

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KENNETH E. FENNER and DEPARTMENT OF THE NAVY,
PHILADELPHIA NAVAL SHIPYARD, Philadelphia, PA

*Docket No. 97-2543; Submitted on the Record;
Issued July 27, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits on the grounds that he had forfeited further compensation effective January 29, 1997, pursuant to 5 U.S.C. § 8148(a).

In the present case, the Office accepted that appellant, a sandblaster, sustained cervical injuries on September 25, 1978 in the performance of his federal employment. The Office terminated appellant's compensation benefits on March 13, 1997, pursuant to 5 U.S.C. § 8148(a), on the grounds that appellant had been convicted of a federal theft charge relating to fraud in the receipt of compensation benefits. The Office denied modification of the prior decision after merit review, on June 19, 1997.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.¹ The Board finds that the Office properly terminated appellant's compensation benefits on the grounds that 5 U.S.C. § 8148(a) required forfeiture of future compensation benefits in this case.

Pursuant to section 8148(a) of the Federal Employees' Compensation Act,² a federal or state criminal conviction relating to fraud in the application for or receipt of any benefit under the Act shall result in forfeiture of compensation benefits as follows:

“Any individual convicted of a violation of section 1920 of title 18, or any other federal or state criminal statute relating to fraud in the application for [or] receipt of any benefit under [the Act], shall forfeit (as of the date of such conviction) any entitlement to any benefits such individual would otherwise be entitled to under

¹ *Patricia A. Keller*, 45 ECAB 278 (1993).

² 5 U.S.C. § 8148(a), enacted on September 30, 1994.

[the Act] for any injury occurring on or before the date of such conviction. Such forfeiture shall be in addition to any action the Secretary may take under section 8106 or 8129.”

In the present case, the evidence of record establishes that appellant pled guilty on January 29, 1997 to a charge of theft of U.S. government funds, violation of 18 U.S.C. § 641, which occurred on January 12, 1995. Upon appellant’s guilty plea, the U.S. District Court Magistrate dismissed additional charges of fraud to obtain federal employees’ compensation and false demands for payment against the U.S. government. The criminal complaint against appellant had alleged that between January 1, 1994 and February 2, 1995 appellant altered 29 prescription receipts to show that he had paid a greater amount than charged. The altered receipts were presented to the Office by appellant, which resulted in an overpayment of prescription charges to appellant in the amount of \$1,940.00.

The evidence of record does establish that appellant was convicted on January 29, 1997, following a guilty plea of violation of a federal criminal statute, 18 U.S.C. § 641, theft of U.S. government funds. The violation of which appellant was convicted, theft of U.S. government funds, did relate to fraud in the receipt of medical benefits under the Act. While the conviction was of theft, rather than fraud, the facts of this case clearly establish that the theft occurred by alteration of prescription bills, in attempt to defraud the government. Appellant’s violation of 18 U.S.C. § 641, therefore, did relate to fraud in the receipt of FECA benefits. The Office thus properly terminated appellant’s compensation benefits effective the date of appellant’s conviction.

Appellant has alleged that he had paid full restitution and would suffer hardship upon termination of his compensation benefits. Appellant is essentially asserting an equitable argument. Section 8148(a)³ is expressed in clear and unambiguous terms. A claimant convicted of a violation of any federal or state criminal statute relating to fraud in the application for or receipt of the FECA benefits shall forfeit compensation, effective the date of the conviction. The terms of the Act are specific as to the method and amount of payment of compensation; neither the Office nor the Board has the authority to enlarge the terms of the Act nor to make an award of benefits under any terms other than those specified in the statute.⁴ Therefore, neither the Office nor the Board has the authority to excuse any conviction which pursuant to 5 U.S.C. § 8148(a) shall result in forfeiture of compensation.

³ *Id.*

⁴ *Richard Dale Kornas, 44 ECAB 1009 (1993).*

The decisions of the Office of Workers' Compensation Programs dated June 19 and March 13, 1997 are hereby affirmed.

Dated, Washington, D.C.
July 27, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member