

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROSETTA CROSBY and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Brooklyn, NY

*Docket No. 99-1513; Submitted on the Record;
Issued February 6, 2001*

DECISION and ORDER

Before DAVID S. GERSON, PRISCILLA ANNE SCHWAB,
VALERIE D. EVANS-HARRELL

The issue is whether appellant received an overpayment of compensation in the amount of \$25,784.41 and, if so, whether she was without fault in the creation of the overpayment.

The Office of Workers' Compensation Programs accepted that appellant sustained a lumbosacral strain and lumbar spondylitis with left sciatic neuritis as a result of lifting a patient on March 20, 1980. Appellant received continuation of pay until May 4, 1980, after which the Office began paying her compensation for temporary total disability.

On June 25, 1992 appellant completed two CA-1032 forms, one covering the period from September 1990 to September 1991 and the other the 15 months prior to June 25, 1992 when appellant signed the form. On both forms appellant answered "no" to the question, "were you employed by an employer during the time period covered by this form?"

On March 7, 1997 appellant pled guilty to one count of making a false statement to obtain compensation under the Federal Employees' Compensation Act,¹ a violation of 18 U.S.C. § 1920. Appellant was placed on probation for five years and ordered to pay a special penalty assessment of \$25.00. Restitution was not ordered because appellant's economic circumstances did not allow payment in the foreseeable future under any reasonable schedule of payments.

By decision dated June 23, 1997, the Office found that appellant was not entitled to compensation after March 7, 1997 on the basis that section 8148 of the Act provides for forfeiture of compensation as of the date of conviction under 18 U.S.C. § 1920. On January 17, 1998 the Office issued a preliminary determination that appellant received an overpayment of compensation in the amount of \$25,784.41, which arose because she forfeited her entitlement to compensation from September 1, 1990 to June 25, 1992 for failing to report earnings from

¹ 5 U.S.C. § 8101 *et seq.*

employment and because she received compensation to which she was not entitled from March 7 to April 26, 1997. The Office found appellant to be with fault in creating the overpayments.

Appellant requested a hearing which was held on June 25, 1998. By decision dated January 21, 1999, the Office hearing representative found that appellant received an overpayment of \$25,784.41, which arose because she forfeited her entitlement to compensation from September 1, 1990 to June 25, 1992 and received compensation to which she was not entitled from March 7 to April 26, 1997. The Office hearing representative also found appellant to be at fault because she failed to furnish information on the Office CA-1032 forms that she knew or should have known to be material and she accepted payments after March 7, 1997, to which she knew or reasonably should have known she was not entitled.

The Board finds that appellant received overpayments of compensation in the amount of \$25,784.41.

Section 8106(b) of the Act² provides in pertinent part:

“The Secretary of Labor may require a partially disabled employee to report his earnings from employment or self-employment, by affidavit or otherwise, in the manner and at the times the Secretary specifies. An employee who: (1) fails to make an affidavit or report when required; or (2) knowingly omits or understates any part of his earnings; forfeits his right to compensation with respect to any period for which the affidavit or report was required. Compensation forfeited under this subsection, if already paid, shall be recovered by a deduction from the compensation payable to the employee or otherwise recovered under § 8129 of this title, unless recovery is waived under that section.”

In this case, appellant forfeited her entitlement to compensation for knowingly failing to report her earnings from September 1, 1990 to June 25, 1992. Appellant’s guilty plea constitutes persuasive evidence that she knowingly omitted earnings when she completed the Office’s CA-1032 forms on June 25, 1992.³ Appellant forfeits all compensation paid during the period covered by these forms -- September 1, 1990 to June 25, 1992 -- even though she may not have had earnings during parts of that period.⁴

The fact that the United States District Court did not order restitution because of appellant’s financial circumstances does not prevent the Office from declaring and collecting the full amount of the overpayment. The Office’s debt collection process would be stopped only if the court order stated that the restitution amount, or the absence of restitution, would be “full satisfaction” of the debt owed the United States. The court order dated March 7, 1997 did not indicate that its \$25.00 penalty assessment was meant to be in full satisfaction of the debt owed

² 5 U.S.C. § 8106(b).

³ *James D. O’Neal*, 48 ECAB 255 (1996); *Iris E. Ramsey*, 43 ECAB 1075 (1992).

⁴ *Armando Barbosa*, 36 ECAB 474 (1985).

to the United States, *i.e.*, that it was a “global settlement.” Thus, the Office was not precluded from pursuing collection of the full amount of the overpayment.⁵

From March 7 to April 26, 1997, appellant was paid \$2,162.04 by the Office. She was not entitled to this compensation because section 8148 of the Act provides that an individual convicted of a violation of 18 U.S.C. § 1920, as appellant was on March 7, 1997, forfeits any entitlement to compensation as of the date of the conviction.

Section 8129(a) of the Act provides that where an overpayment of compensation has been made “because of an error of fact or law,” adjustment shall be made by decreasing later payments to which an individual is entitled. The only exception to this requirement is a situation which meets the tests set forth as follows in section 8129(b): “Adjustment or recovery by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of the Act or would be against equity and good conscience.”⁶ No waiver of an overpayment is possible if the claimant is not “without fault” in helping to create the overpayment.

In determining whether an individual is not “without fault” or, alternatively, “with fault,” section 10.320 of Title 20 of the Code of Federal Regulations states in pertinent part:

“An individual is with fault in the creation of an overpayment who:

- (1) Made an incorrect statement as to a material fact which the individual knew or should have known to be incorrect; or
- (2) Failed to furnish information which the individual knew or should have known to be material; or
- (3) With respect to the overpaid individual only, accepted a payment which the individual knew or should have been expected to know was incorrect.”⁷

The Board finds that appellant was with fault in the creation of the overpayment in the amount of \$23,622.37, that arose because of her failure to report earnings. On the Office CA-1032 forms dated June 25, 1992, appellant failed to furnish information, namely her employment and earnings during the period covered by the forms, which she knew or should have known would affect the amount of compensation she would receive.

The Board further finds that appellant was with fault in the creation of the overpayment of compensation from March 7 to April 26, 1997.

⁵ *Clarence D. Ross*, 42 ECAB 556 (1991); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.300.19 (September 1994).

⁶ 5 U.S.C. § 8129.

⁷ 20 C.F.R. § 10.320(b).

An Office hearing representative, in a January 21, 1999 decision, found appellant at fault for this overpayment, based on his conclusion that appellant had “serious doubts as to whether she was entitled to a check from OWCP after she had pleaded guilty to fraud.” The Office hearing representative found that these doubts and appellant’s failure to inquire whether she was entitled to the checks before cashing them amounted to acceptance of a payment to which she knew or should have been expected to know she was not entitled.

The Board finds the evidence sufficient to establish that appellant should have known that she was not entitled to compensation after her conviction.

Appellant testified at the hearing on June 25, 1998, that she did not know she was not entitled to receive compensation after her conviction on March 7, 1997. However, appellant further testified that her probation officer told her he questioned her entitlement to compensation checks for March 7 to April 26, 1997 after she had pleaded guilty to defrauding the government. Appellant also claimed that the attorney assigned to her criminal case told her to cash the checks, but provided no corroborating statement from the attorney for this advice.

Asked by the hearing representative, if she knew enough to question whether she was entitled to further compensation, appellant declared: “No, I did n[o]t know enough.” The hearing representative then pointed out that appellant had admitted she asked her court-assigned attorney and her probation officer whether she should keep the compensation money. However, appellant did not ask the Office.

Based on the totality of the circumstances of this case and appellant’s testimony at the Office hearing, the Board finds that appellant reasonably should have known that after pleading guilty to charges of falsifying statements to obtain federal compensation, she was not entitled to receive further compensation.

Appellant has argued that because the Office “cut the checks” she should not be found at fault in cashing them. Section 8148(a) of the Act provides that any individual convicted of fraud in the application for or receipt of any benefit under the Act shall forfeit entitlement to any benefit such individual would otherwise be entitled to for any injury occurring on or before the date of such conviction. It is a well-settled principle of workers compensation law that ignorance of statutory requirements will not excuse an individual’s noncompliance with those regulations.⁸

The fact that the Office sent compensation checks to appellant does not excuse her alleged ignorance that she was unaware of the statutory provision that she was not entitled to further compensation.⁹ In this case, the Board concludes that appellant should have been expected to know of the consequences of her fraudulent act against the government, through the exercise of ordinary and reasonable diligence.

⁸ *Robert E. Kimzey*, 40 ECAB 762 (1989).

⁹ *See e.g., Marcelo Crisostomo*, 42 ECAB 339, 340 (1991) (ignorance of the law has never been accepted by the Board as sufficient cause or reason for failure to file a timely claim).

The January 21, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
February 6, 2001

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member

Valerie D. Evans-Harrell
Alternate Member