

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MAURICE G. HARDIN and U.S. POSTAL SERVICE,
POST OFFICE, Owensboro, KY

*Docket No. 00-882; Submitted on the Record;
Issued May 23, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation under 5 U.S.C. § 8148.

On August 11, 1969 appellant, then a 22-year-old letter carrier, twisted his back while collecting mail from a collection box. He underwent surgery on November 3, 1969 for removal of a ruptured L4-5 disc. On June 23, 1970 appellant again underwent surgery for removal of a central disc herniation at L4-5. The Office accepted his claim and began payment of temporary total disability effective August 12, 1969. In a September 28, 1973 decision, the Office found appellant could perform the duties of an accounting clerk and, therefore, had a 52 percent loss of wage-earning capacity. The Office reduced his compensation accordingly.

In a January 19, 1997 investigative memorandum, a postal inspector reported that since June 1972 appellant had played in 45 local golf tournaments, had placed fifth or better in 56 percent of the tournaments and had won 9 tournaments. The postal inspector submitted copies of newspaper stories recounting appellant's victories in golf tournaments and photographs of appellant golfing.

Appellant was indicted on two counts, the first for fraud by failing to reveal material information regarding his medical and physical condition and the second count for fraud for concealing information regarding his physical condition and abilities from a physician to whom the Office had referred him.¹ Appellant was tried on the two counts of fraud. In a December 4, 1997 verdict, a jury acquitted appellant on the first count and convicted him of the second count.

¹ The Office had referred appellant, together with a statement of accepted facts and the case record, to Dr. Thomas M. Marshall, a neurosurgeon, for an examination and second opinion on appellant's ability to work.

In a January 16, 1998 decision, the Office terminated appellant's compensation effective December 4, 1997 because he was convicted of fraud in the receipt of benefits under the Federal Employees' Compensation Act and therefore forfeited entitlement to such benefits.

In a September 18, 1998 letter, appellant requested reconsideration. He stated that he had fulfilled all obligations relating to his sentence of six months of home confinement and making restitution. Appellant, therefore, requested that his compensation be reinstated. He submitted a September 8, 1998 letter from a federal probation officer who reported that appellant was convicted of a violation of 18 U.S.C. § 1920 and was sentenced to six months of home confinement, three years of probation and ordered to pay \$5,554.60 in restitution and a \$100.00 special penalty assessment. In a November 17, 1998 letter, the attorney repeated the request for reconsideration. He contended that, under section 8148 of the Act, appellant was entitled to compensation once his period of incarceration ended and only forfeited compensation for the period of the incarceration.

In an August 26, 1999 merit decision, the Office denied the request for modification of its prior decision.

The Board finds that the Office properly terminated appellant's compensation under section 8148.

Section 8148, in part, states:

“(a) 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 a receipt of any benefit under [the Act], shall forfeit (as of the date of such conviction) any entitlement to any benefit such individual would otherwise be entitled to under [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.

“(b)(1) Notwithstanding any other provision of this chapter ... no benefits under this subchapter or subchapter III of this chapter shall be paid or provided to any individual during any period during which such individual is confined in a jail, prison or other penal or correctional facility, pursuant to that individual's conviction of an offense that constituted a felony under applicable law.”²

Section 10.17 of the implementing regulations states:

“When a beneficiary either pleads guilty to or is found guilty on either Federal or State criminal charges of defrauding the Federal Government in connection with a claim for benefits, the beneficiary's entitlement to any further compensation benefits will terminate effective the date either the guilty plea is accepted or a verdict of guilty is returned after trial, for any injury occurring on or before the date of such guilty plea or verdict. Termination of entitlement under this section

² 5 U.S.C. § 8148.

is not affected by any subsequent change in or recurrence of the beneficiary's medical condition.”³

Under section 8148(a), a claimant who is convicted of fraud in obtaining compensation benefits under 18 U.S.C. § 1920 will have his compensation terminated. The claimant is thereafter permanently barred from receiving any compensation under the Act. Since appellant was convicted of one offense under section 1920, the Office properly terminated appellant's compensation.

Appellant argued that he was entitled to compensation once his period of home confinement ended. However, his argument was based on section 8148(b) which provides that benefits under the Act are not payable to one who has been convicted of any felony, for the period he is incarcerated for that felony. Section 8148(b) is to be distinguished from section 8148(a) which applies solely to convictions for fraud in obtaining benefits under the Act. In that regard, the punishment of section 8148(a) is more severe as it requires a permanent ban of compensation benefits under the Act for anyone convicted of fraudulently receiving benefits under the Act. Since, in this case, appellant was convicted of fraud in receiving compensation benefits, the Office properly imposed the penalty provisions of section 8148(a) to this case.

The decision of the Office of Workers' Compensation Programs, dated August 26, 1999, is hereby affirmed.

Dated, Washington, DC
May 23, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member

³ 20 C.F.R. § 10.17