

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERT E. REED, SR. and DEPARTMENT OF THE NAVY,  
NAVAL AIR WARFARE CENTER WEAPONS, China Lake, CA

*Docket No. 00-1029; Submitted on the Record;  
Issued April 15, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,  
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective May 28, 1999 due to his pleading guilty to one count of violating 18 U.S.C. § 1920.

On March 13, 1968 appellant, then a 27-year-old plumber, experienced pain in his lower back while performing his federal duties. The Office accepted the claim for a lumbosacral strain and aggravation of degenerative arthritis. Appellant never returned to the employing establishment but received appropriate compensation benefits from the Office. He returned to work as an auctioneer and worked intermittently.

Appellant was indicted on October 1, 1997. In a superceding indictment of May 8, 1998, a federal grand jury in the Western District of Missouri-Southwestern Division, Springfield, Missouri charged appellant with 27 counts of wire fraud relative to his fraudulent receipt of Federal Employees' Compensation Act benefits during the period June 18, 1991 through December 19, 1995. The indictment further alleged that appellant fraudulently completed CA-1032 forms and failed to report substantial income and economic gain from an auction business, promotions of auctions and other events, writing, publishing and entertaining. On January 4, 1999 appellant entered into a guilty plea to a one-count information charging him with a violation of 18 U.S.C. § 1920 for making a false statement to obtain federal employee's compensation.<sup>1</sup> The United States and appellant agreed that the following facts accurately described appellant's conduct constituting the offense in this case:

“[Appellant] made misrepresentations to the Office of the United States Department of Labor on OWCP Forms CA-1032. The misrepresentations included omission of economic activity of the defendant and misrepresentation of his marital status. The misrepresentations were intended to cause and did cause,

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<sup>1</sup> In return the government agreed to dismiss the May 8, 1998 indictment at the time of sentencing.

[the Office] to make payments on account of workman's compensation benefits which would not have been due and payable had true facts been known to [the Office]. In this regard [appellant] signed OWCP Forms CA-1032 on September 28, 1992, October 4, 1993 and September 28, 1994, as part of his scheme."

On May 5, 1999 United States magistrate Judge James C. England accepted the plea agreement in open court and sentenced appellant to serve a period of 10 months in a federal institution on that same date.

By decision dated May 28, 1999, the Office terminated appellant's compensation, effective the same date, because he pled guilty to fraud in order to obtain money by false and fraudulent pretenses by misrepresenting his economic activity on the CA-1032 forms filed for the period June 18, 1991 up to and including December 19, 1995.

Following an oral hearing, an Office hearing representative, in a December 15, 1999 decision noted that appellant had agreed in his plea agreement that he had made misrepresentations on CA-1032 forms and that "misrepresentations were intended to cause and did cause [the Office] to make payments on account of workers' compensation benefits which would not have been due and payable had the true facts been known to [the Office]." The hearing representative rejected appellant's contention that the plea agreement never specifically mentioned fraud and found that section 8148 of the Act was applicable. The Office hearing representative, therefore, affirmed the Office's May 28, 1999 decision.

The Board finds that the Office properly terminated appellant's compensation effective May 28, 1999.

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.<sup>2</sup> In terminating appellant's compensation in the present case the Office relied on 5 U.S.C. § 8148(a) which provides that a person convicted of a statute relating to fraud in the application for or receipt of benefits under the Act shall forfeit future entitlement to benefits.

Section 8148(a) states:

"Any individual convicted of a violation of section 1920 of Title 18 or any other [f]ederal or [s]tate criminal statute relating to fraud in the application for or receipt of any benefit under this subchapter ... shall forfeit (as of the date of such conviction) any entitlement to any benefit such individual would otherwise be entitled to under this subchapter ... 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 [forfeiture] or 8129 [recovery of overpayments]."<sup>3</sup>

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<sup>2</sup> William A. Kandel, 43 ECAB 1011, 1020 (1992).

<sup>3</sup> 5 U.S.C. § 8148(a). Public Law No. 103-333, which amended the Act by adding 5 U.S.C. § 8148, was enacted

Section 10.17 of the implementing regulations states:

“When a beneficiary either pleads guilty to or is found guilty on either [f]ederal or [s]tate criminal charges of defrauding the [f]ederal [g]overnment 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 is not affected by any subsequent change in or recurrence of the beneficiary’s medical condition.”<sup>4</sup>

Section 8148 provides for termination of compensation upon conviction under section 1920. The implementing regulations provide that the termination shall be effective as of the date of a guilty verdict or date a guilty plea is accepted. No compensation, therefore, will be paid under section 8148 once it has been established that a claimant is guilty of defrauding the federal government by submitting a false or fraudulent statement in an effort to obtain compensation to which he or she is not entitled.

On May 5, 1999 appellant made a guilty plea in open court to one count of violating 18 U.S.C. § 1920. This plea was accepted by the court as, by sentencing order dated May 5, 1999, appellant was sentenced to 10 months of incarceration to begin June 8, 1999. Therefore, under the explicit terms of 5 U.S.C. § 8148(a) and the clearly stated directive of section 10.17, the Office properly terminated appellant’s compensation effective May 28, 1999. Congress has enacted section 8148(a) as an absolute forfeiture of compensation, without any provision for waiver of the effects of this section of the Act.<sup>5</sup> Inasmuch as appellant was convicted on May 5, 1999, a date after section 8148 was enacted, the Board finds that the Office properly terminated appellant’s compensation effective May 28, 1999.

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on September 30, 1994. Subsection (b) of 5 U.S.C. § 8148, not relevant in this case bars receipt of compensation by any person imprisoned for a felony conviction during the period of such imprisonment. 5 U.S.C. § 8148(b).

<sup>4</sup> 20 C.F.R. § 10.17.

<sup>5</sup> *Michael D. Matthews*, 51 ECAB \_\_\_\_ (Docket Nos. 98-2204 & 99-2508, issued December 23, 1999). This forfeiture is a permanent forfeiture which bars appellant from any further entitlement to compensation for any employment-related injuries or conditions which arose prior to December 18, 1997. *Jeff M. Burns*, 51 ECAB \_\_\_\_ (Docket No. 97-2058, issued December 21, 1999).

The December 15, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.<sup>6</sup>

Dated, Washington, DC  
April 15, 2002

Michael J. Walsh  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

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<sup>6</sup> The Board notes that appellant submitted and the record contains additional evidence after the Office's hearing representative's December 15, 1999 decision, but the Board cannot consider such evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c).