

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BECKY R. PIRTLE and TENNESSEE VALLEY AUTHORITY,
INSPECTOR GENERAL, Chattanooga, TN

*Docket No. 01-1467; Submitted on the Record;
Issued April 1, 2002*

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 determined that appellant's entitlement to compensation in conjunction with her August 7, 1995 and February 15, 1996 injuries, was forfeited effective May 23, 2000 pursuant to the provisions of 5 U.S.C. § 8148(a).

The Office accepted that on August 7, 1995 appellant, then a 45-year-old administrative analyst, sustained cervical strain when she lifted a 40-pound bag at work. The Office further accepted that appellant sustained left elbow and knee strain and a stress fracture of the left foot second metatarsal on February 15, 1996 while working out on the employing establishment tread mill. Appellant received appropriate compensation benefits.

On May 23, 2000 appellant signed a plea agreement which was filed with the United States District Court for the Eastern District of Tennessee in which she agreed to plead guilty to violating 18 U.S.C. § 1920 when she knowingly and willfully made a false statement or report to the Office, in connection with an application for, or receipt of, Federal Employees' Compensation Act benefits, and that the statement or report related to a material fact. The circumstances of the fraud occurred with appellant's usage of leave without pay (LWOP) to visit a doctor in conjunction with her workers' compensation claims, where she engaged in a pattern of requesting reimbursement for more hours of lost time on the claim form she submitted to the Office than she claimed as LWOP on her employing establishment leave slips. It was noted that appellant claimed more hours on 14 occasions between December 23, 1996 and November 4, 1998 and that the total amount of overpaid compensation based on the inflated hours was \$430.04.

Also submitted was a copy of an "agreement" signed by appellant and the employing establishment on May 19, 2000, which noted that on April 7, 2000 it had issued appellant a letter advising that she would be terminated effective May 23, 2000. Under the terms of the agreement, appellant agreed to resign effective May 26, 2000, the employing establishment would rescind the April 7, 2000 notice of termination, and appellant agreed to pay restitution to

the employing establishment in the amount of \$2,767.00 in connection with her claims for reimbursement for lost time and travel related to her workers' compensation claims.

By letter dated June 29, 2000, the Office determined that appellant was not entitled to receive further benefits under the Act in connection with her identified injuries since she entered a plea of guilty on May 23, 2000 to defrauding the compensation program in violation of 18 U.S.C. § 1920. The Office cited 5 U.S.C. § 8148 as the basis for this decision. The Office indicated that appellant was not entitled to further medical benefits or wage-loss compensation effective May 23, 2000.

On August 4, 2000 a sentencing hearing was held in the United States District Court for the Eastern District of Tennessee. The plea agreement was accepted that date by the Court and appellant was sentenced to one year of probation and a fine of \$1,500.00 and a special assessment of \$25.00.

Appellant disagreed with the Office's June 29, 2000 decision and requested an oral hearing which was held on November 28, 2000.

At the hearing appellant testified that she did increase the hours claimed for lost time due to medical treatment in both claims. She testified that she did this several times in connection with the February 15, 1996 injury and once with the August 7, 1995 injury. Appellant testified that she repaid the employing establishment not only for the compensation benefit but also for disputed travel expenses, although the travel expenses were not part of the plea agreement. Appellant testified that she entered the guilty plea because the employing establishment agreed to allow her to stay on the payroll until she reached age 50 on May 25, 2000, which would entitle her to immediate retirement benefits. Appellant testified that she was then able to resign and retire on May 27, 2000. She claimed that the employing establishment insisted on a guilty plea in order to prevent her from seeking wage-loss benefits under the Act.

By decision dated February 2, 2001, the hearing representative affirmed the June 29, 2000 decision finding that, in accordance with 5 U.S.C. § 8148(a), appellant's conviction under 18 U.S.C. § 1920 for defrauding the Act, mandated forfeiture of compensation entitlement. The hearing representative found that appellant's benefits were forfeited under 5 U.S.C. § 8148 effective May 23, 2000, the date of her guilty plea for violation of 18 U.S.C. § 1920 in defrauding the Act.

The Board finds that the Office properly determined that appellant's entitlement to compensation in conjunction with her August 7, 1995 and February 15, 1996 injuries, was forfeited pursuant to the provisions of 5 U.S.C. § 8148(a). However, the Board finds that the effective date of the forfeiture was improperly determined.

Title 5 of the United States Code, section 8148 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 receipt of any benefit under this subchapter or subchapter III of this chapter, shall forfeit (as of the date of such conviction) and entitlement to any benefits such

individual would otherwise be entitled to under this subchapter or subchapter III for any action the Secretary may take under section 8106 or 8129.”

The facts in this case are straight forward. Appellant voluntarily pled guilty on May 23, 2000 to fraudulently claiming more hours under the Act for medical treatment than she claimed leave without pay from the employing establishment. On August 4, 2000 the Court accepted her guilty plea of defrauding the Act under 18 U.S.C. § 1920 and subsequently sentenced her accordingly.¹ Thereafter the Office properly applied 5 U.S.C. § 8148(a) and determined that appellant forfeited her compensation entitlement as she was “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 this subchapter...”² However, the hearing representative improperly determined the beginning date of the forfeiture.

Title 20 C.F.R. § 10.17 states that where the “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...”³

In this case, the date appellant’s guilty plea was accepted on August 4, 2000 and not May 23, 2000, the date of signature. Therefore, benefits will terminate and the forfeiture will not begin until August 4, 2000. Consequently, the hearing representative’s decision must be modified to reflect the August 4, 2000 effective date.

As no further decision as to the existence of any overpayment or recovery of such has been rendered in this case, 5 U.S.C. § 8106 has not yet been applied.

¹ See *Iris E. Ramsey*, 43 ECAB 1075 (1992) (misdemeanor counts, as well as felony counts are actionable). *Id.* at 1085-86. (Both Ms. Ramsey and appellant received a probated sentences and a fine.)

² 5 U.S.C. § 8148(a). Both Ms. Ramsey and appellant forfeited their compensation entitlements.

³ 20 C.F.R. § 10.17 (1999).

The decisions of the Office of Workers' Compensation Programs dated February 2, 2001 and June 29, 2000 are hereby affirmed as modified.

Dated, Washington, DC
April 1, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member