

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MICHAEL W. WALKER and U.S. POSTAL SERVICE,  
POST OFFICE, Capitol Heights, MD

*Docket No. 01-08; Oral Argument Held June 4, 2002;  
Issued July 9, 2002*

Appearances: *Gary Diamond, Esq.*, for appellant; *Catherine P. Carter, Esq.*,  
for the Director, Office of Workers' Compensation Programs.

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DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,  
COLLEEN DUFFY KIKO

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation under section 8148 of the Federal Employees' Compensation Act.

On October 19, 1987 appellant, then a 40-year-old modified letter carrier, filed a claim for work-related stress which he attributed to pressure on the job. He stopped working that day. The Office accepted appellant's claim for aggravation of depression and anxiety and began payment of temporary total disability effective November 30, 1987.

In a November 14, 1990 letter, the Office requested that appellant complete a CA-1032 form reporting, among other matters, whether he was employed in the prior 15 months and, if so, when and for whom he worked. The Office also instructed appellant to report any self-employment describing any enterprise in which he worked and from which he earned revenue, even if it operated at a loss or if the profits were reinvested. The Office indicated that appellant must show as his rate of pay what it would have cost to hire someone to perform the job he did. In a November 30, 1990 report, appellant indicated that he had not been employed or self-employed during the period in question. In subsequent CA-1032 forms dated June 2, 1991, April 21, 1992, May 12, 1994, May 23, 1995, April 16, 1996, April 11 and December 9, 1997 and May 7, 1998, appellant reported that he had no employment or self-employment except for a one day job on November 10, 1996 as a movie extra.

On March 2, 1999 the United States Attorney for the District of Columbia filed an information in federal court, stating that from approximately March 1993 to at least March 1998, appellant was performing services for a home improvement business. It noted that appellant failed to report his work on CA-1032 forms dating from May 12, 1994 to December 9, 1997. The information charged appellant with knowingly and willfully falsifying, concealing and covering up a material fact in a claim for compensation on or about December 9, 1997.

Appellant agreed to a plea of guilty to a one-count misdemeanor violation of section 1920,<sup>1</sup> based on a factual admission of guilt. He signed the plea agreement on November 16, 1998. Appellant's guilty plea was accepted by the U.S. District Court on June 29, 1999 and he was sentenced to two years probation.

In an April 28, 1999 CA-1032 form, appellant indicated that he was self-employed from January 1998 to the present. He stated that he was under a doctor's care for bipolar disorder. Appellant commented that as part of his treatment plan, he was required to stay active and busy. He stated that for no pay he functioned as a coordinator and supervisor for Hughes/Walker Enterprises, which was a janitorial and maintenance organization. Appellant commented that the business was a partnership which was losing money every year. He noted that it was difficult to calculate the rate of pay since he was not compensated.

In an August 17, 1999 decision, the Office terminated appellant's compensation effective August 15, 1999 under section 8148(a) of the Act,<sup>2</sup> on the basis of his conviction of fraud relating to the application for or receipt of compensation under the Act.

Appellant requested a hearing before an Office hearing representative. At the February 9, 2000 hearing, he testified that his physician told him that he was deteriorating while sitting and doing nothing around the house. The physician recommended that appellant find a way to help others. Appellant stated that, in 1992 he began teaching a trade to people who needed help. He indicated that he would pick trainees up and drive them to a job location. Appellant noted that he found jobs for people through his church. He stated that he would take checks from the men he trained, cash the checks, pay them and purchase materials they needed for work. Appellant testified that, in some instances, the jobs cost him money and he had recently filed for bankruptcy. He stated that he earned no money from his efforts. Appellant testified that, after reviewing the CA-1032 forms, he concluded that so long as he was not making money, he did not have to report his activities. He stated that he regarded his efforts not as work but as help to others.

In a May 10, 2000 decision, the Office hearing representative affirmed the Office's August 17, 1999 decision to terminate appellant's compensation.

The Board finds that the Office properly terminated appellants' compensation under section 8148(a) of the Act.

Section 8148(a) states:

“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 benefit such individual would otherwise be entitled to under [the Act] for any injury occurring on or before the date of such conviction. Such

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<sup>1</sup> 18 U.S.C. § 1920.

<sup>2</sup> 5 U.S.C. § 8148(a).

forfeiture shall be in addition to any action the Secretary may take under section 8106 or 8129.”<sup>3</sup>

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 is not affected by any subsequent change in or recurrence of the beneficiary’s medical condition.”<sup>4</sup>

In this case, appellant plead guilty to and was convicted of one count of making a false report in a CA-1032 form, which was a violation of section 1920. Under the terms of section 8148(a) then, appellant’s compensation must be terminated. The statute makes no exceptions and provides no room for any waiver of the requirements of section 8148(a). Appellant’s attorney argued that the provisions of section 8148(a) should only apply to a felony conviction under section 1920. He claimed that as appellant only plead guilty to a misdemeanor, his compensation should not be terminated. While section 8148(b) specifically allows the termination of compensation during the period of incarceration for any felony conviction, section 8148(a) makes no distinction between a conviction for a felony or misdemeanor violation of section 1920. The Board has previously upheld the termination of compensation on the basis of a misdemeanor violation of section 1920.<sup>5</sup>

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<sup>3</sup> 5 U.S.C. § 8148(a).

<sup>4</sup> 20 C.F.R. § 10.17.

<sup>5</sup> *Carl C. Graci*, 50 ECAB 557 (1999).

The decision of the Office of Workers' Compensation Programs dated May 10, 2000 is hereby affirmed.

Dated, Washington, DC  
July 9, 2002

Michael J. Walsh  
Chairman

Alec J. Koromilas  
Member

Colleen Duffy Kiko  
Member