

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GERALD C. MARINO and U.S. POSTAL SERVICE,
POST OFFICE, Flushing, NY

*Docket No. 01-1756; Submitted on the Record;
Issued June 7, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

On December 22, 1988 appellant sustained an injury to his right knee, which was accepted by the Office for precipitation of medial synovial plica syndrome. He returned to part-time limited duty at the employing establishment and the Office paid him for loss of wage-earning capacity. On October 25, 1996 appellant elected, effective October 5, 1996, to receive benefits under the Civil Service Retirement Act in preference to any benefits to which he might be entitled under the Federal Employees' Compensation Act.

By a June 8, 1998 letter, a postal inspector advised the Office that on December 2, 1997 appellant pled guilty to a violation of 18 U.S.C. § 1920, "[f]alse statement or fraud to obtain [f]ederal employees' compensation." Accompanying this letter was a criminal docket sheet from the U.S. District Court, Southern District of New York showing that on December 2, 1997 appellant entered a guilty plea and the court accepted the plea for violating 18 U.S.C. § 1920. On April 7, 1998 appellant was sentenced to three years of probation and restitution in the amount of \$9,004.80.

By decision dated March 29, 1999, the Office found that appellant was not entitled to receive any further benefits under the Federal Employees' Compensation Act effective December 2, 1997, on the basis that he pled guilty to making false statements to obtain federal employees' compensation. The Office advised appellant that it would pay for authorized medical treatment he received before the date of its decision.

In an undated letter received by the Office on March 29, 2000, appellant requested reconsideration, contending that he pled guilty on April 7, 1998 of misdemeanor compensation fraud and that only convicted felons forfeited their entitlement to compensation.

By decision dated April 6, 2000, the Office found: “[r]egardless of whether you pled guilty to a felony charge or a misdemeanor charge under section 1920 of title 18, your entitlement to any benefits under the Federal Employees’ Compensation Act is terminated as of the date you pled guilty in open court and the court accepted your plea.”

In an undated letter received April 3, 2001, appellant requested reconsideration, contending that, despite his guilty plea, he was entitled to a schedule award under the Federal Employees’ Compensation Act, as it was already being decided at the time of his guilty plea.

By decision dated April 17, 2001, the Office found that appellant’s request for reconsideration did not raise a substantive legal question nor include new and relevant evidence, and was, therefore, insufficient to warrant review of its prior decision.

The only Office decision before the Board on this appeal is the Office’s April 17, 2001 decision finding that appellant’s application for review was not sufficient to warrant review of its prior decision. Since more than one year elapsed between the date of the Office’s most recent merit decision on April 6, 2000 and the filing of appellant’s appeal on June 19, 2001, the Board lacks jurisdiction to review the merits of appellant’s claim.¹

The Board finds that the Office properly refused to reopen appellant’s case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

Section 8128(a) of the Federal Employees’ Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

(1) end, decrease, or increase the compensation awarded; or

(2) award compensation previously refused or discontinued.”

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim.

Appellant did not submit any new evidence with his request for reconsideration received by the Office on April 3, 2001. He also did not show that the Office erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously

¹ 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board be filed within one year of the date of the Office final decision being appealed.

considered by the Office. Appellant's contention that he remains entitled to a schedule award despite his guilty plea to violating 18 U.S.C. § 1920 is contrary to section 8148(a) of the Federal Employees' Compensation Act,² which 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 a receipt of any benefits under this subchapter or subchapter III of this chapter, shall forfeit (as of the date of such conviction) any entitlement to any benefits such individual would otherwise be entitled to under this subchapter or subchapter III for any injury occurring on or before the date of such a conviction. Such forfeiture shall be in addition to any action the Secretary may take under section 8106 or 8129."

The Office's regulations define "benefits" as "the money [the Office] pays to or on behalf of a beneficiary from the Employees' Compensation Fund for lost wages, a loss of wage-earning capacity or a permanent physical impairment...."³ The statute and regulations thus clearly show that a beneficiary, such as appellant, who is convicted of a violation of 18 U.S.C. § 1920 is not entitled to a schedule award, which is compensation for a permanent physical impairment.⁴ As it is clear that appellant is not entitled to a schedule award after his conviction of a violation of 18 U.S.C. § 1920, appellant's argument that he is so entitled does not show that the Office erroneously applied or interpreted a specific point of law, nor can it be considered a relevant legal argument not previously considered by the Office.

² 5 U.S.C. § 8148(a).

³ 20 C.F.R. § 10.5(a).

⁴ This is consistent with the preclusion of a schedule award following a refusal of suitable work; *see Stephen R. Lubin*, 43 ECAB 564 (1992); 20 C.F.R. § 10.517(b). *See Paul Hanley*, 53 ECAB ____ (Docket No. 01-403, issued March 7, 2002) (a claimant convicted of fraud in obtaining compensation benefits is permanently barred from receiving any compensation).

The April 17, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
June 7, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member