

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WILLIAM E. BROWN and DEPARTMENT OF THE NAVY,  
NORFOLK ISLAND SHIPYARD, Portsmouth, VA

*Docket No. 01-1003; Submitted on the Record;  
Issued October 16, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation under 5 U.S.C. § 8148; and (2) whether the Office properly denied appellant's request for reconsideration.

On May 21, 1991 appellant, then a 42-year-old shipfitter worker, sustained a crush injury to the right foot with gangrene in the performance of duty. He began receiving compensation for temporary total disability effective July 5, 1991. The Office later accepted an acute stress reaction as related to the foot injury.

On December 7, 1999 the employing establishment advised the Office that an investigation had revealed that appellant had been operating a lawncare business but did not report these earnings to the Office.<sup>1</sup> The employing establishment wished to give appellant another chance to report his earnings and asked the Office to send another Form EN1032 to him.

In Office Form EN1032 dated December 16, 1999, appellant indicated that he had not been employed or self-employed for the previous 15 months.

In a report dated September 11, 2000, Sean Thomas, a special agent for the employing establishment Office of Investigations, advised the Office that appellant had been found guilty in federal court of fraud under Title 18, section 1920 of the Federal Employees' Compensation Act. A copy of the Criminal Information and Judgment Order was provided. The Judgment dated August 24, 2000 indicated that appellant, who had been represented by counsel, had pleaded guilty to making false statements on October 11, 1999 and December 16, 2000 in connection with application for and receipt of compensation benefits under the Act.

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<sup>1</sup> On October 11, 1999 appellant signed Office Form EN1032 and indicated that he had not been employed or self-employed during the previous 15 months.

By decision dated October 5, 2000, the Office terminated appellant's compensation effective August 21, 2000 because he was convicted of fraud in the receipt of benefits under the Act and, therefore, forfeited entitlement to such benefits.

In an undated letter received by the Office on October 30, 2000, appellant requested reconsideration.

By letter dated November 8, 2000, the Office asked appellant to submit evidence in support of his reconsideration request by November 30, 2000. The record shows that no additional evidence was submitted by that date.

By decision dated December 1, 2000, the Office denied appellant's request for reconsideration on the grounds that he had not submitted new evidence or legal argument in support of his request for reconsideration.

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 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.”<sup>2</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>3</sup>

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<sup>2</sup> 5 U.S.C. § 8148.

<sup>3</sup> 20 C.F.R. § 10.17.

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.

The Board further finds that the Office properly denied appellant's request for reconsideration.

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.<sup>4</sup> When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.<sup>5</sup>

In support of his request for reconsideration, appellant did not submit any additional evidence or argument. As appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit relevant and pertinent evidence not previously considered by the Office, the Office properly denied his request for reconsideration.

The decisions of the Office of Workers' Compensation Programs dated December 1 and October 5, 2000 are affirmed.

Dated, Washington, DC  
October 16, 2002

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>4</sup> 20 C.F.R. § 10.606(b)(2).

<sup>5</sup> 20 C.F.R. § 10.608(b).