

appellant's treating physicians and an Office referral physician with regard to whether the prescribed purchase of a whirlpool spa tub was necessary for the treatment of his work-related back condition. The facts and the circumstances of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.²

To resolve the conflict the Office referred appellant to Dr. Peter A. Feinstein, a Board-certified orthopedic surgeon, selected as the impartial medical specialist. In a report dated February 18, 2000, Dr. Feinstein recommended the whirlpool as a one-time investment without the need for any other additional treatment including trigger point injections or physical therapy.

In a letter dated March 8, 2000, the Office notified appellant of the authorization for the purchase of the prescribed whirlpool spa.

On May 31, 2000 the employing establishment offered appellant a full-time position as a tractor trailer operator. The position entailed inspecting and taking a yard inventory of all trailers, performing a rail van check of all rails received, inspecting the yard for safety hazards and assisting in light office duties. The physical requirements of the sedentary position included intermittent sitting, standing for 15 minutes at a time, no prolonged walking/carrying/lifting and sitting and standing at his discretion. The tour of duty was from 8:00 a.m. to 4:30 p.m.

On June 28, 2000 the Office sent appellant Form EN-1032 wage and compensation disclosure forms for verification of his wages and earning during the previous 15 months. In July 2000, appellant completed and signed a Form EN-1032 covering the 15-month period preceding it, which advised him that he must report all employment for which he received wages or other payment during the 15-month period covered by the form and it described the penalty if he fraudulently concealed or failed to report such income that would have a material effect on his benefits. Appellant indicated that he was not employed, nor had he received any wages or income during this time period. By signing the form, appellant acknowledged the following:

"I know that anyone who fraudulently conceals or fails to report income or other information which would have an effect on benefits, or who makes a false statement or misrepresentation of a material fact in claiming a payment or benefit under the Federal Employees' Compensation Act may be subject to criminal prosecution, from which a fine or imprisonment, or both, may result.

"I understand that I must immediately report to [the Office] any improvement in my medical condition, any employment, any change in the status of claimed dependents, any third-party settlement and any change in income from [f]ederally assisted disability or benefit programs."

Having received a completed Form EN-1032, the Office paid compensation for total disability.

² Docket No. 98-1358 (issued September 24, 1999).

In letters dated July 12 and August 29, 2000, appellant, through his attorney, requested reimbursement for several prescription bills that were outstanding. Counsel advised that appellant had attempted to return to work on a number of occasions which led to a worsening of his symptoms and the need for further medical treatment. He also requested a copy of a surveillance tape, which was taken by the employing establishment.

By letter dated August 21, 2000, the Office received a surveillance videotape from the employing establishment showing appellant building decks. The Office indicated that the surveillance videotape would be provided to physicians involved to see if it affected their opinion with regard to his ability to work.

In an August 25, 2000 letter, the Office requested that Dr. Feinstein review the job description for a tractor trailer operator and comment on whether appellant's injury had sufficiently resolved for him to perform the duties of the position. The Office enclosed the surveillance tape of appellant engaged in physical activity. By a letter dated October 10, 2000, Dr. Feinstein noted that he reviewed the job description and the surveillance tape of appellant filmed from February 10 to June 28, 2000. He indicated that the videotape surveillance showed appellant carrying steps for a wooden porch, transporting the wood used to build the porch, carrying heavy pieces of construction wood, bending over, lifting and carrying full pieces of construction lumber, using a power saw to cut the lumber, holding the power saw over head to cut the wood, lifting, carrying and placing cement blocks on a porch, bending, carrying, lifting and walking in the snow, carrying work tools up and down stairs and carrying a generator. Dr. Feinstein advised that the activities depicted on the tape were totally inconsistent with appellant's clinical complaints, subjective complaints and clinical history as he presented them at the time of his impartial medical examination on February 18, 2000. Dr. Feinstein opined that the tapes indicated that appellant was malingering and untruthful. He concluded that, on the basis of the activities which were depicted in the tape, appellant would not be restricted in any way from any job activities and would be able to perform the job as a tractor trailer operator. Dr. Feinstein indicated that there was nothing to indicate that appellant was disabled in any way and was fully functional for all activities of daily living, vocational, recreational and otherwise.

By a letter dated September 20, 2000, the Office advised appellant that, after reviewing the surveillance video and appellant's medical history, Dr. Feinstein opined that he was capable of performing the duties of a tractor trailer operator. The Office advised that the employing establishment did not provide an investigative report. On September 25, 2000 appellant accepted the offered position of tractor trailer operator effective October 7, 2000.

On September 25, 2000 the employing establishment offered appellant a full-time position as a tractor trailer operator. The position entailed inspecting and taking a yard inventory of all trailers, perform a rail van check of all rails received, inspect the yard for safety hazards and assist in light office duties. The physical requirements of the sedentary position included intermittent sitting, standing for 15 minutes at a time, no prolonged walking/carrying/lifting and sitting and standing at his discretion. The tour of duty was from 8:00 a.m. to 4:30 p.m.

Appellant continued to submit medical records from Dr. Yasin N. Khan, a Board-certified anesthesiologist, dated October 30, 2000 to August 27, 2002, who noted treating appellant for low back pain and lower extremity pain and diagnosed cervical radiculopathy.

On November 6, 2001 appellant was indicted for violating Title 18 U.S.C. § 1920 for making false statements to obtain compensation benefits. On November 30, 2001 appellant pled guilty to one count of violating Title 18 U.S.C. § 1920 for making false statements to obtain compensation benefits. On May 8, 2002 a judgment was entered against appellant and he was sentenced to 5 years probation, 50 hours of community service and ordered to make \$56,884.00 in restitution to the employing establishment.

By decision dated October 18, 2002, the Office terminated appellant's compensation effective October 18, 2002 under 5 U.S.C. § 8148. The Office based its termination on the fact that appellant pled guilty on November 30, 2001 and was sentenced on May 20, 2002 to violating 18 U.S.C. § 1920 by knowingly and willfully making false statements on an EN-1032 form he signed in July 2000.

By letters dated November 12, 2002 and October 13, 2003, appellant requested an oral hearing before an Office hearing representative. The hearing was held on November 19, 2003. Appellant stated that he made the mistake of helping a friend build a deck and was thereafter convicted of fraud.

By a decision dated January 29, 2004, an Office hearing representative affirmed the October 18, 2002 decision.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.³ 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 [T]itle 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 [compensation for local police officers], shall forfeit (as of the date of such conviction) any entitlement to any benefit such individual would otherwise be entitled to under this subchapter or subchapter III for any injury occurring on or before the date of such conviction. Such forfeiture shall be in addition to any

³ *William A. Kandel*, 43 ECAB 1011, 1020 (1992).

action the Secretary may take under section 8106 [forfeiture] or 8129 [recovery of overpayments].”⁴

Section 10.17 of the Office’s implementing federal regulation provides:

“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.”⁵

The Office procedure manual states that in support of termination or suspension of compensation the record must contain copies of the indictment or information, the plea agreement, if any, the document containing the guilty verdict and/or the court’s docket sheet. Further, this evidence must establish: (1) the individual was convicted; and (2) the conviction is related to the claim for, or receipt of, compensation benefits under the Act.⁶ The termination is effective on the date of the verdict or on the date the guilty plea is accepted and guilt adjudicated.⁷ Because of the criminal basis for the termination, no pretermination notice is required before a final decision is issued.⁸

ANALYSIS

On November 30, 2001 appellant entered a plea of guilty to one count of violating 18 U.S.C. § 1920 when he knowingly and willfully made false, fictitious and fraudulent statements on an EN-1032 form he signed in July 2000 regarding his employment, self-employment and income during the period April 1999 to July 31, 2000. Under section 8148(a) of the Act, a claimant who is convicted of fraud in obtaining compensation benefits under 18 U.S.C. § 1920 will have his compensation forfeited. The claimant is thereafter permanently barred from receiving any compensation under the Act.⁹ The Office procedures require that, in

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

⁵ 20 C.F.R. § 10.17.

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.12(d) (March 1997).

⁷ See *Paul Hanley*, 53 ECAB 424 (2002); 20 C.F.R. § 10.17; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.12(e) (March 1997).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.12(f)(2) (March 1997).

⁹ Congress has enacted 5 U.S.C. § 8148(a) as an absolute forfeiture of compensation, without any provision for waiver of the effects of this section of the Act. *Michael D. Matthews*, 51 ECAB 247 (1999). This is a permanent forfeiture which bars appellant from any further entitlement to compensation for any employment-related injuries or conditions. *Jeff M. Burns*, 51 ECAB 241 (1999).

support of the termination of compensation, the record must contain copies of the indictment or information, the plea agreement, if any, the document containing the guilty verdict and/or the court's docket sheet establishing that the individual was convicted and that the conviction is related to the claim for, or receipt of, compensation benefits under the Act.¹⁰ In this instance, the record contains a judgment dated May 8, 2002, which noted that appellant plead guilty to one count of violating Title 18 U.S.C. § 1920, making a false statement in obtaining federal employee's compensation on July 31, 2000. Since appellant was convicted of an offense under section 1920, the Office properly terminated his compensation benefits.¹¹

Appellant contends that prior to pleading guilty he was never advised of section 8148(a) of the Act¹² or that he would forfeit any entitlement to future medical benefits and that he remains entitled to medical benefits. Appellant indicated that on November 30, 2001 he was sentenced to 5 years probation, 50 hours of community service and was ordered to pay \$56,884.00 in restitution. The Board notes that the forfeiture penalty enacted under section 8148(a) is a permanent ban on all compensation benefits under the Act for anyone convicted of fraudulently receiving benefits.¹³ In this case, appellant was convicted of fraud in receiving compensation benefits, the Office properly imposed the penalty provisions of section 8148(a) to this case. There is no exception for excluding the forfeiture of medical benefits as they constitute compensation benefits under the Act.¹⁴

Section 8148(a) of the Act provides that benefits of beneficiaries 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) 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. In this case, the Board finds that the effective date of appellant's conviction was November 30, 2001. The language of 8148(a) does not permit discretion on the part of the Office. Appellant was not entitled to wage-loss compensation after November 30, 2001 and his entitlement to compensation benefits should have been suspended effective on that

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.12(d) (March 1997).

¹¹ The record contains the appropriate court documents specified by Office procedure.

¹² 5 U.S.C. § 8148(a).

¹³ See *Maurice G. Hardin*, 52 ECAB 376 (2001); see also *Paul Hanley*, *supra* note 7.

¹⁴ The terms of the Act are specific as to the method and amount of payment of compensation; neither the Office nor the Board has the authority to enlarge the terms of the Act or to make an award of benefits under any terms other than those specified in the statute. See *Edward Schoening*, 48 ECAB 326 (1997); *Alonzo R. Witherspoon*, 43 ECAB 1120 (1992); see also 5 U.S.C. § 8101(12) and *Gary L. Whitmore*, 43 ECAB 441 (compensation includes payments for medical expenses).

date.¹⁵ It was therefore error for the Office to conclude that he was entitled to wage-loss compensation up to October 18, 2002.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation effective November 30, 2001 under 5 U.S.C. § 8148.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 29, 2004 is affirmed, as modified.

Issued: April 18, 2005
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹⁵ 5 U.S.C. § 8128(a); 20 C.F.R. § 10.17; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.12(e) (March 1997).