

**United States Department of Labor
Employees' Compensation Appeals Board**

TINA M. PARRELLI-BALL, Appellant)

and)

DEPARTMENT OF THE TREASURY,)
INTERNAL REVENUE SERVICE,)
Lexington, KY, Employer)

**Docket No. 06-121
Issued: June 6, 2006**

Appearances:
Tina M. Parrelli-Ball, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 19, 2005 appellant filed a timely appeal of a July 22, 2005 nonmerit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction to review the merits of her case.¹

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits of her claim.

FACTUAL HISTORY

On April 7, 1989 appellant, then a 32-year-old special agent, filed a claim for compensation for an occupational disease of panic disorder that she attributed to stress in her

¹ These sections of the Board's *Rules of Procedure* provide that an appeal must be filed within one year of the date of issuance of the Office's final decision.

employment. The Office accepted that she sustained anxiety with phobic reaction in the performance of duty and began payment of compensation for temporary total disability on July 29, 1989.²

On March 1, 2004 appellant pleaded guilty in U.S. District Court, Eastern District of Kentucky, to a violation of 18 U.S.C. § 1920, to making a false statement to obtain federal employees' compensation. In the plea agreement, she admitted that on July 6, 2001 she willfully and knowingly made a false statement that she was not self-employed or involved in a business enterprise during the past 15 months. On March 1, 2004 the Court accepted appellant's guilty plea and adjudged her guilty of this offense.

By decision dated March 23, 2004, the Office terminated appellant's compensation effective March 1, 2004 on the basis that she pleaded guilty to making a false statement to obtain benefits under the Act and that section 8148 of the Act provides that any individual convicted of such offense shall forfeit entitlement to benefits. On November 10, 2004 she made restitution to the Office of the amount of compensation she received during the 15 months preceding July 6, 2001. In a November 10, 2004 letter, the Office noted that forfeiture of compensation would not be pursued, as a global settlement was made.

By letter dated March 22, 2005, appellant requested reconsideration of the Office's March 23, 2004 decision, contending that her guilty plea was involuntary as it was made in an untreated state of bipolar disorder. In a 48-page letter, she also contended that the employing establishment improperly failed to reemploy her; that the Office improperly failed to rehabilitate her; that the employing establishment's investigation of her activities was improper; and that she had been prescribed improper medications. Appellant stated that her motion to withdraw her guilty plea had been denied, as was her motion for downward departure in sentencing due to diminished mental capacity. In support of her contention that she did not have the mental ability to properly complete the Office's form reporting her self-employment, appellant submitted a May 6, 2004 report from Dr. Charles I. Shelton, an osteopath specializing in psychiatry. He stated that she had a significantly reduced mental capacity at the time she committed the compensation fraud and that her mental condition impaired her ability to understand the wrongfulness of her behavior. Appellant also submitted copies of transcripts of grand jury testimony and a copy of the investigative report from the Department of Labor's Office of the Inspector General.

By decision dated May 9, 2005, the Office found that appellant's request for reconsideration was not timely filed and did not present clear evidence of error. By decision dated July 22, 2005, superseding the May 9, 2005 decision, the Office found that her request for reconsideration was timely filed, but was not sufficient to warrant further review of the merits of her case, as it did not show that her guilty plea was reversed or overturned in a court of law.

² Effective that date, appellant elected to receive benefits under the Federal Employees' Compensation Act in preference to retirement benefits administered by the Office of Personnel Management.

LEGAL PRECEDENT

Section 8148(a) of the Act (5 U.S.C. § 8148) 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 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 or Subchapter III of this chapter 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.”

Section 8128(a) of the 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. Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.³

ANALYSIS

On March 1, 2004 appellant was convicted of a violation of 18 U.S.C. § 1920.⁴ By operation of law, she forfeited any entitlement to any benefits under the Act as of the date of the conviction. The Office and the Board have no authority to continue compensation benefits following such a conviction.

³ *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

⁴ This section states: “Whoever knowingly and willfully falsifies, conceals or covers up a material fact or makes or uses a false statement or report knowing the same to contain any false, fictitious or fraudulent statement or entry in connection with the application for or receipt of compensation or other benefit or payment under Subchapter I or III of Chapter 81 of Title 5, shall be guilty of perjury and on conviction thereof shall be punished by a fine of not more than \$250,000.00; or by imprisonment for not more than 5 years; or both; but, if the amount of the benefits falsely obtained does not exceed \$1,000.00, such person shall be punished by a fine of not more than \$100,000.00 or by imprisonment for not more than 1 year, or both.”

Appellant's arguments and evidence concerning her impaired mental state when she committed the violation and when she pleaded guilty are, therefore, not relevant to the Office's March 23, 2004 decision. That decision was limited to a finding that, because she was convicted of a violation of 18 U.S.C. § 1920, appellant was not entitled to further compensation benefits. The only argument or evidence that could be considered relevant to the March 23, 2004 Office decision would be evidence that her conviction of a violation of 18 U.S.C. § 1920 was set aside. As appellant has not submitted such argument or evidence, the Office properly refused to reopen her case for further merit review.

CONCLUSION

The Office properly refused to reopen appellant's case for further merit review.

ORDER

IT IS HEREBY ORDERED THAT the July 22, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 6, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board