



## **FACTUAL HISTORY**

On August 22, 1986 appellant, then a 39-year-old clerk and letter sorting machine operator, filed an occupational disease claim alleging that she sustained a right upper extremity condition due to the repetitive duties required by her work.

The Office accepted that appellant sustained right carpal tunnel syndrome and Kienbock's disease of the right hand due to her work duties.<sup>2</sup> She underwent surgical procedures on September 5, 1986, January 20, 1993 and September 28, 1994 which were authorized by the Office.

Appellant worked in various limited-duty positions for the employing establishment and received appropriate compensation from the Office. She stopped work on July 15, 1993 and did not return after that date.

Between 1997 and 2002, appellant completed CA-1032 forms which failed to fully disclose her employment activities.<sup>3</sup> The record contains investigative documents which show that appellant was self-employed as a house cleaner and had earnings during the periods covered by the CA-1032 forms.

Appellant was indicted on three counts of wire fraud and three counts of violating 18 U.S.C. § 1920 for committing fraud in the receipt of Federal Employees' Compensation Act benefits and she was tried by the U.S. District Court for the Western District of Pennsylvania. The record contains court documents showing that in May 2003 she was acquitted on counts 1, 2 and 3 pertaining to wire fraud, but was convicted on counts 4, 5 and 6 for violating 18 U.S.C. § 1920.

By decision dated February 13, 2003, the Office terminated appellant's compensation effective January 29, 2003 under 5 U.S.C. § 8148 due to her conviction for a crime involving fraud in the application for or receipt of Office benefits.

By decision dated March 27, 2003, the Office determined that appellant forfeited her entitlement to compensation for the periods June 19, 1996 to June 13, 2001 and August 15, 2001 to November 15, 2002 due to her failure to report her work activities.

By letter dated March 27, 2003, the Office advised appellant of its preliminary determination that she was at fault in the creation of a \$198,791.78 overpayment of compensation related to the forfeiture of her compensation, such that she was not entitled to waiver.

Appellant requested a hearing before an Office hearing representative which was held on November 26, 2003. At the hearing, appellant argued that her conviction on counts 3, 4 and 5 of her indictment was not sufficient to support the Office's finding of forfeiture. She asserted that

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<sup>2</sup> The Office later accepted that appellant sustained an employment-related aggravation of her depression.

<sup>3</sup> In a Form CA-1032 dated November 15, 2002, appellant indicated that she "did some light house cleaning" but she did not provide any further information.

she was not convicted of fraud for knowingly failing to report her employment, but was only convicted of perjury for not reporting activities which she did not realize constituted self-employment. Appellant asserted that she did not think that she was required to report her cleaning activities because her therapist and employing establishment investigators knew about the activities. She claimed that her earnings from cleaning were so minimal that they would not have affected her Office compensation.

By decision dated April 7, 2004, the Office hearing representative found that the Office properly terminated appellant's compensation effective January 29, 2003 under 5 U.S.C. § 8148 and that it properly determined that appellant forfeited her entitlement to compensation.<sup>4</sup> She further found that the Office properly determined that appellant was at fault in the creation of an overpayment such that she was not entitled to waiver, but modified the amount of the overpayment from \$198,791.78 to \$72,899.81.

By letter dated April 21, 2004, appellant requested reconsideration of her claim and argued that her conviction on counts 3, 4 and 5 of her indictment was not sufficient to support the Office's finding of forfeiture for the periods covered by the CA-1032 forms she completed. She asserted that she did not knowingly fail to report her employment and stated that the "conviction of perjury does not prove that I did conceal a material fact only that I said no instead of yes believing it was not self-employment." Appellant alleged that her lack of intent to conceal earnings was shown by the fact that her therapist and employing establishment investigators knew about her cleaning activities and she claimed that her mental illness was not considered by the Office. She claimed that the jury at her trial was not adequately advised regarding the charges against her and that the judge rushed the jury to make a decision. She indicated that 5 U.S.C. § 8106(b) provided that partially disabled employees must report their earnings, but asserted that this provision did not apply to her as she was totally disabled.

By decision dated April 29, 2004, the Office denied appellant's request for merit review.

### **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128(a) of the Act,<sup>5</sup> the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.<sup>6</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>7</sup> When a claimant fails to

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<sup>4</sup> The Office originally found that appellant forfeited compensation for the periods June 19, 1996 to June 13, 2001 and August 15, 2001 to November 15, 2002, but the Office hearing representative modified the prior decision to find that appellant forfeited compensation between March 12, 1999 and June 13, 2001.

<sup>5</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

<sup>6</sup> 20 C.F.R. § 10.606(b)(2).

<sup>7</sup> 20 C.F.R. § 10.607(a).

meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.<sup>8</sup>

### ANALYSIS

The Office accepted that appellant sustained employment-related right carpal tunnel syndrome, Kienbock's disease of the right hand, and aggravation of depression and paid compensation for periods of disability. The Office terminated appellant's compensation effective January 29, 2003 under 5 U.S.C. § 8148, determined that she forfeited her entitlement to compensation for various periods, and found that she was at fault in the creation of an overpayment, such that she was not entitled to waiver. By decision dated April 29, 2004, the Office denied appellant's request for merit review.

In her April 21, 2004 request for reconsideration, appellant argued that her conviction on counts 3, 4 and 5 of her indictment was not sufficient to support the Office's finding of forfeiture for the periods covered by the CA-1032 forms she completed. She asserted that she did not knowingly fail to report her employment and that her conviction for perjury only showed that she "said no instead of yes believing it was not self-employment." Appellant alleged that her lack of intent to conceal earnings was shown by the fact that her therapist and employing establishment investigators knew about her cleaning activities. However, appellant previously submitted these arguments to the Office, which already considered and rejected them.<sup>9</sup> The Board has held that the submission of evidence or argument which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.<sup>10</sup>

Appellant claimed that her mental illness was not properly considered, that the jury at her trial was not adequately advised regarding the charges against her and that the judge rushed the jury to make a decision. However, appellant has not explained the relevance of these arguments to the issues of termination, forfeiture and overpayment. Appellant's mere suggestion that she was improperly convicted under 18 U.S.C. § 1920 would not constitute the type of evidence or argument requiring review of her claim on the merits. The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>11</sup>

Appellant indicated that 5 U.S.C. § 8106(b) provided that partially disabled employees must report their earnings, but asserted that this provision did not apply to her as she was totally disabled. However, appellant did not provide any support for this assertion and the Board has consistently held that 5 U.S.C. § 8106(b) applies to both partially and totally disabled

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<sup>8</sup> 20 C.F.R. § 10.608(b).

<sup>9</sup> The Board notes that court documents show that in May 2003 appellant was convicted on counts 4, 5 and 6 of her indictment for violating 18 U.S.C. § 1920, a provision relating to fraud in the receipt of Office benefits. Under 5 U.S.C. § 8148(a), a person convicted of a statute relating to fraud in the application for or receipt of benefits under the Act, including 18 U.S.C. § 1920, shall forfeit entitlement to compensation benefits.

<sup>10</sup> *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

<sup>11</sup> *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

employees.<sup>12</sup> While a reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required, as in the present case, where the legal contention does not have a reasonable color of validity.<sup>13</sup>

In the present case, appellant has not established that the Office improperly denied her request for further review of the merits of its April 7, 2004 decision under section 8128(a) of the Act, because the evidence and argument she submitted 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 constitute relevant and pertinent new evidence not previously considered by the Office.

### **CONCLUSION**

The Board finds that the Office properly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

### **ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision April 29, 2004 is affirmed.

Issued: May 3, 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

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<sup>12</sup> See *Ronald H. Ripple*, 24 ECAB 254, 260 (1973).

<sup>13</sup> *John F. Critz*, 44 ECAB 788, 794 (1993). Appellant submitted additional evidence after the Office's April 29, 2004 decision, but the Board cannot consider such evidence for the first time on appeal. See 20 C.F.R. § 501.2(c).