



examiner, Dr. M. Anwarul Quader, a Board-certified orthopedic surgeon, was not sufficiently rationalized to resolve a conflict in the medical opinion evidence.<sup>1</sup> The facts and the circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.<sup>2</sup>

On remand, the Office further developed the medical evidence and on January 22, 1990, accepted appellant's claim for temporary aggravation of osteoarthritis. He was placed on the periodic rolls for temporary total disability beginning November 1, 1985.

Appellant submitted EN1032 forms signed April 30, 1999, April 25, 2000, April 19, 2001 and April 9, 2002, attesting that he had not worked during the previous 15 months. These forms advised appellant that he must "immediately" report all employment for which he received wages or other payment during the 15-month period covered by the form and that fraudulently concealing or failing to report income could subject him to criminal prosecution. Appellant continued to receive compensation for temporary total disability through January 31, 2005.

On February 9, 2005 appellant was convicted by a jury in the United States District Court for the Western District of Kentucky of four counts of making false statements or reports in violation of 18 U.S.C. § 1920.<sup>3</sup> Appellant made a false statement on the EN1032 forms dated April 30, 1999 to April 9, 2002 to obtain more than \$1,000.00 in federal employees' compensation.

By decision dated March 29, 2005, the Office terminated appellant's compensation benefits effective February 19, 2005 based on his conviction for fraud pursuant to 5 U.S.C. § 8148. On April 9, 2005 appellant requested an oral hearing before an Office hearing representative.

In a decision issued on February 10, 2006, an Office hearing representative affirmed the March 29, 2005 decision. The hearing representative found that the evidence of record established that appellant was found guilty of fraud and making false statements in the receipt of compensation benefits.

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<sup>1</sup> Docket No. 88-587 (issued June 27, 1988).

<sup>2</sup> On August 1, 1967 appellant sustained a back injury when he slipped on a bank and twisted his back as he fell. His claim was accepted for lumbar strain.

<sup>3</sup> 5 U.S.C. § 1920 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."

## LEGAL PRECEDENT

Section 8148 of Title 5 of the United States Code, states, in part:

“(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 a 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.”

Section 10.17 of the implementing federal regulations provides, as follows:

“When a beneficiary either pleads guilty to or is found guilty on either [f]ederal or [s]tate 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.<sup>4</sup>”

Public Law 103-112, 107 Stat. 1089, enacted on October 21, 1993, prohibits individuals who have been convicted of fraud related to their claims from receiving further benefits paid under the Act. Subsequently, Public Law 103-333, enacted on September 30, 1994, added section 8148, which provides for (a) the termination of benefits payable to beneficiaries who have been convicted of defrauding the program and (b) the suspension of benefits payable to beneficiaries imprisoned as a result of a felony conviction.<sup>5</sup>

Office procedures require that, to support termination or suspension of benefits under section 8148, the case record must contain: a copy of the indictment or information; a copy of the plea agreement, if any; a copy of the document containing a guilty verdict; and/or a copy of 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 benefits under the Act.<sup>6</sup> The effective date of termination in fraud cases under section 8148(a) is the date of conviction, which is the date of the verdict or in cases of a plea agreement, the date the claimant made the plea in open court (not the date of sentencing or when the court papers were signed).<sup>7</sup> Due to the nature of the termination involving fraud, no pretermination notice is required before issuing a final decision.<sup>8</sup>

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<sup>4</sup> 20 C.F.R. § 10.17.

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.12(a) (March 1997); see 5 U.S.C. § 8148; see also *Terry A. Keister*, 56 ECAB \_\_\_ (Docket No. 04-1136, issued May 23, 2005).

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

<sup>7</sup> *Id.* at Chapter 2.1400.12(e)(1).

<sup>8</sup> *Jorge E. Sotomayor*, 52 ECAB 105 (2000); see also *id.* at Chapter 2.1400.12(f)(2).

**ANALYSIS**

The Board finds that the Office properly terminated appellant's compensation benefits on the grounds that he was found guilty of making false statements to obtain federal employees' compensation.

Under section 8148(a), a claimant who is convicted of fraud in obtaining compensation benefits under 18 U.S.C. § 1920, or any other statute relating to fraud in the application for or a receipt of any benefit under the Act, will have his or her compensation terminated. Such a claimant is thereafter permanently barred from receiving any compensation under the Act. Appellant was convicted by a jury on February 9, 2005 of four counts of making false statements or reports to the Office dated April 30, 1999, April 25, 2000, April 19, 2001 and April 9, 2002. He was found in violation of 18 U.S.C. § 1920. For this reason, the Office properly terminated his compensation benefits under section 8148(a).

**CONCLUSION**

The Board finds that the Office met its burden of proof to terminate appellant's compensation on the grounds that he was found guilty of compensation fraud.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' hearing representative's February 10, 2006 decision is affirmed.

Issued: November 30, 2006  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board