

found that appellant was at fault in creating the \$20,843.93 overpayment, thereby precluding waiver of recovery.

On appeal, appellant contends that OWCP improperly determined that she forfeited her compensation benefits due to her guilty plea for theft of government property. She further contends that OWCP's decision was based on a lie that she cashed her deceased brother's OWCP compensation benefits checks and requested that they be forwarded to her address. Appellant asserts that she did not receive notification prior to the termination of her compensation benefits. She also asserts that she did not knowingly accept payments which she knew were incorrect. Appellant contends that repayment of the overpayment would cause her severe financial hardship.

On appeal, the Director contends that the evidence establishes that appellant forfeited her entitlement to all compensation benefits arising from her employment injuries effective August 4, 2011 under 5 U.S.C. § 8148(a) due to her conviction for theft of U.S. government funds in violation of 18 U.S.C. § 641. It is contended that OWCP properly found that she received an overpayment of compensation in the amount of \$20,843.93 for the period of the forfeiture from August 4, 2011 to March 10, 2012 based on her August 4, 2011 conviction, thereby precluding waiver of recovery. The Director asserts that appellant was at fault in the creation of the overpayment because she knew or should have known that continued receipt of FECA compensation payments after her August 4, 2011 conviction was incorrect. He notes that FECA, its implementing regulations and OWCP's procedure manual provide that a claimant who pleads guilty or is convicted of fraud in the application for or receipt of FECA benefits forfeits entitlement to benefits effective the date the plea is accepted or the date of conviction. The Director noted appellant's contention that she was without fault because she was unaware that the guilty plea or conviction would terminate her benefits; but contends that ignorance of the law does not create an exception to the termination of entitlement to FECA benefits.

FACTUAL HISTORY

OWCP accepted that on March 18, 1992 appellant, then a 37-year-old chief of canteen services, sustained a closed bimalleolar fracture and post-traumatic arthritis of the right ankle when she slipped and fell in a parking lot at work. She stopped work on the date of injury and returned to work on April 1, 1992. Appellant continued to work until September 24, 1992. She has not returned to work. OWCP placed appellant on the periodic compensation rolls for total disability.

On March 26, 2012 OWCP received an investigative memorandum dated March 21, 2012 from the Office of the Inspector General of the employing establishment and the Department of Labor who conducted a joint investigation regarding whether appellant failed to report wages from her employment. The investigation did not substantiate allegations of her employment, but discovered that she was in receipt of her deceased brother's wage-loss compensation checks under File No. xxxxxxxx753. Appellant's brother died on April 10, 2006 and left no eligible dependents. Following his death, appellant submitted a change of address request to OWCP under his claim and fraudulently had OWCP change the compensation check address to one she controlled. She received and negotiated 14 U.S. Department of Treasury checks issued in her brother's name, totaling \$27,073.17. On January 26, 2011 a federal grand jury in the

U.S. District Court for the Northern District of Texas, Dallas Division, returned a one-count indictment charging appellant with a violation of Title 18 U.S.C. § 641, Theft of Public Money. Appellant was charged for receipt and negotiating her deceased brother's OWCP wage-loss compensation checks. On July 20, 2011 a plea agreement was filed in the U.S. District Court for the Northern District of Texas. On August 4, 2011 appellant entered a plea of guilty in open court to one count in violation of Title 18 U.S.C. § 641, Theft of Public Money. On November 3, 2011 she was sentenced to serve three years of probation and directed to pay restitution to OWCP in the amount of \$27,073.17. The special agent-in charge who prepared the investigative memorandum requested that OWCP consider terminating appellant's compensation under 5 U.S.C. § 8148(a) effective the date of her conviction and issue an overpayment for all benefits paid to her after August 4, 2011.

The indictment for one count of Theft of Government Property under Title 18 U.S.C. § 641 stated:

“On or about April 2006, through on or about April 2007, in the Dallas Division of the Northern District of Texas, [appellant], did knowingly and with the intent to deprive the owner of the use and benefit of the money, embezzle, steal and convert money belonging to the Department of Labor, a department or agency of the United States of America, namely [OWCP] benefit payments made to the defendant's brother, ..., to which she knew she was not entitled, having a value of approximately \$27,000.00.”

The plea agreement signed by appellant on July 14, 2011 stated that she understood the nature and elements of the offense alleged in the one-count indictment in violation of 18 U.S.C. § 641, Theft of Government Property, to which she pled guilty and agreed that “the factual resume” she signed was true.

A sentencing order of the U.S. District Court, dated November 3, 2011, placed appellant on probation for three years and ordered her to pay restitution in the amount of \$27,073.17.²

In an August 15, 2012 decision, OWCP found that appellant forfeited her right to further compensation because she pled guilty to fraud in the receipt of her deceased brother's FECA compensation benefits in the amount of \$27,073.71 under File No. xxxxxx753 from March 19, 2006 through April 14, 2007. It terminated compensation effective March 11, 2012.

On August 31, 2012 OWCP made a preliminary determination that appellant received an overpayment of compensation in the amount of \$27,073.71 from March 19, 2006 to April 14, 2007 because she fraudulently accepted her deceased brother's compensation payments. It found that she was at fault in creating the overpayment because she accepted payments that she knew or reasonably should have known to be incorrect. OWCP notified appellant to complete an enclosed Form OWCP-20 and submit supporting financial documents. It notified her that, within 30 days of the date of the letter she could request a telephone conference, a final decision based on the written evidence or a prerecoupment hearing.

² On September 27, 2012 OWCP received appellant's court-ordered restitution in the amount of \$27,073.17 under File No. xxxxxx753.

On September 10, 2012 appellant requested an oral hearing before an OWCP hearing representative regarding the August 15, 2012 forfeiture decision and August 31, 2012 preliminary overpayment determination. She contended that the overpayment occurred through no fault of her own and requested waiver of recovery of the overpayment. In a September 30, 2012 statement, appellant contended that the investigation was filled with incorrect information and misleading statements. She alleged that she never submitted a change of address to OWCP to have her brother's checks directed to her and she never contacted OWCP about his checks. Appellant stated that there were a number of people receiving mail at the forwarding address which was a post office box. She claimed that she never committed fraud or negotiated the checks. Appellant deposited them into her brother's bank account of which she was a joint owner. After his death, she called the employing establishment asking what to do with the checks, but no one called her back. Appellant used some of the money to settle her brother's estate. In a partially completed OWCP-20 form, she stated that she no longer had any of the incorrectly paid checks. Appellant reported monthly income of \$200.00 in food stamps and assets of \$2,015.00. She stated that she had no income and was unable to pay any household expenses.

In a January 7, 2013 decision, OWCP found that appellant forfeited her right to further compensation under FECA because she had pled guilty to one count of fraud under Title 18 U.S.C. 641, Theft of Government Property, in receipt of benefits under FECA. It terminated her compensation effective March 11, 2012.

In a letter dated January 7, 2013, OWCP made a preliminary determination that appellant received an overpayment of compensation in the amount of \$20,843.93 from August 4, 2011 to March 10, 2012 because she was convicted of violating 18 U.S.C. § 641 when she fraudulently accepted her deceased brother's FECA compensation under File No. xxxxxx753. It found that she was at fault in creating the overpayment because she accepted a payment that she knew or reasonably should have known was incorrect. OWCP requested that appellant complete an enclosed Form OWCP-20 and submit supporting financial documents. It notified her that, within 30 days of the date of the letter she could request a telephone conference, a final decision based on the written evidence or a prerecoupment hearing. A compensation payment history listed gross compensation paid from August 4, 2011 to March 10, 2012 pursuant to appellant's claim under File No. xxxxxx094.

By letter dated January 23, 2013, appellant requested an appeal of OWCP's January 7, 2013 decision.

In a February 6, 2013 decision, an OWCP hearing representative vacated the August 15, 2012 forfeiture and termination decision because it was not prepared for a District Director's required signature. She reversed the August 31, 2012 preliminary overpayment determination, finding that \$27,073.71 overpayment was based on the overpaid compensation of appellant's deceased brother under File No. xxxxxx753 and that only her own compensation benefits under File No. xxxxxx094 could be declared forfeited. The hearing representative noted that appellant had already paid the court-ordered restitution of \$27,073.17 in her brother's case.

In a February 8, 2013 decision, OWCP finalized the overpayment of compensation in the amount of \$20,843.93 from August 4, 2011 to March 10, 2012, because appellant pled guilty to

fraud under 18 U.S.C. § 641. It found that she was at fault in creating the overpayment and directed recovery of the overpayment in full.

By decision dated March 4, 2013, OWCP vacated the February 8, 2013 decision. It found that appellant had filed a timely request for a prerecoupment hearing regarding the January 7, 2013 decisions.

During an April 25, 2013 hearing, appellant disagreed with the overpayment determination. She testified that she continued to be totally disabled and she did not have anything to do with being overpaid. Appellant provided her monthly income and expenses and contended that she would suffer severe financial hardship in repaying the overpayment. She contended that she did not steal the money and was not a criminal. Appellant testified that when her brother died she contacted “them” and was told that they would get back to her. She contended that it was not her fault that his checks were not stopped. Appellant also contended that she did not create a change of address. She kept the money and tried to give it back. Appellant testified that she did not understand her guilty plea. She was advised by her lawyer to sign the plea agreement to avoid going to jail.

In a June 12, 2013 decision, an OWCP hearing representative affirmed the January 7, 2013 forfeiture decision. She found that appellant forfeited her entitlement to compensation effective August 4, 2011, the date her guilty plea for fraud pursuant to 18 U.S.C. § 641 was accepted by the court. The hearing representative finalized the overpayment determination. She found that appellant received an overpayment of compensation in the amount of \$20,843.93 based on the forfeiture. The hearing representative further found that, based on the plea agreement, appellant failed to provide information which she knew or should have known to be material, that she failed to notify OWCP about her brother’s death and accepted his compensation payments, which she knew or should have known were incorrect; thus, she was not without fault. She directed recovery of the overpayment in full.

LEGAL PRECEDENT -- ISSUE 1

Public Law No. 103-333, enacted on September 30, 1994, amended FECA by adding 5 U.S.C. § 8148, which provides for forfeiture of compensation benefits by an individual convicted of fraud with respect to receipt of compensation pursuant to a felony conviction. Section 8148(a) specifically states that any individual convicted of a violation of 18 U.S.C. § 1920 or any other federal or state criminal statute relating to fraud in the application for or receipt of any benefit under FECA, shall forfeit, as of the date of such conviction, any entitlement to any benefit to which such individual would otherwise be entitled under FECA 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 8106³ (forfeiture) or section 8129⁴ (recovery of overpayments) of FECA.⁵

³ 5 U.S.C. § 8106.

⁴ *Id.* at § 8129.

⁵ *Id.* at § 8148(a); *see F.C.*, 59 ECAB 666 (2007).

Section 10.17 of OWCP's implementing regulations provide that when a claimant pleads guilty to federal or state criminal charges of fraud in connection with receipt of Federal Government benefits, the claimant's entitlement to further compensation benefits will terminate effective the date the guilty plea is accepted. Termination of entitlement under this section is not affected by any subsequent change in or recurrence of the beneficiary's medical condition.⁶

OWCP's 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 that the individual was convicted and the conviction is related to the claim for or receipt of compensation benefits under FECA.⁷ The termination is effective on the date of the verdict or on the date the guilty plea is accepted and guilt adjudicated.⁸ Because of the criminal basis for the termination, no pretermination notice is required before a final decision is issued.⁹

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly terminated appellant's compensation benefits on the grounds that she was convicted in federal court on one count of theft of public money related to her receipt of benefits under FECA. On August 4, 2011 appellant pled guilty in the U.S. District Court for the Northern District of Texas to one count of violating 18 U.S.C. § 641 when she knowingly and intentionally converted FECA benefit payments that were made to her deceased brother. Under section 8148(a) of FECA, a claimant who is convicted of fraud in obtaining compensation benefits under 18 U.S.C. § 1920 or any other federal or state criminal statute relating to fraud in the application for or receipt of any benefit under FECA is permanently barred from receiving any compensation under FECA.¹⁰ The record contains copies of the indictment, the plea agreement and court judgment. The Board finds that this evidence establishes that appellant was convicted of fraud in obtaining FECA compensation benefits.¹¹ OWCP procedures provide that the termination is effective on the date the guilty plea is made in open court.¹² The Board finds that OWCP properly terminated appellant's compensation benefits that day, August 4, 2011.¹³

⁶ 20 C.F.R. § 10.17.

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.17c(2) (February 2013).

⁸ *Id.* at Chapter 2.1400.17(d) (February 2013).

⁹ *Id.* at Chapter 2.1400.4(a)(6) (February 2013).

¹⁰ 5 U.S.C. § 8148(a).

¹¹ *See supra* note 7.

¹² *See supra* note 8.

¹³ *See John L. Hoss, Jr.*, 54 ECAB 239 (2002); *Bob R. Gilley*, 51 ECAB 377 (2000).

On appeal, appellant contended that OWCP improperly determined that she forfeited her compensation benefits based on her guilty plea for theft of her brothers FECA benefits.¹⁴ Her conviction for theft, in this instance under 18 U.S.C. § 641, acts as a forfeiture of her right to FECA compensation.¹⁵

Appellant further contends on appeal that she did not receive a pretermination notice. The Board finds that a pretermination notice is not required when the basis of the termination is criminal.¹⁶ As appellant was convicted of a violation of 18 U.S.C. § 641, OWCP properly terminated her compensation benefits under the forfeiture provision without pretermination notice.

LEGAL PRECEDENT -- ISSUE 2

Section 8148 of FECA states that any individual convicted of a violation of 18 U.S.C. § 1920 or any other federal or state criminal statute relating to fraud in the application for or receipt of any benefit under FECA, shall forfeit, as of the date of such conviction, any entitlement to any benefit such individual would otherwise be entitled to under FECA 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 8106¹⁷ (forfeiture) or section 8129¹⁸ (recovery of overpayments) of FECA.¹⁹

ANALYSIS -- ISSUE 2

On August 4, 2011 appellant pled guilty to one count of violating 18 U.S.C. § 641, a federal criminal statute, when she knowingly and intentionally converted her deceased brother's FECA compensation benefits. As stated, under section 8148(a) of FECA any individual convicted of 18 U.S.C. § 1920 or any other federal or state criminal statute relating to fraud in the application for or receipt of benefits under FECA will have her compensation forfeited, as of the date of such conviction.²⁰ Because appellant pled guilty to violating a federal criminal statute, she forfeited any compensation as of August 4, 2011, the date of her conviction.

The record reveals that appellant received wage-loss benefits from August 4, 2011 to March 10, 2012 under her own claim assigned File No. xxxxxx094 after her conviction on

¹⁴ 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 FECA. *Michael D. Matthews*, 51 ECAB 247 (1999). This forfeiture 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).

¹⁵ *Danny E. Haley*, 56 ECAB 393 (2005).

¹⁶ Federal (FECA) Procedure Manual, *supra* note 7 at Chapter 2.1400.4(a)(6) (2013).

¹⁷ *See supra* note 3.

¹⁸ 5 U.S.C. § 8129.

¹⁹ *See supra* note 5.

²⁰ 5 U.S.C. § 8148(a).

August 4, 2011 for theft under 18 U.S.C. § 641. OWCP determined that during the stated period she received gross compensation in the amount of \$20,843.93. The record contains documentation of OWCP's calculations and there is no contrary evidence. In *Alan L. Trindle, Sr.*,²¹ the Board found that gross compensation represented the amount of overpayment from forfeiture of compensation. OWCP explained the basis of the overpayment and appellant does not dispute that she received compensation payments from August 4, 2011 to March 10, 2012 following her fraud conviction. The Board finds that she received an overpayment of compensation in the amount of \$20,843.93.

LEGAL PRECEDENT -- ISSUE 3

Section 8129(a) of FECA provides that, when an overpayment of compensation has been made because of an error of fact or law, adjustment shall be made by decreasing later payments to which an individual is entitled. The only exception to this requirement is when an incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or be against equity and good conscience.²² No waiver of payment is possible if appellant is with fault in helping to create the overpayment.²³

Section 10.433(a) of OWCP's implementing regulations provide that an individual is with fault in the creation of an overpayment who: (1) made an incorrect statement as to a material fact which the individual knew or should have known to be incorrect; (2) failed to furnish information which the individual knew or should have known to be material; or (3) with respect to the overpaid individual only, accepted a payment which the individual knew or should have been expected to know was incorrect.²⁴

ANALYSIS -- ISSUE 3

OWCP applied the second and third standards to determine that appellant was at fault in creating the overpayment. The Board finds that the record establishes that she knew or should have known that she accepted incorrect compensation payments under her deceased brother's FECA claim.

When appellant pled guilty to violating 18 U.S.C. § 641, she admitted that she knowingly and intentionally converted FECA compensation benefits payable to her brother "which she knew she was not entitled." The plea agreement noted that she agreed to "the factual resume" of her case. This plea of guilt is sufficient to establish that appellant knew that she had accepted incorrect payments under her brother's claim. As noted by the Director, following her plea, she knew or should have known her continued receipt of FECA benefits after her August 4, 2011 conviction was incorrect. Even if the overpayment resulted from negligence on the part of OWCP in continuing to issue appellant wage-loss checks after she was convicted of stealing her

²¹ 53 ECAB 487 (2002).

²² 5 U.S.C. § 8129(b).

²³ *Robert W. O'Brien*, 36 ECAB 541, 547 (1985).

²⁴ 20 C.F.R. § 10.433(a); *Kenneth E. Rush*, 51 ECAB 116, 118 (1999).

deceased brother's FECA benefits, this did not excuse her from accepting continued payments which she knew or should have known to be incorrect.²⁵ As appellant accepted compensation benefits from OWCP, which covered the period August 4, 2011 to March 10, 2012, the Board finds that she was at fault in creating the \$20,843.93 overpayment for this period and is not entitled to waiver.²⁶

On appeal, appellant argued that she was not at fault in the creation of the \$20,843.93 overpayment because she did not cash her deceased brother's FECA compensation checks, did not request that his checks be forwarded to her address or knowingly accept payments which she knew to be incorrect. As noted, she pled guilty to violating 18 U.S.C. § 641 as a result of knowingly and intentionally converting her deceased brother's FECA benefits that she knew she was not entitled to receive. The Board finds that appellant's contentions are without merit.

Appellant further contended on appeal that repayment of the overpayment would cause her severe financial hardship. The Board's jurisdiction is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.²⁷ As appellant was not in receipt of continuing compensation, at the time the final decision was entered in this matter, the Board lacks jurisdiction to review recovery of the overpayment.

CONCLUSION

The Board finds that OWCP properly terminated appellant's compensation effective August 4, 2011 on the grounds that she forfeited her entitlement to compensation for the period August 4, 2011 to March 10, 2012 pursuant to 5 U.S.C. § 8148(a). The Board further finds that OWCP properly found that she received an overpayment of compensation in the amount of \$20,843.93 based on the forfeiture. The Board also finds that OWCP properly found that appellant was at fault in creating the \$20,843.93 overpayment, thereby precluding waiver of recovery of the overpayment.

²⁵ *Diana L. Booth*, 52 ECAB 370 (2001).

²⁶ *Bob G. Gilley*, *supra* note 13.

²⁷ *Judith A. Cardio*, 55 ECAB 348, 353 (2004).

ORDER

IT IS HEREBY ORDERED THAT the June 12, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 7, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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