



for bilateral chondromalacia of the patella, lumbar sprain, and other unspecified disorders of the lumbar spine.<sup>2</sup>

Appellant performed modified employment until March 26, 2011, when the employing establishment sent him home under the National Reassessment Program (NRP) as there was no work available within his restrictions. OWCP paid compensation benefits for disability beginning March 26, 2011.

By decision dated April 2, 2012, OWCP reduced appellant's compensation effective April 8, 2012 based on its finding that he had the physical and vocational capacity to earn wages in the selected position of credit clerk.

In a statement dated April 5, 2012, appellant informed OWCP that he had requested that, on April 7, 2012, the employing establishment was returning him to the payroll so he could receive his annual and sick leave and asked that OWCP halt his compensation payments.

On April 5, 2012 appellant filed a claim for a schedule award. In a decision dated July 27, 2012, OWCP granted him a schedule award for an additional seven percent impairment of the left lower extremity.<sup>3</sup> The period of the award ran from April 8 to August 27, 2012.

In a notice of proposed removal dated December 13, 2012, the employing establishment advised that appellant had received both unemployment benefits from the Texas Workforce Commission and compensation from OWCP from July 31, 2011 through August 27, 2012. It further found that he had made a false statement to OWCP in order to obtain a schedule award when he advised that he was being returned to the rolls of the employing establishment. On January 22, 2013 the employing establishment removed appellant from employment for cause.

On June 7, 2013 appellant filed a claim for compensation beginning May 4, 2013.

In an investigative report dated June 20, 2013, Jeff Krafels, an assistant special agent in charge with the employing establishment's Office of Inspector General, advised that appellant had been removed from the employing establishment for cause and that OWCP should terminate compensation benefits. He indicated that appellant had received both state unemployment compensation and schedule award benefits. By letter dated August 15, 2013, OWCP informed Mr. Krafels that a claimant was not prohibited from receiving state unemployment compensation while receiving OWCP benefits.

On June 25, 2013 OWCP advised appellant that it was returning him to the periodic rolls and paying him compensation beginning May 4, 2013 based on his loss of wage-earning capacity.

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<sup>2</sup> By decision dated August 13, 1997, OWCP granted appellant a schedule award for a 10 percent permanent impairment of each upper extremity. In a decision dated February 8, 2008, it granted him a schedule award for 10 percent impairment of the right lower extremity.

<sup>3</sup> OWCP issued an identical schedule award decision on July 13, 2012.

In an indictment dated September 23, 2013, a grand jury for the United States District Court for the Eastern District of Texas charged appellant with one count of violating 18 U.S.C. § 1920, making false statement to obtain FECA benefits. It indicated that he falsely told OWCP that he was on the payroll of the employing establishment in order to receive schedule award benefits. The grand jury also charged appellant with a second count of violating 18 U.S.C. § 1920 for filing a July 7, 2013 claim for compensation for leave without pay that contained fraudulent information and a third count of violating 18 U.S.C. § 641, theft of government property, by obtaining state unemployment benefits from September 13, 2011 through August 29, 2012.

On May 5, 2014 appellant pleaded guilty to count one, making a false statement to obtain federal workers' compensation benefits under 18 U.S.C. § 1920, when he told OWCP that he was on the payroll of the employing establishment in order to obtain schedule award benefits. On May 5, 2014 the District Court accepted the guilty plea. On May 8, 2014 a United States District Judge accepted appellant's guilty plea and found him guilty on count one of the indictment, "conditioned upon the Court's final acceptance of the guilty plea and plea agreement at sentencing." In a judgment in a criminal case dated October 9, 2014, the United States District Court for the Eastern District of Texas found appellant guilty of one count of making a false statement to obtain FECA compensation under 18 U.S.C. § 1920. It sentenced him to four years of probation and to make restitution of \$22,166.00 to the United States Department of Labor.

In an October 15, 2014 investigative report, an investigator indicated that on October 9, 2014 appellant was ordered to pay restitution of \$22,164.00 to OWCP and sentenced to four years of probation. It advised that in August 2011 appellant applied for and obtained state unemployment benefits while concealing that he was also in receipt of federal workers' compensation benefits. In April 2012, appellant falsely told OWCP that he was going to use sick and annual leave in lieu of compensation and consequently received a schedule award. He also filed a claim for compensation (Form CA-7) for leave without pay after he had been removed from the employing establishment.

By decision dated December 1, 2014, OWCP terminated appellant's compensation effective May 8, 2014. It found that as he had pleaded guilty to making false statements to obtain federal workers' compensation, he forfeited his entitlement to compensation under section 8148 of FECA.

### **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 [f]ederal or [s]tate criminal statute relating to fraud in the application for or a 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 8106 or 8129.”<sup>4</sup>

Section 10.17 of the implementing federal regulations provide, 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>5</sup>

OWCP 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 FECA.<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>

### ANALYSIS

The Board finds that OWCP properly terminated appellant’s compensation benefits based on his conviction in federal court of one count of making false statements to obtain FECA benefits under 18 U.S.C. § 1920. On May 5, 2014 appellant pleaded guilty in the U.S. District Court for the Eastern District of Texas to one count of violating 18 U.S.C. § 1920, on May 8, 2014 a judge accepted his guilty plea, and on October 9, 2014 a judge provided sentencing. 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.<sup>9</sup> The record contains copies of the indictment, the plea agreement, and the court judgment. The Board finds that this evidence establishes that appellant was convicted of fraud in obtaining FECA compensation benefits.<sup>10</sup> OWCP procedures provide

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<sup>4</sup> 5 U.S.C. § 8148(a).

<sup>5</sup> 20 C.F.R. § 10.17.

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.17c(2) (February 2013); see also *K.R.*, Docket No. 14-434 (issued October 7, 2014).

<sup>7</sup> *Id.* at Chapter 2.1400.17(d) (February 2013).

<sup>8</sup> *Id.* at Chapter 2.1400.4(a)(6) (February 2013).

<sup>9</sup> *Supra* note 4; *S.H.*, Docket No. 14-421 (issued August 27, 2014).

<sup>10</sup> See *supra* note 6.

that the termination is effective on the date the guilty plea is made in open court.<sup>11</sup> The Board finds that OWCP properly terminated appellant's compensation benefits that date, May 8, 2014.<sup>12</sup>

**CONCLUSION**

The Board finds that OWCP properly terminated appellant's compensation under 5 U.S.C. § 8148(a) effective May 8, 2014 on the grounds that he committed fraud in obtaining compensation.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 1, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 1, 2015  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>11</sup> See *supra* note 7.

<sup>12</sup> See *John L. Hoss, Jr.*, 54 ECAB 239 (2002); *Bob R. Gilley*, 51 ECAB 377 (2000).