

FACTUAL HISTORY

On November 16, 2009 appellant, then a 37-year-old mail processor, sustained injury to his left foot when a chair suddenly moved backward as he was attempting to sit in it. OWCP accepted that he sustained a left foot contusion and paid compensation for periods of total disability. Appellant returned to full-time work for the employing establishment on July 14, 2010.

The record contains an order signed on September 24, 2015 by a judge for the U.S. District Court for the Northern District of Texas accepting appellant's guilty plea under 18 U.S.C. § 1920 to one count of False Statements to Obtain Federal Employees' Compensation. The record also contains copies of the plea agreement, factual resume, and indictment. The plea agreement acknowledges that appellant knowingly and intentionally obtained FECA benefit payments on a fraudulent basis by filing false claims for travel mileage reimbursement related to medical appointments.

In a November 2, 2015 letter, OWCP advised appellant of its preliminary determination that he had received an overpayment of compensation in the amount of \$1,008.51 for the period September 24 to October 17, 2015 because he received compensation for this period after he plead guilty under 18 U.S.C. § 1920 to one count of False Statements to Obtain Federal Employees' Compensation.² OWCP also made a preliminary determination that appellant was at fault in the creation of the overpayment because he accepted a payment he knew or reasonably should have known was incorrect, thereby precluding waiver of recovery of the overpayment. It provided appellant 30 days to submit evidence and argument challenging the proposed actions.³ Appellant did not respond within the allotted period.

In a decision dated December 2, 2015, OWCP determined that appellant forfeited his entitlement to compensation beginning September 24, 2015.⁴ It noted that he had pled guilty to 18 U.S.C. § 1920, False Statements to Obtain Federal Employees' Compensation. OWCP indicated that, as a result of his conviction, and in accordance with 5 U.S.C. § 8148(a) and 20 C.F.R. § 10.17, appellant was not entitled to receive further benefits under FECA. It noted that it would pay for any authorized medical treatment appellant received prior to the date of the conviction, but no further medical treatment would be paid beyond that date. Compensation benefits, including schedule award benefits, were terminated September 24, 2015, the date of appellant's conviction.

By decision dated December 17, 2015, OWCP finalized the overpayment of compensation in the amount of \$1,008.51 from September 24 to October 17, 2015 based on the

² OWCP previously determined that appellant received a \$1,838.99 overpayment in 2010 and a \$2,478.87 overpayment in 2014. These prior overpayments are not the subject of the present appeal.

³ The record contains a manual adjustment form, completed by an OWCP claims examiner on October 19, 2015, showing that appellant received \$1,008.51 in compensation for the period September 24 to October 17, 2015.

⁴ OWCP inadvertently listed the date of termination for appellant's compensation as August 25, 2015, but a review of the content and context of the December 2, 2015 decision shows that OWCP intended the termination to begin September 24, 2015.

forfeiture of his compensation under 18 U.S.C. § 1920. It also found that he was at fault in creating the \$1,008.51 overpayment because he accepted a payment he knew or reasonably should have known was incorrect, thereby precluding waiver of recovery.

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 the termination of benefits payable to beneficiaries who have been convicted of defrauding the program. 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 8106⁵ (forfeiture) or section 8129⁶ (recovery of overpayments) of FECA.⁷

Section 10.17 of OWCP's implementing regulations provides 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.⁸

OWCP's procedures state 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.⁹ The termination is effective on the date of the verdict or on the date the guilty plea is accepted and guilt adjudicated.¹⁰ Because of the criminal basis for the termination, no pretermination notice is required before a final decision is issued.¹¹

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly terminated appellant's compensation benefits effective September 24, 2015 because he was convicted in federal court under a statute relating to fraud in the application for or receipt of compensation benefits under FECA. On

⁵ 5 U.S.C. § 8106.

⁶ *Id.* at § 8129.

⁷ *Id.* at § 8148; *see F.C.*, 59 ECAB 666 (2007).

⁸ 20 C.F.R. § 10.17.

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.17c(2) (February 2013).

¹⁰ *Id.* at Chapter 2.1400.17(d) (February 2013).

¹¹ *Id.* at Chapter 2.1400.4(a)(6) (February 2013).

September 24, 2015 a judge for the U.S. District Court for the Northern District of Texas accepted appellant's guilty plea to one count of violating 18 U.S.C. § 1920 (False Statements to Obtain Federal Employees' Compensation) when he knowingly and intentionally obtained FECA benefit payments on a fraudulent basis by filing false claims for travel mileage reimbursement. 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.¹² The record contains copies of the indictment, plea agreement, factual resume, and court judgment. The Board finds that this evidence establishes that appellant was convicted of fraud in obtaining FECA compensation benefits.¹³ OWCP procedures provide that the termination is effective on the date the guilty plea is accepted and guilt adjudicated.¹⁴ The Board finds that OWCP properly terminated appellant's compensation benefits that day, September 24, 2015.¹⁵

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 8106 (forfeiture) or section 8129 (recovery of overpayments) of FECA.¹⁶

ANALYSIS -- ISSUE 2

On September 24, 2015 a judge accepted appellant's guilty plea to one count of violating 18 U.S.C. § 1920, a federal criminal statute, when he knowingly and intentionally obtained FECA benefit payments on a fraudulent basis by filing false claims for travel mileage reimbursement. 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 his or her compensation forfeited, as of the date of such conviction. Because appellant pled guilty to violating a federal criminal statute, he forfeited any compensation as of September 24, 2015, the date his guilty plea was accepted and guilt adjudicated.

The record reveals that appellant received wage-loss compensation benefits from September 24 to October 17, 2015 under his own claim assigned File No. xxxxxx255 after his

¹² 5 U.S.C. § 8148(a).

¹³ See *supra* note 9.

¹⁴ See *supra* note 10.

¹⁵ See *John L. Hoss, Jr.*, 54 ECAB 239 (2002); *Bob R. Gilley*, 51 ECAB 377 (2000).

¹⁶ See *supra* note 7.

conviction on September 24, 2015 for theft under 18 U.S.C. § 1920. OWCP determined that during the stated period he received gross compensation in the amount of \$1,008.51. The record contains documentation of OWCP's calculations and there is no contrary evidence. In *Alan L. Trindle, Sr.*,¹⁷ 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 he received compensation payments from September 24 to October 17, 2015 following his fraud conviction. The Board finds that he received an overpayment of compensation in the amount of \$1,008.51.

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.¹⁸ No waiver of payment is possible if appellant is with fault in helping to create the overpayment.¹⁹

Section 10.433(a) of OWCP's implementing regulations provides 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.²⁰

ANALYSIS -- ISSUE 3

OWCP applied the third standard to determine that appellant was at fault in creating the overpayment. The Board finds that the record establishes that he knew or should have known that he accepted incorrect compensation payments by filing false claims for travel mileage reimbursement.

When appellant pled guilty to violating 18 U.S.C. § 1920, he admitted that he knowingly and intentionally received FECA compensation benefits which he knew she was not entitled. The plea agreement noted that he agreed to the factual resume of his case. This plea of guilt is sufficient to establish that appellant knew that he had accepted incorrect FECA payments. Appellant knew or should have known that his continued receipt of FECA benefits after his September 24, 2015 conviction was incorrect. Even if the overpayment resulted from negligence on the part of OWCP in continuing to issue appellant wage-loss checks after he was convicted of fraudulently obtaining FECA benefits, this did not excuse him from accepting continued

¹⁷ 53 ECAB 487 (2002).

¹⁸ 5 U.S.C. § 8129(b).

¹⁹ *Robert W. O'Brien*, 36 ECAB 541, 547 (1985).

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

payments which he knew or should have known to be incorrect.²¹ As appellant accepted compensation benefits from OWCP, which covered the period September 24 to October 17, 2015, the Board finds that he was at fault in creating the \$1,008.51 overpayment for this period and is not entitled to waiver.²²

CONCLUSION

The Board finds that OWCP properly terminated appellant's compensation effective September 24, 2015 because he forfeited his entitlement to compensation beginning September 24, 2015 pursuant to 5 U.S.C. § 8148(a). The Board further finds that OWCP properly found that appellant received an overpayment of compensation in the amount of \$1,008.51 from September 24 to October 17, 2015 based on the forfeiture of compensation and properly found that he was at fault in the creation of the \$1,008.51 overpayment, thereby precluding waiver of recovery.

ORDER

IT IS HEREBY ORDERED THAT the December 17 and 2, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 6, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

²¹ *Diana L. Booth*, 52 ECAB 370 (2001).

²² *See K.R.*, Docket No. 14-434 (issued October 7, 2014).