

**United States Department of Labor
Employees' Compensation Appeals Board**

R.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Fredericksburg, VA, Employer**

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**Docket No. 17-0280
Issued: May 5, 2017**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 17, 2016 appellant filed a timely appeal from July 27 and October 26, 2016 merit decisions of the Office of Workers' Compensation Programs (OWCP) and a September 20, 2016 nonmerit decision. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP properly denied his request for a hearing as untimely under 5 U.S.C. § 8124; and (2) whether OWCP properly terminated appellant's wage-loss medical compensation effective May 22, 2015 as he forfeited his entitlement to compensation pursuant to 5 U.S.C. § 8148.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 7, 2008 appellant, then a 42-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he experienced stiffness of his low back and neck after he was in a motor vehicle accident. OWCP accepted the claim for a sprain of the right shoulder and upper arm, lumbar sprain, and a right superior labral tear from anterior to posterior tear of the shoulder.²

In an e-mail dated May 6, 2015, a special agent with the employing establishment's Office of Inspector General advised that on April 10, 2015 appellant signed a plea agreement acknowledging that he made a false statement to obtain workers' compensation in violation of 18 U.S.C. § 1920.

On May 21, 2015 the U.S. District Court for the Western Division of Virginia accepted the guilty plea to one count of making a false statement to obtain federal workers' compensation. On September 9, 2015 appellant was sentenced to two years' probation on September 9, 2015. A judge also ordered appellant to pay restitution and a fine.

By decision dated July 27, 2016, OWCP determined that appellant had forfeited his entitlement to compensation effective May 22, 2015 as he had plead guilty to making a false statement to obtain benefits under FECA pursuant to section 8148 and thus was not entitled to receive further benefits. It noted that it would pay for any authorized medical treatment he received prior to July 27, 2016, but would pay no further medical treatment beyond that date. Compensation benefits, including schedule award benefits, were terminated effective May 22, 2015.

By letter dated August 26, 2016 and postmarked August 29, 2016, appellant requested a review of the July 27, 2016 decision. He asserted that the employing establishment would not let him return to work because he was on medication. Appellant submitted two pages of an August 13, 2015 presentence investigative report recommending that he receive a "reduction for acceptance of responsibility."

In a decision dated September 20, 2016, OWCP denied appellant's request for an oral hearing or review of the written record as untimely under section 8124. It considered the request within its discretion and determined that the matter could be equally well addressed through a request for reconsideration and submission of evidence.

On October 7, 2016 appellant requested reconsideration. He related that his injury continued and that he could not resume work because he was on medication. Appellant noted that he plead guilty for the period January 2013 to January 2014. He submitted a page from his presentence investigative report indicating that he plead guilty. Appellant also submitted medical evidence.

² By decision dated December 22, 2008, OWCP denied appellant's claim as the medical evidence was insufficient to show a condition causally related to the accepted work incident. On January 5, 2009 appellant requested an oral hearing. In a summary decision rendered at the hearing, an OWCP hearing representative reversed the December 22, 2008 decision and accepted the claim.

By decision dated October 26, 2016, OWCP denied modification of its July 27, 2016 decision. It found that the evidence appellant submitted was irrelevant to the underlying issue of whether he had been convicted of a violation relating to fraud in the receipt of FECA benefits.

LEGAL PRECEDENT -- ISSUE 1

Section 8124(b) of FECA provides that a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his or her claim before a representative of the Secretary.³ Section 10.615 of the federal regulations implementing this section of FECA provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.⁴ The request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.⁵ A claimant is entitled to a hearing or review of the written record as a matter of right if the request is filed within 30 days.⁶

While a claimant may not be entitled to a hearing or review of the written record as a matter of right if the request is untimely, OWCP has the discretionary authority to grant the request and must properly exercise such discretion.⁷

ANALYSIS -- ISSUE 1

OWCP terminated appellant's compensation under section 8148 in a decision dated July 27, 2016. He sought a hearing in correspondence postmarked August 29, 2016. As appellant's request for a hearing was postmarked August 29, 2016, more than 30 days after OWCP issued its July 27, 2016 decision, he was not entitled to a hearing as a matter of right.

OWCP has the discretionary power to grant a hearing or review of the written record when a claimant is not entitled to a hearing or review as a matter of right.⁸ It properly exercised its discretion by noting that it had considered the matter in relation to the issue involved and denied appellant's request for a hearing as the case could be resolved by submitting additional evidence to OWCP with a reconsideration request. The Board has held that the only limitation on OWCP's discretionary authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.⁹

³ 5 U.S.C. § 8124(b)(1).

⁴ 20 C.F.R. § 10.615.

⁵ *Id.* at § 10.616(a).

⁶ See *Leona B. Jacobs*, 55 ECAB 753 (2004).

⁷ 20 C.F.R. § 10.616(b); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(a) (October 2011).

⁸ *Afegalai L. Boone*, 53 ECAB 533 (2002).

⁹ See *André Thyratron*, 54 ECAB 257 (2002).

There is no evidence that OWCP committed any action in connection with its denial of appellant's request for a hearing which could be found to be an abuse of discretion. Consequently, it properly denied his request for a hearing as untimely under section 8124.

LEGAL PRECEDENT -- ISSUE 2

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.”¹⁰

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.”¹¹

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 a formal accusation that the person has committed the crime; 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.¹² 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).¹³ Due to the nature of the termination involving fraud, no pretermination notice is required before issuing a final decision.¹⁴

¹⁰ 5 U.S.C. § 8148(a).

¹¹ 20 C.F.R. § 10.17.

¹² *Supra* note 7, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.17c(2) (February 2013); *see also K.R.*, Docket No. 14-0434 (issued October 7, 2014).

¹³ *Id.* at Chapter 2.1400.17(d) (February 2013).

¹⁴ *Id.* at Chapter 2.1400.4(a)(6) (February 2013).

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly terminated appellant's compensation benefits based on his conviction in federal court under a statute relating to fraud in the application for or receipt of compensation benefits under FECA. On September 9, 2015 a judge with the U.S. District Court for the Western Division of Virginia accepted his guilty plea to one count of violating 18 U.S.C. § 1920, making a false statement to obtain federal workers' compensation benefits. Under section 8148 of FECA, a claimant who is convicted of fraud in obtaining compensation benefits under section 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.¹⁵ The record contains evidence supporting that appellant was formally charged with one count of making a false statement to obtain workers' compensation and also has copies of the plea agreement, and the court judgment. The Board finds that this evidence establishes that he was convicted of fraud in obtaining FECA compensation benefits.¹⁶ OWCP procedures provide that the termination is effective on the date the guilty plea is made in open court.¹⁷ The Board thus finds that OWCP properly terminated appellant's compensation benefits effective May 22, 2015.¹⁸

CONCLUSION

The Board finds that OWCP properly terminated appellant's compensation effective May 22, 2015 as he forfeited his entitlement to compensation pursuant to 5 U.S.C. § 8148. The Board further finds that OWCP properly denied his request for an oral hearing as untimely under 5 U.S.C. § 8124.

¹⁵ 5 U.S.C. § 8148(a); *S.H.*, Docket No. 14-0421 (issued August 27, 2014).

¹⁶ *See supra* note 12; *see also D.B.*, Docket No. 16-0998 (issued September 6, 2016).

¹⁷ *See supra* note 13.

¹⁸ *See John L. Hoss, Jr.*, 54 ECAB 239 (2002); *Bob R. Gilley*, 51 ECAB 377 (2000).

ORDER

IT IS HEREBY ORDERED THAT the October 26, September 20, and July 27, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 5, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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