

received an overpayment of compensation in the amount of \$1,146.84 for the period December 27, 2017 to January 6, 2018 based on the forfeiture; and (3) whether OWCP properly found appellant at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

FACTUAL HISTORY

On December 23, 1993 appellant, then a 37-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 21, 1993 he sustained a right leg fracture when he slipped and fell on ice and snow while in the performance of duty. OWCP accepted the claim for fracture of right tibia fibula and placed appellant on the periodic compensation rolls effective July 24, 1994. Appellant returned to full-time work with restrictions for the employing establishment on April 26, 1999.

The record contains an order signed on December 27, 2017 by a judge for the U.S. District Court for the District of Nevada accepting appellant's guilty plea under 18 U.S.C. § 287 to one count of False, Fictitious, or Fraudulent Claims to obtain FECA compensation benefits. The record also contains copies of the plea agreement and criminal indictment which acknowledge that appellant knowingly and intentionally submitted Forms OWCP-915 requesting reimbursement of medical expenses that he had not incurred. As purported proof of his payment of those expenses, appellant created false, fictitious, and fraudulent invoices from companies that either never existed or no longer did business at the time of the invoice. As further purported proof of his payment, appellant submitted false, fictitious, and fraudulent documents purporting to prove that he paid for the requested medical expenses using personal checks, when in fact no such payment had been made. Restitution was not ordered.

By decision dated January 3, 2018, OWCP found that appellant had forfeited his entitlement to compensation beginning December 27, 2017. It noted that on December 27, 2017 he pled guilty to one count of making False, Fictitious, and Fraudulent Claims, in violation of 18 U.S.C. § 287 in relationship to obtaining workers' compensation benefits. OWCP advised 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 only pay for any authorized medical treatments appellant received prior to the date of the conviction. Compensation benefits, including entitlement to schedule award benefits, were terminated December 27, 2017, the date of appellant's conviction. OWCP noted that any checks received for benefits on or after December 27, 2017 must be returned to OWCP.

On January 30, 2018 OWCP advised appellant of its preliminary determination that he had received an overpayment of compensation in the amount of \$1,146.84 for the period December 27, 2017 to January 6, 2018 because he received compensation on the periodic rolls after he pled guilty under 18 U.S.C. § 287 to one count of False, Fictitious, and Fraudulent Claims to obtain FECA compensation benefits. It also made a preliminary determination that he 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. OWCP explained that appellant was paid \$2,919.24 net compensation over the course of a 28-day periodic roll cycle and he was over paid 11 days from December 27, 2017 to January 6, 2018. It calculated that \$2,919.24 divided by 28 days (days in a periodic roll cycle) times 11 days (days over paid) equaled an

overpayment in the amount of \$1,146.84. OWCP provided appellant 30 days to submit evidence and argument challenging the proposed actions. Appellant did not respond within the allotted period.

By decision dated March 12, 2018, OWCP finalized the preliminary determination of an overpayment of compensation in the amount of \$1,146.84 for the period December 27, 2017 to January 6, 2018 based on the forfeiture of his compensation under 18 U.S.C. § 287. It also found that he was at fault in the creation of the \$1,146.84 overpayment because he accepted a payment he knew or reasonably should have known was incorrect, thereby precluding waiver of recovery of the overpayment. OWCP instructed appellant to pay the full amount of \$1,146.84 within 30 days or to contact OWCP so that appropriate arrangements for recovery (such as installment payments) could be made.

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 provides that an 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 a benefit under FECA, shall forfeit, as of the date of such conviction, entitlement to any benefit to which such individual would otherwise be entitled under FECA for an 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

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.⁶

OWCP's procedures provide that in support of termination or suspension of compensation the record must contain copies of the indictment or information and the plea agreement, if any, or the document containing the guilty verdict. 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

³ 5 U.S.C. § 8106.

⁴ *Id.* at § 8129.

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

⁶ 20 C.F.R. § 10.17.

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

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, effective December 27, 2017, because he forfeited his entitlement to compensation beginning that date pursuant to 5 U.S.C. § 8148(a) as he was convicted in federal court under a statute relating to false claims in the application for or receipt of compensation benefits under FECA.

On December 27, 2017 a judge for the U.S. District Court for the District of Nevada accepted appellant's guilty plea to one count of violating 18 U.S.C. § 287 (False, Fictitious, or Fraudulent Claims) when he knowingly and intentionally obtained FECA benefit payments on a fraudulent basis. 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 a benefit under FECA is permanently barred from receiving compensation under FECA.¹⁰

The record contains copies of the guilty verdict. OWCP's January 3, 2018 letter further detailed the circumstances under which appellant committed fraud under FECA. 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 accepted and guilt adjudicated.¹² The Board finds that OWCP properly terminated appellant's compensation benefits on December 27, 2017.¹³

LEGAL PRECEDENT -- ISSUE 2

Section 8129(a) of FECA provides, in pertinent part, "When an overpayment has been made to an individual under this subchapter because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled."¹⁴

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); *see D.B.*, Docket No. 16-0988 (issued September 6, 2016).

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).

¹⁴ *Id.* at § 8129(a).

Section 10.529(b) of OWCP's implementing regulations provides as follows:

“(b) Where the right to compensation is forfeited, OWCP shall recover any compensation already paid for the period of forfeiture pursuant to 5 U.S.C. § 8129 and other relevant statutes.”¹⁵

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly found that appellant received an overpayment of compensation in the amount of \$1,146.84 for the period December 27, 2017 to January 6, 2018 based on the forfeiture.

The record reveals that appellant received wage-loss compensation benefits for the period December 27, 2017 to January 6, 2018 after his conviction on December 27, 2017 for false claims under 18 U.S.C. § 287 and subsequent to the forfeiture. OWCP determined that during this period he received an overpayment of compensation in the amount of \$1,146.84. The record contains documentation of OWCP's calculations and there is no contrary evidence of record. OWCP explained the basis of the overpayment and appellant does not dispute that he received compensation payments for the period December 27, 2017 to January 6, 2018 following his false claims conviction. Thus, the Board finds that he received an overpayment of compensation in the amount of \$1,146.84.

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.¹⁶ No waiver of payment is possible if appellant is with fault in helping to create the overpayment.¹⁷

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.¹⁸

¹⁵ *Id.*

¹⁶ 5 U.S.C. § 8129(b).

¹⁷ *Robert W. O'Brien*, 36 ECAB 541, 547 (1985).

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

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly found appellant at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

Upon its application of the third standard to determine if appellant was at fault in the creation of the overpayment, OWCP found that appellant had knowledge that the payment was incorrect. 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 FECA benefits.¹⁹

When appellant pled guilty to violating 18 U.S.C. § 287, he admitted that he knowingly and intentionally obtained FECA compensation benefits to which he knew he was not entitled. The December 27, 2017 plea of guilt alone 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 December 27, 2017 conviction was incorrect. As appellant accepted compensation benefits from OWCP, which covered the period December 27, 2017 to January 6, 2018, the Board finds that he was at fault in the creation of the \$1,146.84 overpayment and is not entitled to waiver of recovery of the overpayment.²⁰

Lastly, the Board notes that its jurisdiction is limited to reviewing those cases where OWCP seeks recovery from continuing compensation benefits under FECA. Appellant forfeited further compensation benefits commencing December 27, 2017. Thus, as he is no longer in receipt of wage-loss compensation benefits, the Board lacks jurisdiction over OWCP's recovery of the overpayment.²¹

CONCLUSION

The Board finds that OWCP properly terminated appellant's compensation, effective December 27, 2017, because he forfeited his entitlement to compensation beginning that same date 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 \$1,146.84 for the period December 27, 2017 to January 6, 2018 based on the forfeiture and properly found appellant at fault in the creation of the overpayment, thereby precluding waiver of recovery.

¹⁹ See *R.M.*, Docket No. 17-0141 (issued March 28, 2018).

²⁰ See *K.R.*, Docket No. 14-0434 (issued October 7, 2014).

²¹ See *D.R.*, 59 ECAB 148 (2007) (with respect to the recovery of an overpayment, the Board's jurisdiction is limited to those cases where OWCP seeks recovery from continuing compensation benefits under FECA).

ORDER

IT IS HEREBY ORDERED THAT the March 12 and January 3, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 13, 2019
Washington, DC

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

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

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