

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

_____)	
L.C., Appellant)	
)	
and)	Docket No. 19-1094
)	Issued: February 25, 2020
U.S. POSTAL SERVICE, EAST HOUSTON)	
POST OFFICE, Houston, TX, Employer)	
_____)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On April 19, 2019 appellant, through counsel, filed a timely appeal from March 26 and 27, 2019 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that appellant submitted additional evidence to OWCP following the March 27, 2019 decision. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUES

The issues are: (1) whether OWCP properly terminated appellant's compensation, effective June 13, 2018, finding that she forfeited her entitlement to compensation pursuant to 5 U.S.C. § 8148(a); (2) whether OWCP properly found that appellant received an overpayment of compensation in the amount of \$594.00; 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 May 26, 2011 appellant, then a 40-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 16, 2011 she strained her lower back while bending down to pick up express mail in the performance of duty. OWCP accepted the claim for lumbar intervertebral disc displacement without myelopathy and lumbar sprain. Appellant stopped work on May 18, 2011 and returned to modified work for four hours per day on March 11, 2013.

On October 11, 2016 a grand jury for the U.S. District Court for the Southern District of Texas, Houston Division, indicted appellant on two counts. Count one alleged that appellant, with intent to defraud, had made false, fictitious, or fraudulent representations for receipt of medically-related travel benefits, during the period November 15, 2011 through May 4, 2016, by filing false Form 957 reports with the U.S. Department of Labor in violation of 18 U.S.C. § 1920. Count two alleged that appellant willfully and knowingly engaged in theft of public funds from the U.S. Department of Labor in violation of 18 U.S.C. § 641 during the period November 15, 2011 through May 4, 2016. This indictment also related that if appellant was convicted of the offenses charged, the United States intended to seek forfeiture of all property which was derived from proceeds traceable to such offenses.

In a report dated May 15, 2017, the employing establishment's Office of the Inspector General detailed its investigation into appellant's filing of more than 500 fraudulent claims for reimbursement for co-payments and medical travel for the period May 17, 2011 to May 4, 2016.

On June 13, 2018 the jury found appellant guilty on both counts of making a false statement regarding FECA benefits and theft of public funds. On that same date, the United States District Court Judge recorded that appellant had been found guilty of Counts One and Two of the indictment and ordered a presentence report.

By decision dated July 19, 2018, OWCP found that appellant had forfeited her entitlement to compensation beginning June 13, 2018 as she was found guilty of making false statements regarding FECA benefits in violation of 18 U.S.C. § 1920 and theft of public funds in violation of 18 U.S.C. § 641. It determined that, as a result of her conviction, and in accordance with 5 U.S.C. § 8148(a) and 20 C.F.R. § 10.17, she was not entitled to receive further benefits under FECA under this or any other file number.

On July 19, 2018 OWCP notified appellant of its preliminary determination that she had received an overpayment of wage-loss compensation in the amount of \$594.00 for the period June 13 through 23, 2018. It further advised her of its preliminary determination that she was at fault in the creation of the overpayment. OWCP requested that she complete the enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial

documentation. Additionally, it notified appellant 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.

In a form dated August 15, 2018, appellant requested a telephonic hearing before an OWCP hearing representative. A telephonic hearing was held on January 14, 2019 during which appellant was represented by counsel and the issues of termination of compensation and overpayment were addressed. Appellant testified that she had appealed her conviction and that she was looking into disability retirement.

By decision dated March 26, 2019, OWCP's hearing representative affirmed the July 19, 2018 decision regarding the termination of appellant's compensation benefits. He determined that appellant's entitlement to compensation was properly terminated effective June 13, 2018, under 5 U.S.C. section 8148(a), as a jury had found her guilty of making false statements regarding FECA benefits and theft of public funds.

By decision dated March 27, 2019, OWCP finalized its determination that appellant received an overpayment of compensation in the amount of \$594.00 as she was paid compensation from June 13 to 23, 2018 after OWCP had terminated her compensation benefits effective June 13, 2018 for fraudulent receipt of FECA benefits. It further found that she was at fault in the creation of the overpayment of compensation and thus not entitled to waiver of recovery of the overpayment.

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 FECA 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 8106⁴ (forfeiture) or section 8129⁵ (recovery of overpayments) of FECA.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 that 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

⁴ 5 U.S.C. § 8106.

⁵ *Id.* at § 8129.

⁶ *Id.* at § 8148; *see D.S.*, Docket No. 18-1173 (issued June 13, 2019); *F.C.*, 59 ECAB 666 (2007).

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

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, effective June 13, 2018, as she forfeited her entitlement to compensation pursuant to 5 U.S.C. § 8148(a).

On October 11, 2016 a grand jury for the U.S. District Court for the Southern District of Texas, Houston Division, indicted appellant for making false, fictitious, or fraudulent representations of for receipt of medically-related travel benefits to which she was not entitled in violation of 18 U.S.C. § 1920 and theft of public funds in violation of 18 U.S.C. § 641. On June 13, 2018 a U.S. District Court jury found her guilty on both counts.

The record contains a copy of the indictment and the jury verdict. The Board finds that the evidence establishes that appellant was convicted of fraud for making false statements regarding OWCP compensation benefits under 18 U.S.C. § 1920 and theft of public funds in violation of 18 U.S.C. § 641. OWCP procedures provide that termination is effective the date of the verdict.¹⁰ The Board thus finds that OWCP properly terminated appellant's compensation benefits on June 13, 2018.¹¹

On appeal counsel asserts that the decision is contrary to fact and law. Contrary to counsel's assertion the evidence establishes that appellant forfeited her entitlement to compensation based on her conviction under federal criminal statutes for making false statements regarding receipt of benefits under FECA and theft of government funds.¹²

LEGAL PRECEDENT -- ISSUE 2

Section 8148 of FECA provides 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, entitlement to any benefit such individual would otherwise be entitled to under FECA for an injury occurring on or

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

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

¹⁰ *Supra* note 8.

¹¹ *D.S.*, *supra* note 6.

¹² *See supra* note 6.

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.¹³

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly found that appellant received an overpayment of compensation in the amount of \$594.00 for the period June 13 through 23, 2018.

The record reveals that OWCP paid appellant wage-loss compensation for the period June 13 through 23, 2018 after her conviction on June 13, 2018 for false statements regard FECA benefits under 18 U.S.C. § 1920 and theft of public funds in violation of 18 U.S.C. § 641 and subsequent to forfeiture. OWCP determined that during this period she received an overpayment in the amount of \$594.00. 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 she received a compensation payment in this amount for the June 13 to 23, 2018 following her fraud conviction. Thus, the Board finds that she received an overpayment of compensation in the amount of \$594.00.

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.¹⁴ No waiver of payment is possible if appellant is with fault in helping to create the overpayment.¹⁵

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.¹⁶

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.

¹³ *Supra* note 6 at § 8148; *R.M.*, Docket No. 17-0141 (issued March 28, 2018).

¹⁴ 5 U.S.C. § 8129(b).

¹⁵ *D.S.*, *supra* note 6; *Robert W. O'Brien*, 36 ECAB 541 (1985).

¹⁶ 20 C.F.R. § 10.433(a); *D.S.*, *supra* note 6; *Kenneth E. Rush*, 51 ECAB 116, 118 (1999).

As noted, under section 8148(a), a claimant who is convicted of fraud in obtaining compensation benefits under 18 U.S.C. § 1920 will permanently forfeit his or her entitlement to further compensation benefits effective the date of the conviction. The date of conviction in this case was June 13, 2018 and therefore no further benefits were due effective this date.¹⁷ Appellant knew or should have known her continued receipt of FECA benefits after her June 13, 2018 conviction was incorrect because she filed false claims for FECA benefits.¹⁸ As appellant accepted compensation benefits from OWCP, which covered the period June 13 to 23, 2018, the Board finds that she was at fault in the creation of the \$594.00 overpayment and is not entitled to waiver of recovery of the overpayment.¹⁹

The Board's jurisdiction is limited to reviewing those cases where OWCP seeks recovery from continuing compensation benefits under FECA. Appellant forfeited further compensation commencing June 13, 2018. Thus, as she is no longer in receipt of wage-loss compensation benefits, the Board lacks jurisdiction over OWCP's recovery of the overpayment.²⁰

CONCLUSION

The Board finds that OWCP properly terminated appellant's compensation, effective June 13, 2018, because she forfeited her 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 \$594.00 for the period June 13 to 23, 2018 based on the forfeiture and properly found appellant at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

¹⁷ *Supra* note 8.

¹⁸ *D.S., supra* note 6; *Bob R. Gilley*, 51 ECAB 377 (2000).

¹⁹ *D.S., supra* note 6; *K.R.*, Docket No. 14-0434 (issued October 7, 2014).

²⁰ *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 26 and 27, 2019 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 25, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board