

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

K.V., Appellant	)	
	)	
and	)	<b>Docket No. 19-1947</b>
	)	<b>Issued: May 28, 2020</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Fairbanks, AK, Employer	)	
	)	

*Appearances:*  
Gary G. Colbath, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
CHRISTOPHER J. GODFREY, Deputy Chief Judge  
JANICE B. ASKIN, Judge

**JURISDICTION**

On September 23, 2019 appellant, through counsel, filed a timely appeal from an April 4, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>2</sup> Pursuant to the Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> 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.

<sup>2</sup> Appellant timely requested oral argument before the Board. 20 C.F.R. § 501.5(b). By order dated May 21, 2020, the Board exercised its discretion and denied the request, finding that the arguments on appeal could adequately be addressed based on the case record. *Order Denying Request for Oral Argument*, Docket No. 19-1947 (issued May 21, 2020). The Board's *Rules of Procedure* provide that an appeal in which a request for oral argument is denied by the Board will proceed to a decision based on the case record and the pleadings submitted. 20 C.F.R. § 501.5(b).

<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

The issue is whether OWCP properly terminated appellant's compensation, effective May 18, 2018, finding that he forfeited his entitlement to compensation pursuant to 5 U.S.C. § 8148(a).

## **FACTUAL HISTORY**

On March 29, 2010 appellant, then a 48-year-old customer service supervisor, filed a traumatic injury claim (Form CA-1) alleging that on March 10, 2010 he fell while stepping over a concrete embankment and hit his head on a wall while in the performance of duty. He stopped work on March 11, 2010. OWCP accepted the claim for left sensory hearing loss and dizziness and paid appropriate intermittent wage-loss compensation on its supplemental compensation rolls as of April 25, 2010. Appellant was removed from the employing establishment effective November 6, 2015. OWCP continued to pay him wage-loss compensation on the periodic rolls as of May 29, 2016 based upon his loss of wage-earning capacity.<sup>4</sup>

On August 15, 2017 a grand jury for the U.S. District Court for the District of Alaska indicted appellant on six counts of wire fraud under 18 U.S.C. § 1343 and six counts of making false statements or fraud to obtain federal workers' compensation under 18 U.S.C. § 1920.

On May 18, 2018 appellant pled guilty to six counts of wire fraud under 18 U.S.C. § 1343. Specifically, he pled guilty to defrauding the FECA program by providing false statements and omissions of fact regarding his marital status to receive a higher compensation rate which directly caused OWCP to overpay him by electronic direct deposit into his bank account of at least \$14,237.24. The plea agreement contained no agreement as to restitution or additional agreements by the United States. The plea agreement also specifically provided that it would not bind other federal, state, or local prosecuting authorities. The Court accepted the plea agreement on May 18, 2018 and imposition of sentence was set for August 3, 2018.

By decision dated August 9, 2018, OWCP found that appellant had forfeited his entitlement to compensation effective May 18, 2018, the date of his conviction, as he pled guilty to defrauding the FECA program by wire fraud. It determined that, as a result of his conviction, and in accordance with 5 U.S.C. § 8148(a) and 20 C.F.R. § 10.17, he was not entitled to receive further benefits under FECA under this OWCP File No. xxxxxx074 and in OWCP File No. xxxxxx032. OWCP further advised that any authorized medical treatment received prior to the date of this decision would be paid, but no further medical treatment would be paid beyond the date of the decision.

On August 29, 2018 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on January 22, 2019. Appellant testified that from 2010 to 2017 the character of his work injury changed and he was diagnosed with a head trauma injury. He confirmed that he had pled guilty to six counts involving intentional fraud to the government, but testified that he had no criminal intent and that he had agreed to the

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<sup>4</sup> Appellant had a prior February 6, 2001 claim under OWCP File No. xxxxxx032, which was accepted for left shoulder and upper arm sprain, lumbar sprain and displacement of lumbar intervertebral disc without myelopathy. The claims have not been combined.

six wire fraud counts because he had no problem with paying back the overpayment. Appellant testified that he filled out his claim forms with the assistance of his claims representative and he signed the forms. He attributed his mistake in completing CA-7 forms to severe head trauma, the worsening of his condition, and anxiety due to his injury. Counsel opined that the evidence and appellant's description of the injury was indicative of a head/brain injury. He indicated that when the plea agreement was entered into, it was everyone's belief, including the prosecutor and the judge, that if appellant pled guilty and was convicted of a more generic wire fraud violation, it would not result in a termination of his FECA benefits. Appellant testified that he had no income source at this time. No evidence pertaining to the current fraud issue was submitted post-hearing.

By decision dated April 4, 2019, an OWCP hearing representative affirmed the August 9, 2018 decision. The hearing representative found that, although detailed testimony was provided regarding appellant's medical condition, and his belief that the wire fraud charges would not trigger termination of his compensation benefits, none of those explanations would negate the formal guilty plea. The hearing representative also found that the case record contained proper documentation of the offense, including a copy of the indictment and a copy of the plea agreement, with an indication that it was accepted by the court.

### **LEGAL PRECEDENT**

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 8106<sup>5</sup> (forfeiture) or section 8129<sup>6</sup> (recovery of overpayments) of FECA.<sup>7</sup>

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.<sup>8</sup>

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

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<sup>5</sup> 5 U.S.C. § 8106.

<sup>6</sup> *Id.* at § 8129.

<sup>7</sup> *Id.* at § 8148; *see L.C.*, Docket No. 19-1094 (issued February 25, 2020); *D.S.*, Docket No. 18-1173 (issued June 13, 2019); *F.C.*, 59 ECAB 666 (2007).

<sup>8</sup> 20 C.F.R. § 10.17.

compensation benefits under FECA.<sup>9</sup> The termination is effective on the date of the verdict or on the date the guilty plea is accepted and guilt adjudicated.<sup>10</sup> Because of the criminal basis for the termination, no pretermination notice is required before a final decision is issued.<sup>11</sup>

### ANALYSIS

The Board finds that OWCP properly terminated appellant's compensation, effective May 18, 2018, finding that he forfeited his entitlement to compensation pursuant to 5 U.S.C. § 8148(a).

On August 15, 2017 a grand jury for the U.S. District Court for the District of Alaska indicted appellant on six counts of wire fraud under 18 U.S.C. § 1343 and six counts of making false statements or fraud to obtain federal workers' compensation under 18 U.S.C. § 1920. On May 18, 2018 appellant pled guilty to six counts of wire fraud under 18 U.S.C. § 1343. Specifically, he plead guilty to defrauding the FECA program by providing false statements and omissions of fact regarding his marital status to receive a higher compensation rate which directly caused OWCP to overpay appellant by electronic direct deposit into appellant's bank account of at least \$14,237.24.

As noted, 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.<sup>12</sup>

The record contains a copy of the indictment and the plea agreement, which the Court accepted. The Board finds that the evidence establishes that appellant was convicted of defrauding the FECA program by wire fraud. OWCP procedures provide that the termination is effective on the date of the guilty plea is accepted.<sup>13</sup> The Board thus finds that OWCP properly terminated appellant's FECA compensation benefits effective May 18, 2018, the date of his conviction.<sup>14</sup>

On appeal and before OWCP appellant contends that he pled guilty to the wire fraud charges as he was advised it would not trigger the termination of his compensation benefits. The Board finds that this explanation does not negate appellant's formal guilty plea. As discussed, pursuant to 5 U.S.C. § 8148, appellant forfeited his entitlement to compensation based on his

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

<sup>10</sup> *Id.* at Chapter 2.1400.17(d) (February 2013).

<sup>11</sup> *Id.* at Chapter 2.1400.4(a)(6) (February 2013).

<sup>12</sup> 5 U.S.C. § 8148(a); 20 C.F.R. § 10.17; *see R.R.*, Docket No. 18-0804 (issued October 8, 2019); *R.M.*, Docket No. 17-0141 (issued March 28, 2018).

<sup>13</sup> *Supra* note 9.

<sup>14</sup> *See D.S.*, Docket No. 18-1173 (issued June 13, 2019).

conviction under a federal criminal statute for wire fraud in the application for or receipt of benefits under FECA.<sup>15</sup>

**CONCLUSION**

The Board finds that OWCP properly terminated appellant's compensation, effective May 18, 2018, finding that he forfeited his entitlement to compensation pursuant to 5 U.S.C. § 8148(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 4, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 28, 2020  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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<sup>15</sup> *Supra* note 11.