

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

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<b>Q.M., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 20-1614</b>
	)	<b>Issued: November 25, 2020</b>
<b>U.S. POSTAL SERVICE, PROCESSING &amp; DISTRIBUTION CENTER, Inglewood, CA, Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On March 2, 2020 appellant filed a timely appeal from a January 15, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether OWCP properly terminated appellant's compensation, effective March 10, 2015, finding that she forfeited her entitlement to compensation pursuant to 5 U.S.C. § 8148(a).

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>2</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On September 21, 2002 appellant, then a 28-year-old mail processor, filed a traumatic injury claim (Form CA-1) alleging that on September 1, 2000 she sustained bilateral carpal tunnel syndrome as a result of her repetitive employment duties. She stopped work and returned to modified duty as a casual clerk on September 12, 2002. OWCP assigned OWCP File No. xxxxxx098 and converted appellant's traumatic injury claim to an occupational disease claim.<sup>3</sup> It subsequently accepted the claim for bilateral carpal tunnel syndrome, bilateral shoulder strain, bilateral de Quervain's syndrome, and bilateral lateral epicondylitis. Appellant was terminated from federal employment, effective December 27, 2002.

OWCP began paying wage-loss compensation benefits on the daily rolls beginning September 24, 2002, and placed appellant on the periodic rolls, effective March 23, 2003.

In March 2015, OWCP received evidence that appellant was indicted in the County of Los Angeles for the crime of insurance fraud in violation of Section 550(B) of the California Penal Code. "A FELONY COMPLAINT FOR AN ARREST WARRANT" revealed that, on or between January 1, 2012 and December 31, 2013, appellant committed the crime of insurance fraud when she "assisted, conspired with another to[,] and presented and caused to be presented a written and oral statement as part of, ... a claim for payment and other benefit to an insurance policy, knowing that the statement contained false and misleading information concerning a material fact." Appellant was charged with one count under Section 550(b)(1) of the California Penal Code.

OWCP also received a "DECLARATION IN SUPPORT OF AN ARREST WARRANT" signed by A.R., who reported that she was employed as a Peace Officer for the California Department of Insurance and that she had obtained information and investigated allegations that appellant had committed insurance fraud in violation of California Penal Code 550(B)(1).

A printout of a court docket revealed that on March 10, 2015 the Superior Court of California, County of Los Angeles accepted appellant's guilty plea to one count of insurance fraud under Section 550(B)(3) of the California Penal Code. Appellant was sentenced to three years of summary probation and ordered to pay restitution to the employing establishment and a fine to the court. The printout was signed by a Deputy of the Superior Court of the County of Los Angeles and contained a court stamp.

By decision dated April 27, 2015, OWCP found that appellant had forfeited her entitlement to compensation, effective March 10, 2015, the date of her conviction, as she pled guilty to one

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<sup>2</sup> *Q.M.*, Docket No. 18-0345 (issued May 17, 2019).

<sup>3</sup> OWCP administratively combined this case with a previous claim, under OWCP File No. xxxxxx399, with the present case as the master file. Under OWCP File No. xxxxx399, it accepted that appellant sustained cervical and lumbosacral strains, cervical radiculopathy, and lumbosacral radiculopathy as a result of her employment duties.

count of insurance fraud in violation of California Penal Code 550(B)(3) in connection with an application for, or receipt of, benefits under FECA. 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 OWCP File Nos. xxxxxx098 and xxxxxx399. OWCP further advised that any authorized medical treatment received prior to April 27, 2015 would be paid, but no further medical treatment would be paid beyond that date.

On February 23, 2016 appellant requested reconsideration of the April 27, 2015 decision. In a February 18, 2016 statement, she requested that OWCP reinstate her wage-loss compensation and medical benefits since her conviction and guilty plea were dismissed. Appellant argued that since the termination of benefits was based upon a conviction that, no longer stood, her benefits should be reinstated.

OWCP received a printout of the docket for the Superior Court of Los Angeles County, which demonstrated that appellant had fulfilled 100 hours of community service and had paid her criminal restitution and fine in full. It also revealed that on August 4, 2015 her plea, verdict, or finding of guilt regarding count 2 was set aside and vacated and a plea of not guilty was entered. OWCP noted that an expungement order was signed and filed.

Appellant submitted an August 4, 2015 Order For Dismissal from the Superior Court of Los Angeles County, which granted appellant's petition for dismissal regarding appellant's conviction under Section 1203.4 of the California Penal Code. The order was signed by Judge David M. Horwitz and was stamped by the Superior Court of Los Angeles County.

By decision dated May 23, 2016, OWCP vacated the April 27, 2015 termination decision, and reinstated appellant's wage-loss compensation and medical benefits. It noted that the California Superior Court had dismissed the conviction of insurance fraud against her, and thus, OWCP had no basis to terminate her wage-loss compensation and medical benefits pursuant to 5 U.S.C. § 8148(a).

In an August 15, 2016 decision, OWCP rescinded the May 23, 2016 decision and reinstated the April 27, 2015 decision, which terminated appellant's benefits under Section 8148(a). It noted that an Order of Dismissal under California Penal Code § 1203.4 did not nullify or expunge her criminal conviction of fraud, but was an acknowledgement by the court that she had successfully completed her probation and was releasing her from all penalties and disabilities resulting from the offense. OWCP cited to various state court decisions in interpreting Section 1203.4 of the California Penal Code.

On August 4, 2017 appellant requested reconsideration. In a June 23, 2017 statement, she explained that she pled guilty for insurance fraud pursuant to California Penal Code 550(B)(3) because at the time of the conviction, she did not have evidence to prove her innocence so she accepted a plea bargain to enter a plea of *nolo contendere* in order to avoid jail time. Appellant noted that she later filed a petition for expungement, which was granted on August 4, 2015. She initially asserted that OWCP violated the Full Faith and Credit clause of the U.S. Constitution by ignoring the clear language of the August 4, 2015 Order for Dismissal, which explicitly noted that "the plea, verdict, or finding of guilt be set aside and vacated." Second, appellant argued that the purpose of the California Penal Code Section 1203.4 was to release convicted persons from all

penalties and disabilities from the offense of which he or she had been convicted and that OWCP had not shown the existence of a specifically enumerated exception to Section 1203.4 that would preclude receipt of workers' compensation benefits. She also cited to various state cases that OWCP had quoted in its decision and explained how her case was different from the cases cited. Lastly, appellant alleged that OWCP did not cite to any Board cases to support its arguments in its August 15, 2016 decision.

Appellant resubmitted the August 4, 2015 Order For Dismissal, and copies of court records dated November 2014 to August 2015, including a notice of scheduling of an August 4, 2015 hearing on motion for modification of sentence/early termination.

OWCP received a September 6, 2016 report by Dr. Christopher P. DeCarlo, a physical medicine and rehabilitation specialist, who related appellant's complaints of continuing relenting pain in the bilateral biceps area, right elbow, both wrists, and both thumbs. He provided examination findings and indicated that she could return to modified work.

By decision dated November 1, 2017, OWCP denied appellant's request for reconsideration of the merits of the claim, pursuant to 5 U.S.C. § 8128(a). It found that her reconsideration request neither raised substantive legal questions nor included new and relevant evidence sufficient to warrant further merit review of her claim.

Appellant filed an appeal before the Board. In a May 17, 2019 decision, the Board set aside the November 1, 2017 decision and remanded her claim to OWCP for review and reconsideration on the merits.

By decision dated January 15, 2020, OWCP denied modification of the August 15, 2016 decision reinstating the termination of appellant's compensation benefits in accordance with 5 U.S.C. § 8148(a).

### **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 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>4</sup> (forfeiture) or section 8129<sup>5</sup> (recovery of overpayments) of FECA.<sup>6</sup>

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<sup>4</sup> 5 U.S.C. § 8106.

<sup>5</sup> *Id.* at § 8129.

<sup>6</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).

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>7</sup>

OWCP's procedures provide that in support of termination or suspension of compensation the record must contain evidence establishing that the person convicted of fraud and the conviction was related to the claim for, or receipt of, benefits under FECA.<sup>8</sup> Such evidence includes a copy of the indictment or formal accusation that the person has committed the crime and a copy of the plea agreement with an indication that it was accepted by the court, or a copy of the guilty verdict.<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 improperly terminated appellant's compensation benefits, effective March 10, 2015.

OWCP found that appellant had forfeited her entitlement to compensation, effective March 10, 2015, pursuant to 5 U.S.C. § 8148 because she pled guilty to one count of insurance fraud in connection with an application for, or receipt of, benefits under FECA in violation of California Penal Code 550(B)(3).

As noted above, OWCP's procedures provide that, to support the termination of compensation under 5 U.S.C. § 8148, the evidence of record must contain a copy of the indictment or formal accusation and a copy of the plea agreement with an indication that it was accepted by the court, or a copy of the guilty verdict.<sup>12</sup> The Board has reviewed the evidence of record and notes that it does not contain copies of the indictment, plea agreement, or court judgment related to appellant's guilty verdict. In this case, the evidence of record contains a felony complaint for a warrant indicating that she was charged with insurance fraud under Section 550(b)(1) of the California Penal Code, a Declaration in support of the arrest warrant, and a printout of the court docket. Because the evidence of record does not contain the evidence needed to support the termination of appellant's wage-loss compensation benefits under 5 U.S.C. § 8148, the Board

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<sup>7</sup> 20 C.F.R. § 10.17.

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.17(c)(2) (September 2020).

<sup>9</sup> *Id.*

<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> *Supra* notes 7 and 8.

therefore finds that OWCP did not properly terminate her compensation benefits, effective March 10, 2015.<sup>13</sup>

Furthermore, the Board notes that the evidence of record must establish that the individual was convicted of a crime related to the claim for or receipt of the compensation benefits under FECA.<sup>14</sup> In this case, the evidence of record does not establish that appellant's guilty plea to one count of insurance fraud under Section 550(b)(3) of the California Penal Code was related to her FECA benefits. Section 550(b)(3) notes that it was unlawful to do or knowingly assist or conspire, with any person, to: "(3) [c]onceal, or knowingly fail to disclose the occurrence of, an event that affects any person's initial or continued right or entitlement to any insurance benefit or payment, or the amount of any benefit or payment to which the person is entitled."<sup>15</sup> According to OWCP's April 27, 2015 and January 15, 2020 decisions, appellant pled guilty in the Superior Court of California to insurance fraud in relation to her receipt of FECA benefits. However, there is no evidence in the case record to demonstrate that her guilty plea was in connection to the receipt of her FECA benefits. Accordingly, the Board finds that the January 15, 2020 decision terminating appellant's wage-loss compensation benefits, effective March 10, 2015, shall therefore be reversed.

### **CONCLUSION**

The Board finds that OWCP improperly terminated appellant's compensation benefits, effective March 10, 2015.

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<sup>13</sup> *C.G.*, Docket No. 17-1142 (issued January 25, 2018); *Lorenzo P. Garcia*, Docket No. 99-1665 (issued July 12, 2001).

<sup>14</sup> *Supra* note 7.

<sup>15</sup> Cal. Penal Code § 550(B)(3).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 15, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: November 25, 2020  
Washington, DC

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

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

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