

traumatic stress disorder due to factors of his federal employment, including being under constant fire and rocket attack. He noted that he first became aware of his claimed conditions on November 16, 2011 and realized their relationship to his federal employment on January 2, 2012.² On October 2, 2012 OWCP accepted appellant's claim for post-traumatic stress disorder, dysthymic disorder, and depressive disorder. It paid him wage-loss compensation on the supplemental rolls as of October 16, 2012 and the periodic rolls as of August 19, 2013.

A November 14, 2018 investigative report authored by the employing establishment's criminal investigation division revealed that appellant was employed by the government of Botswana, Africa and received approximately \$21,310.03 in salary, which was not reported on his annual EN1032 forms.

On October 15, 2017 appellant signed a plea bargain agreement, pleading guilty to one count of theft of government property, in violation of 18 U.S.C. § 641.

An August 15, 2018 judgment issued by the United States District Court for the Western District of Texas, Waco Division indicated that on June 19, 2018 appellant pled guilty to one count of theft of government property under 18 U.S.C. § 641. He was also ordered to pay \$21,310.03 in restitution to OWCP.

By decision dated January 15, 2019, OWCP found that appellant had forfeited his entitlement to compensation effective August 15, 2018, the date of his conviction, as he pled guilty to defrauding the FECA program by theft of government property. 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 for this claim. OWCP further advised that all 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.

In a notice dated January 15, 2019, OWCP made a preliminary determination that appellant had received an overpayment of compensation in the amount of \$28,747.54 for the period August 15, 2018 through January 5, 2019 because he pled guilty to one count of theft of government property under 18 U.S.C. § 641. It found that he was at fault in the creation of the overpayment. OWCP explained its calculation of the overpayment, informed appellant of the actions he could take, and allotted him 30 days to respond.

On January 26, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review regarding the January 15, 2019 forfeiture decision. On February 11, 2019 he requested a preresumption hearing regarding the January 15, 2019 preliminary overpayment determination.

By decision dated April 22, 2019, an OWCP hearing representative vacated the January 15, 2019 forfeiture decision and the January 15, 2019 preliminary overpayment determination and remanded the case to OWCP to recalculate the amount of the overpayment for the period June 19, 2018 through January 5, 2019.

² The record reveals that appellant stopped work on January 4, 2012.

Thereafter, OWCP received an April 25, 2019 memorandum for the file in which the DOL Office of the Solicitor advised that the effective date for the termination of appellant's compensation under 5 U.S.C. § 8148(a) should be June 19, 2018, the date he pled guilty and the court accepted his plea. An accompanying U.S. District Court, Western District of Texas criminal docket showed that an indictment filed against him for one count of theft/embezzlement of federal property was entered on January 10, 2017, that his plea agreement was entered on October 18, 2017, and that his guilty plea was entered on June 19, 2018.

OWCP, in a June 18, 2019 forfeiture decision, terminated appellant's entitlement to compensation effective June 19, 2018, under 5 U.S.C. § 8148(a) as he pled guilty to one count of theft of Federal Government property in violation of 18 U.S.C. § 641.

On July 29, 2019 appellant requested a telephonic oral hearing of the June 18, 2019 forfeiture decision before an OWCP hearing representative, which was held on November 14, 2019. During the hearing he contended that, at the time he signed the plea agreement, he did not have adequate counsel. Appellant maintained that he was not aware of the ramifications of signing the agreement and he did not realize that it would be considered a conviction/guilty plea. Further, he maintained that, at the time of the plea agreement, he was recovering from bone cancer and undergoing radiation and chemotherapy, and thus, he was not in a state of mind to make the decision regarding the agreement. Additionally, appellant asserted that he had not intended to defraud the government. He claimed that he was not aware that he was prohibited from working in a job outside of the continental United States.

By decision dated January 20, 2020, an OWCP hearing representative affirmed the June 18, 2019 decision.

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 8106³ (forfeiture) or section 8129⁴ (recovery of overpayments) of FECA.⁵

20 C.F.R. § 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

³ 5 U.S.C. § 8106.

⁴ *Id.* at § 8129.

⁵ *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).

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 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 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

The Board finds that OWCP properly terminated appellant's compensation, effective June 19, 2018, finding that he forfeited his entitlement to compensation pursuant to 5 U.S.C. § 8148(a).

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.¹⁰

The case record establishes that on January 10, 2017 appellant was indicted on one count of theft/embezzlement of federal property under 18 U.S.C. § 641 after an investigation discovered that he had not reported employment activity on his EN1023 forms. On June 19, 2018 he pled guilty to one count of theft of government property under 18 U.S.C. § 641. OWCP's procedures provide that the termination is effective on the date the guilty plea is accepted.¹¹ The Board thus finds that OWCP properly terminated appellant's FECA compensation benefits, effective June 19, 2018, the date that his guilty plea was entered.¹²

On appeal appellant contends that he was not competent to make a decision pertaining to his legal court case as he was recovering from cancer and was heavily medicated, which was known by the court and his attorney. Additionally, he contends that his government-appointed

⁶ 20 C.F.R. § 10.17.

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

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); 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).

¹¹ *Supra* note 8.

¹² *See K.V.*, Docket No. 19-1947 (issued May 28, 2020); *R.R.*, *supra* note 10; *D.S.*, Docket No. 18-1173 (issued June 13, 2019).

attorney provided ineffective counsel during his legal case. However, appellant has not submitted evidence to support his contentions.

CONCLUSION

The Board finds that OWCP properly terminated appellant's compensation, effective June 19, 2018, finding that he forfeited his entitlement to compensation pursuant to 5 U.S.C. § 8148(a).¹³

ORDER

IT IS HEREBY ORDERED THAT the January 6, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 24, 2020
Washington, DC

Christopher J. Godfrey, Deputy 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

¹³ The Board notes that, although OWCP issued a preliminary notice of overpayment, the record does not establish that a final overpayment decision has been issued.