

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 28, 2008 appellant, then a 47-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed a back condition due to factors of his federal employment. He indicated that he first became aware of his condition and realized its relation to his federal employment on August 15, 2007. On February 12, 2008 OWCP accepted appellant's claim for lumbar strain. Appellant filed a second Form CA-2 on February 2, 2009 alleging that he injured his low back due to factors of his federal employment, including carrying mail on his delivery route. He noted that he first became aware of his condition and its relation to his federal employment on August 5, 2008. On October 26, 2010 OWCP expanded acceptance of appellant's claim to include degeneration of lumbar intervertebral disc, multilevel disc herniations, annular tear with moderately severe spinal stenosis at L2-3, and compression fracture of L3. Appellant stopped work on March 18, 2011. OWCP paid him appropriate compensation benefits.

On August 12, 2019 the United States Attorney for the District Court for the Central District of California charged appellant with making a false statement to obtain FECA benefits under 18 U.S.C. § 1920. He noted that appellant made false statements on Form CA-1032s and concealed his business profits entirely, as well as concealing his operation of a second business enterprise, which directly resulted in an overpayment of wage-loss compensation benefits under FECA. Appellant entered into a plea agreement on August 12, 2019. The plea agreement specifically provided that it would not bind other federal, state, or local prosecuting authorities. Appellant gave up the right to indictment by a grand jury and agreed to plead guilty "to a single-count Information" which charged him with "[c]ausing a [f]alse [s]tatement or [r]eport" to obtain FECA benefits, in violation of 18 U.S.C. § 1920.

On October 11, 2019 appellant pled guilty to one count of causing a false statement or report under 18 U.S.C. § 1920. The Court accepted the plea and plea agreement on October 11, 2019 and imposition of sentence was set for February 21, 2020.

By decision dated January 31, 2020, OWCP found that appellant had forfeited his entitlement to compensation, effective October 11, 2019, the date of his conviction, as he pled guilty to defrauding the FECA program. 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, appellant was not entitled to receive further benefits under FECA. 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.

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) of FECA³ 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

³ 5 U.S.C. § 8148(a).

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

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.⁷

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.⁸ The termination is effective on the date of the verdict or on the date the guilty plea is accepted and guilt adjudicated.⁹ Because of the criminal basis for the termination, no pretermination notice is required before a final decision is issued.¹⁰

ANALYSIS

The Board finds that OWCP properly terminated appellant's compensation benefits, effective October 11, 2019, finding that he forfeited his entitlement to compensation pursuant to 5 U.S.C. § 8148(a).

On October 11, 2019 appellant pled guilty to one count of fraud under 18 U.S.C. § 1820. Specifically, he pled guilty to defrauding the FECA program by providing false statements and omissions of fact regarding two businesses, which he owned and operated which resulted in an overpayment of wage-loss compensation.

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

⁴ *Id.* at § 8106.

⁵ *Id.* at § 8129.

⁶ *Supra* note 2; *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).

⁷ 20 C.F.R. § 10.17.

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.17(c)(2) (February 2013).

⁹ *Id.* at Chapter 2.1400.17(d) (February 2013).

¹⁰ *Id.* at Chapter 2.1400.4(a)(6) (February 2013).

to fraud in the application for or receipt of a benefit under FECA is permanently barred from receiving compensation under FECA.¹¹

The record contains a copy of the information, the plea, and the plea agreement, which the Court accepted. The Board finds that the evidence establishes that appellant was in fact convicted of defrauding the FECA program. OWCP procedures provide that the termination is effective on the date of the guilty plea is accepted.¹² The Board, thus, finds that OWCP properly terminated appellant's FECA compensation benefits, effective October 11, 2019, the date of his conviction.¹³

On appeal appellant asserted that he still had injuries and resultant disability related to his previously accepted work injuries, which requires ongoing medical care. However, as noted above a claimant who is convicted of fraud in connection with receiving compensation benefits is permanently barred from receiving compensation under FECA.

CONCLUSION

The Board finds that OWCP properly terminated appellant's compensation, effective October 11, 2019, finding that he forfeited his entitlement to compensation pursuant to 5 U.S.C. § 8148(a).

¹¹ 5 U.S.C. § 8148(a); 20 C.F.R. § 10.17; *K.V.*, Docket No. 19-1947 (issued May 28, 2020); *R.R.*, Docket No. 18-0804 (issued October 8, 2019); *R.M.*, Docket No. 17-0141 (issued March 28, 2018).

¹² *Supra* note 6.

¹³ *K.V.*, *supra* note 11; *D.S.*, Docket No. 18-1173 (issued June 13, 2019).

ORDER

IT IS HEREBY ORDERED THAT the January 31, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 1, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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