

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

A.C., Appellant)	
)	
and)	Docket Nos. 22-1256; 22-1259
)	Issued: January 10, 2024
U.S. POSTAL SERVICE, RIVERDALE)	
STATION, Bronx, NY, Employer)	
)	

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, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On August 29, 2022 appellant filed a timely appeal from an August 23, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 22-1256. On August 29, 2022 appellant also filed a timely appeal from a May 27, 2022 merit decision of OWCP. The Clerk of the Appellate Boards assigned Docket No. 22-1259. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP properly terminated appellant's compensation, effective May 19, 2022, finding that she forfeited her entitlement to compensation, pursuant to 5 U.S.C. § 8148(a); (2) whether appellant received an overpayment of compensation in the amount of \$355.75 for the period May 19 through 21, 2022, due to her forfeiture of entitlement to

¹ 5 U.S.C. § 8101 *et seq.*

compensation; and (3) whether OWCP properly determined that appellant was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

FACTUAL HISTORY

On June 6, 2015 appellant, then a 48-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she fractured her right wrist when she slipped on wet leaves and fell while in the performance of duty. She stopped work on June 6, 2015. OWCP accepted appellant's claim for partial rotator cuff tear of the right shoulder and closed fracture of the lower end of the right radius.² It paid her wage-loss compensation on the supplemental rolls, effective July 22, 2015 and on the periodic rolls, effective December 13, 2015.

On May 21, 2022 appellant received a bank deposit *via* electronic funds transfer (EFT) in the amount of \$3,320.32 as compensation for disability from work for the period April 24 through May 21, 2022.

On May 26, 2022 OWCP received documents establishing that on May 19, 2022 appellant pleaded guilty in the United States District Court, Eastern District of New York, to one count of violating 18 U.S.C. § 1920 for the commission of fraud in the receipt of federal workers' compensation under FECA; specifically, appellant falsely represented to OWCP on EN-1032 forms that she had not been employed and, as a result of these false representations, received more than \$80,000.00 in FECA benefits. The case record contains the July 13, 2021 grand jury indictment, as well as the May 19, 2022 plea agreement, through which appellant pleaded guilty to violating 18 U.S.C. § 1920 and through which the court accepted the plea on May 19, 2022.

By decision dated May 27, 2022, OWCP terminated appellant's compensation benefits, effective May 19, 2022, finding that she forfeited her entitlement to compensation, pursuant to 5 U.S.C. § 8148(a), as appellant was convicted on May 19, 2022 of violating 18 U.S.C. § 1920 by committing fraud in the receipt of federal workers' compensation under FECA.

In a preliminary overpayment determination dated July 13, 2022, OWCP notified appellant of its preliminary finding that she received a \$355.75 overpayment of compensation for the period May 19 through 21, 2022 due to her forfeiture of entitlement to compensation for this period pursuant to 5 U.S.C. § 8148(a).³ It also determined that she was at fault in the creation of the overpayment. OWCP provided appellant with an overpayment action request form and notified her that, within 30 days of the date of the letter, she could request a final decision based on the written evidence or a precoupment hearing. It also advised her that she could request waiver of recovery of the overpayment. OWCP requested that appellant complete and return an overpayment recovery questionnaire (Form OWCP-20). It also requested that she submit supporting financial documentation, including copies of income tax returns, bank account

² Appellant underwent OWCP-authorized surgery, including right distal radius open reduction and internal fixation and brachioradialis tenotomy on June 16, 2015, and right rotator cuff repair with subacromial debridement on March 24, 2017.

³ OWCP provided a calculation showing that a portion of the \$3,320.32 payment appellant received *via* EFT for the period April 24 through May 21, 2022 (28 days) constituted an overpayment of compensation. The amount of this overpayment received for the period May 19 through 21, 2022 was \$355.75.

statements, bills, pay slips, and any other records to support income and expenses. No response was received.

By decision dated August 23, 2022, OWCP finalized its preliminary overpayment determination that appellant received a \$355.75 overpayment of compensation for the period May 19 through 21, 2022 due to her forfeiture of entitlement to compensation for this period pursuant to 5 U.S.C. § 8148(a). It also finalized its determination that she was at fault in the creation of the overpayment, thereby precluding 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 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 May 19, 2022, finding that she forfeited her entitlement to compensation pursuant to 5 U.S.C. § 8148(a).

On July 13, 2021 a grand jury for the United States District Court, Eastern District of New York, indicted appellant for making fraudulent representations on EN-1032 forms in order to

⁴ 5 U.S.C. § 8106.

⁵ *Id.* at § 8129.

⁶ *Id.* at § 8148; *see F.C.*, 59 ECAB 666 (2007).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.17c(2) (September 2020).

⁸ *Id.* at Chapter 2.1400.17d (September 2020).

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

receive FECA compensation to which she was not entitled, in violation of 18 U.S.C. § 1920. On May 19, 2022 appellant pleaded guilty and, on that date, the court accepted the guilty plea.

The record contains a copy of the indictment and the plea agreement. The Board finds that the evidence establishes that, on May 19, 2022, appellant's guilty plea was accepted, and she was convicted of making false statements regarding FECA compensation benefits under 18 U.S.C. § 1920. OWCP's procedures provide that termination is effective the date the guilty plea is accepted, and guilt adjudicated.¹⁰ The Board thus finds that OWCP properly terminated appellant's compensation benefits, effective May 19, 2022, the date of her conviction.¹¹

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 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.¹²

ANALYSIS -- ISSUE 2

The Board finds that appellant received an overpayment of compensation in the amount of \$355.75 for the period May 19 through 21, 2022.

The record establishes that OWCP paid appellant \$355.75 in wage-loss compensation for the period May 19 through 21, 2022 after her conviction on May 19, 2022 for false statements regarding FECA benefits under 18 U.S.C. § 1920 and subsequent to the effective date of forfeiture. During this period, she received an overpayment of compensation in the amount of \$355.75. The record contains documentation of OWCP's calculations and there is no contrary evidence of record.

Thus, the Board finds that appellant received an overpayment of compensation in the amount of \$355.75.

LEGAL PRECEDENT -- ISSUE 3

Section 8129(b) of FECA¹³ provides that [a]djustment or recovery by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of this subchapter or would be against

¹⁰ See *supra* note 8.

¹¹ L.C., Docket No. 19-1094 (issued February 25, 2020).

¹² 5 U.S.C. § 8148; *R.M.*, Docket No. 17-0141 (issued March 28, 2018).

¹³ 5 U.S.C. § 8129(b).

equity and good conscience. Section 10.433 of OWCP's implementing regulations¹⁴ provides that in determining whether a claimant is at fault, it will consider all pertinent circumstances. 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; or
- (2) Failed to provide information which [the individual] knew or should have known to be material; or
- (3) Accepted a payment which [the individual] knew or should have known to be incorrect.¹⁵

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly determined that appellant was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

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 will permanently forfeit his or her entitlement to further compensation benefits effective the date of the conviction.¹⁶ When appellant pled guilty to violating 18 U.S.C. § 1920 and her guilt was adjudicated on May 19, 2022, she admitted that she knowingly and intentionally made fraudulent representations on EN-1032 forms in order to receive FECA compensation to which she was not entitled. She knew or should have known that her continued receipt of FECA benefits after her May 19, 2022 fraud conviction was incorrect.¹⁷ The May 19, 2022 plea of guilt alone is sufficient to establish that appellant knew that she had accepted incorrect payments from OWCP when she accepted FECA benefits for the period May 19 through 21, 2022.¹⁸ As she accepted such benefits for the period May 19 through 21, 2022, the Board finds that she was at fault in the creation of the \$355.75 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

¹⁴ 20 C.F.R. § 10.433.

¹⁵ *Id.*

¹⁶ *See* 5 U.S.C. § 8148.

¹⁷ *L.C.*, Docket No. 19-1094 (issued February 25, 2020); *Bob R. Gilley*, 51 ECAB 377 (2000).

¹⁸ *D.S.*, Docket No. 18-1173 (issued June 13, 2019).

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

commencing May 19, 2022. 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 May 19, 2022, finding that she forfeited her entitlement to compensation pursuant to 5 U.S.C. § 8148(a). The Board further finds that she received an overpayment of compensation in the amount of \$355.75 for the period May 19 through 21, 2022 due to her forfeiture. The Board also finds that OWCP properly found appellant at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the May 27 and August 23, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 10, 2024
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

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).