

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENNIS A. POPPELL and DEPARTMENT OF THE ARMY,
HEADQUARTERS, Fort Stewart, GA

*Docket No. 02-177; Submitted on the Record;
Issued May 20, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective September 26, 2001 based on his pleading guilty to violating 18 U.S.C. § 1920.

On August 6, 1971 appellant, then a 29-year-old truck driver, sustained an employment-related back strain and spondylolisthesis. Appellant received compensation from the Office for periods of disability. On September 26, 2001 appellant made a guilty plea in open court to violating 18 U.S.C. § 1920, one count of making false statements or fraud to obtain federal employees' compensation benefits. By decision dated October 11, 2001, the Office terminated appellant's compensation effective September 26, 2001 due to his pleading guilty to violating 18 U.S.C. § 1920.

The Board finds that the Office properly terminated appellant's compensation effective September 26, 2001 due to his pleading guilty to violating 18 U.S.C. § 1920.

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.¹ In terminating appellant's compensation in the present case, the Office relied on 5 U.S.C. § 8148(a) which provides that a person convicted of a statute relating to fraud in the application for or receipt of benefits under the Federal Employees' Compensation Act shall forfeit future entitlement to benefits.

Section 8148(a) states:

“Any individual convicted of a violation of section 1920 of Title 18, or any other Federal or State criminal statute relating to fraud in the application for or receipt of any benefit under this subchapter or subchapter III of this chapter

¹ William A. Kandel, 43 ECAB 1011, 1020 (1992).

[compensation for local police officers], shall forfeit (as of the date of such conviction) any entitlement to any benefit such individual would otherwise be entitled to under this subchapter or subchapter III for any 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 8129 [recovery of overpayments].”²

Section 10.17 of the implementing regulation states:

“When a beneficiary either pleads guilty to or is found guilty on either Federal or State criminal charges of defrauding the Federal Government in connection with a claim for benefits, the beneficiary’s entitlement to any further compensation benefits will terminate effective the date either the guilty plea is accepted or a verdict of guilty is returned after trial, for any injury occurring on or before the date of such guilty plea or verdict. Termination of entitlement under this section is not affected by any subsequent change in or recurrence of the beneficiary’s medical condition.”³

Under section 8148(a), a claimant who is convicted of fraud in obtaining compensation benefits under 18 U.S.C. § 1920 will have his compensation terminated. The claimant is thereafter permanently barred from receiving any compensation under the Act. Since appellant was convicted of one offense under section 1920, the Office properly terminated appellant’s compensation.

The Office’s procedure manual states that in support of termination or suspension of compensation the record must contain copies of the indictment or information, the plea agreement, if any, the document containing the guilty verdict and/or the court’s docket sheet. Further, this evidence must establish: (1) the individual was convicted; and (2) the conviction is related to the claim for, or receipt of, compensation benefits under the Act.⁴ Because of the criminal basis for the termination, no pretermination notice is required before a final decision is issued.⁵

On September 26, 2001 appellant made a guilty plea in open court to violating 18 U.S.C. § 1920. The guilty plea was accepted by the court on that date and therefore appellant was convicted on September 26, 2001 of this offense. Therefore, under the explicit terms of 5 U.S.C. § 8148(a), it was appropriate for the Office to terminate appellant’s compensation effective September 26, 2001. Congress has enacted 5 U.S.C. § 8148(a) as an absolute forfeiture of

² 5 U.S.C. § 8148(a). Public Law No. 103-333, which amended the Act by adding 5 U.S.C. § 8148, was enacted on September 30, 1994. Subsection (b) of 5 U.S.C. § 8148, not relevant in this case, bars receipt of compensation by any person imprisoned for a felony conviction during the period of such imprisonment. 5 U.S.C. § 8148(b).

³ 20 C.F.R. § 10.17.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.12(d) (March 1997).

⁵ *Id.*; Chapter 2.1400.12(f)(2).

compensation, without any provision for waiver of the effects of this section of the Act.⁶ Inasmuch as appellant was convicted on September 26, 2001, a date after section 8148 was enacted, and the Office properly followed its procedures, the Board finds that the Office properly terminated appellant's compensation effective September 26, 2001.⁷

The decision of the Office of Workers' Compensation Programs dated October 11, 2001 is affirmed.

Dated, Washington, DC
May 20, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

⁶ *Michael D. Matthews*, 51 ECAB ____ (Docket Nos. 98-2204 & 99-2508, issued December 23, 1999). This forfeiture is a permanent forfeiture which bars appellant from any further entitlement to compensation for any employment-related injuries or conditions which arose prior to December 18, 1997. *Jeff M. Burns*, 51 ECAB ____ (Docket No. 97-2058, issued December 21, 1999).

⁷ The record contains the appropriate court documents specified in the Office's procedure manual.