

had been terminated due to her conviction for fraud; and (4) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On December 29, 2009 appellant, then a 36-year-old letter carrier, filed a traumatic injury claim alleging that on that date she injured her lower back and left leg when bending down to pick up mail. OWCP accepted the claim for sciatica.² Appellant stopped work on the date of injury and returned to four hours of limited-duty a day on February 16, 2010. On January 17, 2012 OWCP placed her on the periodic rolls for temporary total disability.

On September 16, 2012 appellant completed a Form EN-1032 indicating that she had not been self-employed, involved in any business enterprise or volunteer work for the past 15 months.

In a letter dated March 14, 2013, the employing establishment provided OWCP with a report of an investigation that had been conducted by the agency's Office of the Inspector General.³ It informed OWCP that on November 27, 2012 appellant was arrested for providing a false statement regarding receipt of Federal Workers' Compensation Benefits pursuant to 18 U.S.C. § 1920.

With respect to the court documents concerning the criminal case, the record contains a judgment stating that on April 29, 2013 appellant pled guilty to one count of false statement or fraud to obtain FECA benefits under 18 U.S.C. § 1920. The judgment was signed on September 10, 2013 and noted a special assessment of \$25.00 and restitution ordered in the amount of \$30,590.00 to the Department of Labor.

In a decision dated September 27, 2013, OWCP terminated appellant's compensation effective September 10, 2013. It found that she pled guilty to defrauding FECA program as she "pleaded guilty to making false statements to obtain Federal Workers' Compensation." OWCP

² This was assigned File No. xxxxxx807. OWCP combined File No. xxxxxx807 with File Nos. xxxxxx780, xxxxxx992, xxxxxx565, xxxxxx506, xxxxxx878, xxxxxx016 and xxxxxx756 and File No. xxxxxx512 with File No. xxxxxx807 as the master file number. It did not adjudicate File No. xxxxxx512, which involved appellant alleging lower extremity pain as the result of slipping, but not falling while delivering mail on December 26, 2008. OWCP noted that this claim was administratively closed. Under File No. xxxxxx016 it never formally adjudicated appellant's claim that she sustained left leg and lower back pain on August 2, 2005 due to her employment duties. OWCP denied her occupational disease claim that she sustained a bulging disc in her neck due to her employment duties under File No. xxxxxx780. Under File No. xxxxxx756, it noted that on December 26, 2008 appellant alleged lower extremity pain due to slipping while delivering mail. The claim was never adjudicated and is administratively closed. Under File No. xxxxxx878 on April 18, 2008 appellant sustained cervical strain, right shoulder strain, headache and thoracic strain as the result of her postal truck being struck by another motor vehicle. OWCP accepted that she sustained left sciatica, which was expanded to include L4-5 and L5-S1 herniated discs as the result of an August 2, 2007 traumatic injury under File No. xxxxxx506. Under File No. xxxxxx556 it accepted that appellant sustained a thoracic strain on April 21, 2006 when she tripped over the root of a tree and a dog rushed toward her. Lastly, under File No. xxxxxx992 OWCP accept that she sustained a cervical strain on February 13, 2006 due to putting on a seat belt.

³ The investigation revealed that appellant worked with her husband's plumbing business.

found that under 5 U.S.C. § 8148 appellant forfeited her entitlement to compensation and was not entitled to continuing benefits.

In a September 27, 2013 computer printout form, OWCP noted that appellant was paid \$1,231.99 in wage-loss compensation for the period September 10 to 21, 2013.

On September 30, 2013 OWCP advised appellant of a preliminary determination that an overpayment of \$1,231.99 was created. As to fact of overpayment, it found the overpayment occurred from September 10 to 21, 2013 because her benefits had been terminated effective September 10, 2013 but she received wage-loss compensation after her benefits had been terminated. The termination occurred because appellant had been “convicted for fraud against this program” and was not entitled to further wage-loss compensation. OWCP also made a preliminary determination that appellant was without fault in creating the overpayment. Appellant was given 30 days to respond and was provided an overpayment action request form and an overpayment questionnaire. No completed overpayment questionnaire form was received.

By decision dated December 4, 2013, OWCP finalized the overpayment determination in the amount of \$1,231.99.⁴

LEGAL PRECEDENT -- ISSUE 1

Section 8106(b) of FECA provides that an employee who fails to make an affidavit or report when required or knowingly omits or understates any part of her earnings, forfeits her right to compensation with respect to any period for which the affidavit or report was required.⁵

The Board has held that it is not enough merely to establish that there was unreported employment or earnings. Appellant can only be subjected to the forfeiture provision of 5 U.S.C. § 8106(b) if he or she knowingly failed to report employment or earnings.⁶ The term knowingly as defined in OWCP’s implementing regulations, means with knowledge, consciously, willfully or intentionally.⁷ The Board has found that OWCP can meet this burden of proof in several ways, including by appellant’s own admission to it that she failed to report employment or earnings which she knew she should report or by establishing that she has pled guilty to violating applicable federal statutes by falsely completing the affidavits in the Form EN-1032.⁸

⁴ In a December 4, 2013 memorandum to file, OWCP noted that appellant had an overpayment in the amount of \$16,913.35 due to her compensation being forfeited for the period June 16, 2011 to September 16, 2012 due to her failure to report employment activity during this period. It noted that this issue was currently before the Branch of Hearings and Review. Appellant’s counsel requested a telephonic hearing on October 3, 2013. As the case is in an interlocutory posture, the overpayment issue for the period June 16, 2011 to September 16, 2012 is not currently before the Board. See 20 C.F.R. § 501.2(c)(2).

⁵ 5 U.S.C. § 8106(b).

⁶ *Harold F. Franklin*, 57 ECAB 387 (2006).

⁷ 20 C.F.R. § 10.5(n).

⁸ *Supra* note 5.

ANALYSIS -- ISSUE 1

The evidence of record establishes that appellant knowingly concealed her earnings and employment activities related to her husband's plumbing business from OWCP for the period June 16, 2011 to September 16, 2012. The record reflects that, on September 10, 2013 she was convicted in U.S. District Court on one felony counts of making a false statement to obtain FECA benefits in violation of 18 U.S.C. § 1920, as she was observed performing work.

The Board finds that appellant's conviction in U.S. District Court constitutes evidence that she knowingly omitted earnings and activities when she completed the affidavit on Form EN-1032 on September 16, 2012 and that the provisions of 5 U.S.C. § 8106(b)(2) therefore applies to the period covered by the affidavit. The Board therefore finds that she has forfeited her compensation benefits received during the period June 16, 2011 to September 16, 2012.

LEGAL PRECEDENT -- ISSUE 2

Section 8148 of Title 5 of the United States Code, states, in part:

“(a) Any individual convicted of a violation of section 1920 of Title 18 or any other [f]ederal or [s]tate criminal statute relating to fraud in the application for or a receipt of any benefit under [FECA], shall forfeit (as of the date of such conviction) any entitlement to any benefit such individual would otherwise be entitled to under [FECA] 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 or 8129.”

Section 10.17 of the implementing federal regulations provide, as follows:

“When a beneficiary either pleads guilty to or is found guilty on either [f]ederal or [s]tate 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....”⁹

Public Law 103-112, 107 Stat. 1089, enacted on October 21, 1993, prohibits individuals who have been convicted of fraud related to their claims from receiving further benefits paid under FECA. Subsequently, Public Law 103-333, enacted on September 30, 1994, added section 8148, which provides for (a) the termination of benefits payable to beneficiaries who have been convicted of defrauding the program and (b) the suspension of benefits payable to beneficiaries imprisoned as a result of a felony conviction.¹⁰

⁹ 20 C.F.R. § 10.17.

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.17(a) (February 2013); see 5 U.S.C. § 8148. See also *Joan Ross*, 57 ECAB 694 (2006); *Terry A. Keister*, 56 ECAB 559 (2005).

OWCP procedures require that, to support termination or suspension of benefits under section 8148, the case record must contain a copy of the indictment or information; a copy of the plea agreement, if any; a copy of the document containing a guilty verdict; and/or a copy of 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 benefits under FECA.¹¹ The effective date of termination in fraud cases under section 8148(a) is the date of conviction, which is the date of the verdict or in cases of a plea agreement, the date the claimant made the plea in open court (not the date of sentencing or when the court papers were signed).¹² Due to the nature of the termination involving fraud, no pretermination notice is required before issuing a final decision.¹³

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly terminated appellant's compensation benefits on the grounds that she was convicted of one federal felony count of making unlawful statements to obtain FECA compensation under 18 U.S.C. § 1920.

Under section 8148(a), a claimant who is convicted of fraud in obtaining compensation benefits under 18 U.S.C. § 1920 or any other statute relating to fraud in the application for or a receipt of any benefit under FECA, will have her compensation terminated. Such a claimant is permanently barred from receiving any compensation under FECA. The fact of overpayment is established by appellant's conviction on September 10, 2013 in which she was convicted of one count of making false statements to obtain FECA compensation. Under the terms of the statute, she forfeited her entitlement to compensation benefits following the September 10, 2013 conviction. For this reason, OWCP properly terminated appellant's compensation benefits under section 8148(a).

LEGAL PRECEDENT -- ISSUE 3

FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of her duty.¹⁴ When an overpayment has been made to an individual because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.

ANALYSIS -- ISSUE 3

Appellant's compensation benefits were terminated by OWCP as of September 10, 2013. However, she continued to receive wage-loss compensation payments. The records indicate that appellant received compensation in the amount of \$1,231.99 after the termination of benefits. As

¹¹ Federal (FECA) Procedure Manual, *id.*

¹² *Id.* at Chapter 2.1400.12(e)(1).

¹³ *Jorge E. Sotomayor*, 52 ECAB 105 (2000); *see also id.* at Chapter 2.1400.4(a)(6).

¹⁴ 5 U.S.C. § 8102(a).

she was not entitled to receive compensation from September 10 to 21, 2013, the amount of compensation received for this period resulted in an overpayment. The evidence of record establishes that an overpayment in the amount of \$1,231.99 occurred. The December 4, 2013 OWCP decision will be affirmed.

LEGAL PRECEDENT -- ISSUE 4

According to section 10.436,¹⁵ recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary needs substantially all of his or her current income (including compensation benefits) to meet current, ordinary and necessary living expenses and also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.¹⁶ For waiver under this standard, appellant must meet the two-pronged test and show that she both needs substantially all of her current income to meet current ordinary and necessary living expenses¹⁷ and that her assets do not exceed the resource base.¹⁸

The burden is on the claimant to show that the expenses are reasonable and needed for a legitimate purpose.¹⁹ OWCP's regulations provide:

“(a) the individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of [FECA] or be against equity and good conscience....

“(b) Failure to submit the requested information within 30 days of the request shall result in denial of waiver and no further request for waiver shall be considered until the requested information is furnished.”²⁰

ANALYSIS -- ISSUE 4

OWCP properly determined that appellant did not establish entitlement to waiver of recovery of the \$1,231.99 under the above-described standards. Appellant did not provide a completed overpayment questionnaire or any financial information to show that she was entitled

¹⁵ 20 C.F.R. § 10.436.

¹⁶ OWCP procedures provide that assets must not exceed a resource base of \$4,800.00 for an individual or \$8,000.00 for an individual with a spouse or dependent, plus \$960.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6(a) (October 2004).

¹⁷ An individual is deemed to need substantially all of his or her income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. *Desiderio Martinez*, 55 ECAB 245, 250 (2004).

¹⁸ See *supra* note 15. *W.F.*, 57 ECAB 705, 708 (2006).

¹⁹ *Id.*

²⁰ 20 C.F.R. § 10.438. See *Madelyn Y. Grant*, 57 ECAB 533 (2006).

to waiver of the overpayment. Despite being advised by OWCP's September 30, 2013 letter regarding the importance of providing financial information on an overpayment recovery questionnaire form, she failed to provide such information or a completed form. For these reasons, OWCP properly determined that appellant did not show that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. Therefore, it properly denied waiver of recovery of the overpayment.²¹

CONCLUSION

The Board finds that OWCP properly determined that appellant forfeited her right to compensation for the period June 16, 2011 to September 16, 2012, as she knowingly failed to report her employment activities. The Board further finds that it properly terminated compensation effective September 10, 2013 as she was convicted of compensation fraud. The Board also finds that an overpayment of compensation was created in the amount \$1,231.99 for the period September 10 to 21, 2013 as appellant continued to receive compensation following the termination of her compensation benefits. The Board also finds that OWCP properly denied waiver of recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 4 and September 27, 2013 are affirmed.

Issued: August 27, 2014
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

²¹ See *R.W. (A.T.)*, 59 ECAB 241 (2007); *Madelyn Y. Grant*, 57 ECAB 533 (2006).