

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

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| R.M., Appellant |) | |
| |) | |
| and |) | Docket No. 17-0141 |
| |) | Issued: March 28, 2018 |
| U.S. POSTAL SERVICE, DALLAS BULK MAIL |) | |
| CENTER, Dallas, TX, Employer |) | |
| |) | |

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 27, 2016 appellant filed a timely appeal from a May 19, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over merits of this case.

ISSUES

The issues are: (1) whether OWCP properly terminated appellant's compensation, effective March 8, 2016, because she forfeited her entitlement to compensation beginning March 8, 2016 pursuant to 5 U.S.C. § 8148(a); (2) whether appellant received an overpayment of compensation in the amount of \$2,615.90 from March 8 to April 2, 2016 based on the forfeiture; (3) whether OWCP properly found appellant at fault in the creation of the overpayment, thereby precluding waiver of recovery; and (4) whether OWCP properly determined that recovery of the overpayment should be made in full.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 3, 2008 appellant, then a 51-year-old distribution clerk, filed an occupational disease claim (Form CA-2) alleging that her bilateral plantar fasciitis was caused or aggravated by factors of her federal employment. OWCP initially accepted the claim for bilateral plantar fibromatosis. It subsequently expanded her claim to include acceptance of inflamed bilateral seborrheic keratosis. Appellant stopped work on January 7, 2010. OWCP paid her wage-loss compensation on the supplemental rolls as of January 7, 2010, and on the periodic rolls as of March 14, 2011. Appellant retired from the employing establishment in 2015.²

The record contains an order signed on March 8, 2016 by a judge for the U.S. District Court for the Northern District of Texas accepting appellant's guilty plea under 18 U.S.C. § 1920 to one count of False Statements to Obtain Federal Employees' Compensation. The record also contains copies of appellant's probation and criminal monetary penalties along with a schedule of payments. Restitution was not ordered.

In an April 14, 2016 letter, OWCP related the circumstances of the fraud scheme. It indicated that appellant was being paid by her medical provider to falsify and back date medical documentation stating that she had attended ghost counseling sessions. In return, appellant's medical provider was billing OWCP's FECA division for the ghost counseling sessions from January 2009 to September 2014.

In a compensation termination worksheet, OWCP calculated that for the period March 8 to April 2, 2016, appellant received \$2,615.90 in FECA compensation benefits.

By decision dated April 13, 2016, OWCP determined that appellant forfeited her entitlement to compensation beginning March 8, 2016. It noted that on March 8, 2016 she had pled guilty to 18 U.S.C. § 1920, False Statements to Obtain Federal Employees' Compensation. OWCP indicated that, as a result of her 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. It noted that it would pay for any authorized medical treatment appellant received prior to the date of the conviction, but no further medical treatment would be paid beyond that date. Compensation benefits, including schedule award benefits, were terminated March 8, 2016, the date of appellant's conviction.

On April 14, 2016 OWCP advised appellant of its preliminary determination that she had received an overpayment of compensation in the amount of \$2,615.90 for the period March 8 to April 2, 2016 because she received compensation for this period after she pled guilty under 18 U.S.C. § 1920 to one count of False Statements to Obtain Federal Employees' Compensation. OWCP also made a preliminary determination that appellant was at fault in the creation of the overpayment because she accepted a payment she knew or reasonably should have known was incorrect, thereby precluding waiver of recovery of the overpayment. It provided appellant 30 days to submit evidence and argument challenging the proposed actions. Appellant did not respond within the allotted period.

² On February 1, 2016 OWCP noted that appellant indicated that she had earnings from self-employment in her EN1032 form dated November 22, 2015 and had requested further information to clarify her employment/earnings. Appellant did not respond to OWCP's letter.

By decision dated May 19, 2016, OWCP finalized the overpayment of compensation in the amount of \$2,615.90 from March 8 to April 2, 2016 based on the forfeiture of her compensation under 18 U.S.C. § 1920. It also found that she was at fault in creating the \$2,615.90 overpayment because she accepted a payment she knew or reasonably should have known was incorrect, thereby precluding waiver of recovery. Appellant was instructed to pay the full amount of \$2,615.90 within 30 days or to contact OWCP within 30 days so that appropriate arrangements for recovery (such as installment payments) could be made.

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 program. Section 8148(a) specifically states 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, any entitlement to any benefit to which such individual would otherwise be entitled 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 8106³ (forfeiture) or section 8129⁴ (recovery of overpayments) of FECA.⁵

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.⁶

OWCP's procedures state 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 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

³ 5 U.S.C. § 8106.

⁴ *Id.* at § 8129.

⁵ *Id.* at § 8148; *see F.C.*, 59 ECAB 666 (2007).

⁶ 20 C.F.R. § 10.17.

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

⁸ *Id.* at Chapter 2.1400.17(d) (February 2013).

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

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly terminated appellant's compensation benefits effective March 8, 2016 because she was convicted in federal court under a statute relating to fraud in the application for or receipt of compensation benefits under FECA. On March 8, 2016 a judge for the U.S. District Court for the Northern District of Texas accepted appellant's guilty plea to one count of violating 18 U.S.C. § 1920 (False Statements to Obtain Federal Employees' Compensation) when she knowingly and intentionally obtained FECA benefit payments on a fraudulent basis. 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 any benefit under FECA is permanently barred from receiving any compensation under FECA.¹⁰ The record contains copies of the guilty verdict. OWCP's April 14, 2016 letter further detailed the circumstances under which appellant committed fraud under FECA. The Board finds that this evidence establishes that appellant was convicted of fraud in obtaining FECA compensation benefits.¹¹ OWCP procedures provide that the termination is effective on the date the guilty plea is accepted and guilt adjudicated.¹² The Board finds that OWCP properly terminated appellant's compensation benefits that day, March 8, 2016.¹³

LEGAL PRECEDENT -- ISSUE 2

Section 8148 of FECA states 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, 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 (forfeiture) or section 8129 (recovery of overpayments) of FECA.¹⁴

ANALYSIS -- ISSUE 2

On March 8, 2016 a judge accepted appellant's guilty plea to one count of violating 18 U.S.C. § 1920, a federal criminal statute, when she knowingly and intentionally fraudulently obtained FECA benefit payments. In an April 14, 2016 letter, OWCP indicated that appellant was being paid by her medical provider to back date medical documentation stating that she had attended ghost counseling sessions. Appellant's medical provider then billed FECA for the ghost counseling sessions from January 2009 to September 2014. As stated, under section 8148(a) of FECA any individual convicted of 18 U.S.C. § 1920 or any other federal or state criminal statute relating to fraud in the application for or receipt of benefits under FECA will have his or her

¹⁰ 5 U.S.C. § 8148(a); *see D.B.*, Docket No. 16-0988 (issued September 6, 2016).

¹¹ *See supra* note 6.

¹² *See supra* note 7.

¹³ *See John L. Hoss, Jr.*, 54 ECAB 239 (2002); *Bob R. Gilley*, 51 ECAB 377 (2000).

¹⁴ *See supra* note 4.

compensation forfeited, as of the date of such conviction. Because appellant pled guilty to violating a federal criminal statute, she forfeited any future compensation as of March 8, 2016, the date her guilty plea was accepted and guilt adjudicated.

The record reveals that appellant received wage-loss compensation benefits from March 8 to April 2, 2016 after her conviction on March 8, 2016 for fraud under 18 U.S.C. § 1920. OWCP determined that during the stated period she received compensation in the amount of \$2,615.90.¹⁵ The record contains documentation of OWCP's calculations and there is no contrary evidence. OWCP explained the basis of the overpayment and appellant does not dispute that she received compensation payments from March 8 to April 2, 2016 following her fraud conviction. The Board finds that she received an overpayment of compensation in the amount of \$2,615.90.¹⁶

LEGAL PRECEDENT -- ISSUE 3

Section 8129(a) of FECA provides that, when an overpayment of compensation has been made because of an error of fact or law, adjustment shall be made by decreasing later payments to which an individual is entitled. The only exception to this requirement is when an incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or be against equity and good conscience.¹⁷ No waiver of payment is possible if appellant is with fault in helping to create the overpayment.¹⁸

Section 10.433(a) of OWCP's implementing regulations provides that 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; (2) failed to furnish information which the individual knew or should have known to be material; or (3) with respect to the overpaid individual only, accepted a payment which the individual knew or should have been expected to know was incorrect.¹⁹

ANALYSIS -- ISSUE 3

Upon its application of the third standard to determine if appellant was at fault in the creation of the overpayment, OWCP found that appellant had knowledge that the payment was incorrect. The Board finds that the record establishes that she knew or should have known that she accepted incorrect compensation payments by filing false claims for FECA benefits.

¹⁵ See *Alan L. Trindle, Sr.*, 53 ECAB 487 (2002) where the Board found that gross compensation represented the amount of overpayment from forfeiture of compensation. The gross compensation in this case was \$3,140.43 for the compensation period March 8 to April 2, 2016. OWCP utilized the net compensation to represent the overpayment amount.

¹⁶ See *D.B.*, Docket No. 16-0988 (issued September 6, 2016).

¹⁷ 5 U.S.C. § 8129(b).

¹⁸ *Robert W. O'Brien*, 36 ECAB 541, 547 (1985).

¹⁹ 20 C.F.R. § 10.433(a); *Kenneth E. Rush*, 51 ECAB 116, 118 (1999).

When appellant pled guilty to violating 18 U.S.C. § 1920, she admitted that she knowingly and intentionally received FECA compensation benefits which she knew she was not entitled. The March 8, 2016 plea of guilt alone is sufficient to establish that appellant knew that she had accepted incorrect FECA payments. Appellant knew or should have known that her continued receipt of FECA benefits after her March 8, 2016 conviction was incorrect. Even if the overpayment resulted from negligence on the part of OWCP in continuing to issue appellant wage-loss checks after she was convicted of fraudulently obtaining FECA benefits, this did not excuse her from accepting continued payments which she knew or should have known to be incorrect.²⁰ As appellant accepted compensation benefits from OWCP, which covered the period March 8 to April 2, 2016, the Board finds that she was at fault in the creation of the \$2,615.90 overpayment and is not entitled to waiver of recovery of the overpayment.²¹

LEGAL PRECEDENT -- ISSUE 4

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA. Section 10.441(b) of the regulations provide:

“When an overpayment has been made to an individual who is not entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. The overpayment is subject to the provisions of the Federal Claims Collection Act of 1966 (as amended) and may be reported to the Internal Revenue Service as income....”²²

ANALYSIS -- ISSUE 4

As appellant's right to future compensation benefits was terminated under the forfeiture provision of section 8148(a), she is not entitled to continuing compensation benefits and the Board does not have jurisdiction over OWCP's recovery of the overpayment.²³ It is noted, however, that when a judgment in a criminal case orders restitution to be paid to the Department of Labor, procedures indicate that she should receive credit for this amount.²⁴ Restitution, however, was not ordered to be paid in appellant's criminal case.²⁵ As noted, the Board does not have jurisdiction over OWCP's recovery of the overpayment in the amount of \$2,615.90 that was found in her case.²⁶

²⁰ *Diana L. Booth*, 52 ECAB 370 (2001).

²¹ See *K.R.*, Docket No. 14-0434 (issued October 7, 2014).

²² 20 C.F.R. § 10.441(b).

²³ *Robert Ringo*, 53 ECAB 258, 266, n.20 (2001); *Robert S. Luciano*, 47 ECAB 793, 799 (1996).

²⁴ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.300.18 (June 2009). See also *Martin James Sullivan*, 50 ECAB 158 (1998).

²⁵ See *J.C.*, Docket No. 13-726 (issued September 23, 2013).

²⁶ *Robert Ringo*, *supra* note 23.

Accordingly, the Board does not have jurisdiction over this matter or the method of recovery of the overpayment.

CONCLUSION

The Board finds that OWCP properly terminated appellant's compensation, effective March 8, 2016, because she forfeited her entitlement to compensation beginning March 8, 2016 pursuant to 5 U.S.C. § 8148(a). The Board further finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$2,615.90 from March 8 to April 2, 2016 based on the forfeiture of compensation and properly; and that she was at fault in the creation of the \$2,615.90 overpayment, thereby precluding waiver of recovery.

ORDER

IT IS HEREBY ORDERED THAT the May 19, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 28, 2018
Washington, DC

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

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

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