

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

J.C., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Memphis, TN, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 07-1616
Issued: November 19, 2007**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 23, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated February 9, 2007 terminating her compensation and medical benefits and the April 6, 2007 decision denying appellant's request for an oral hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's compensation effective October 23, 2006 on the grounds that she pled guilty to violating 18 U.S.C. § 641, unlawful conversion of government monies, in receipt of her compensation benefits; and (2) whether the Office properly denied appellant's request for an oral hearing.

FACTUAL HISTORY

Appellant, then a 49-year-old nursing assistant, sustained a work-related injury to her back on September 15, 1984 while assisting a patient into a chair. Her traumatic injury claim was accepted for lumbosacral strain and cervical defects at C5-6 and she was placed on the periodic rolls.

The record reflects that appellant regularly submitted EN1032 forms attesting that she did not work from February 8, 1991 through October 7, 2002. These forms advised her that she was required to immediately report all employment for which she received wages or other payment during the 15-month period covered by the form and that fraudulently concealing or failing to report income could subject her to criminal prosecution. The record indicates that appellant failed to report earnings pursuant to her employment as a private duty nurse as required. However, she continued to receive compensation for temporary total disability through October 23, 2006.

On July 26, 2005 appellant was indicted in the U.S. District Court for the Western District of Tennessee for one count of theft from a government program under 18 U.S.C. § 641. Count 1 of the indictment alleged that she did embezzle, steal, purloin and knowingly convert to her own use, benefits from the Office to which she was not entitled, having a total value of approximately \$138,234.63. On October 23, 2006 appellant entered into a plea agreement, whereby she pled guilty to Count 1 of the indictment, theft from government program in violation of 18 U.S.C. § 641. On January 24, 2007 the Honorable Jon Phipps McCalla, U.S. District Judge for the Western District of Tennessee, entered judgment in the case, finding that appellant was guilty of Count 1 of the indictment.

By decision dated February 9, 2007, the Office terminated appellant's compensation and medical benefits effective October 23, 2006, the date of the plea agreement. It found that, pursuant to 5 U.S.C. § 8148, appellant forfeited her right to further benefits under the Federal Employees' Compensation Act, based on her conviction of a violation related to fraud in the application for or receipt of a benefit under the Act.

On March 13, 2007 appellant requested an oral hearing before an Office hearing representative. In a decision issued on April 6, 2007, an Office hearing representative denied the request for an oral hearing as untimely. The representative also determined that the issue in the case could equally well be addressed in a request for reconsideration.

LEGAL PRECEDENT -- ISSUE 1

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 Federal or State criminal statute relating to fraud in the application for or receipt of any benefit under [the Act], shall forfeit (as of the date of such conviction) any entitlement to any benefit such individual would otherwise be entitled to under [the Act] 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 provides, as follows:

“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.”¹

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 the Act. 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.²

Office 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 the Act.³ 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).⁴ Due to the nature of the termination involving fraud, no pretermination notice is required before issuing a final decision.⁵

ANALYSIS -- ISSUE 1

The Board finds that the Office properly terminated appellant’s compensation benefits on the grounds that she pled guilty to the federal felony of unlawful conversion of government monies.

¹ 20 C.F.R. § 10.17.

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.12(a) (March 1997). See 5 U.S.C. § 8148. See also *Terry A. Keister*, 56 ECAB ___ (Docket No. 04-1136, issued May 23, 2005).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.12(d) (March 1997).

⁴ *Id.* at Chapter 2.1400.12(e)(1).

⁵ *Jorge E. Sotomayor*, 52 ECAB 105 (2000); see also *id.* at Chapter 2.1400.12(f)(2).

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 receipt of any benefit under the Act, will have his or her compensation terminated. Such a claimant is thereafter permanently barred from receiving any compensation under the Act. Appellant's guilt was established by the plea agreement entered on October 23, 2006 in which she pled guilty in open court to one count of the information charging her with unlawful conversion of government monies under 18 U.S.C. § 641, by converting to her own use, benefits from the Office to which she was not entitled, having a total value of approximately \$138,234.63. The plea agreement reflected that her defense counsel informed her as to the nature of the charges brought against her and that she was pleading guilty to the charge.

The Board notes that, under the terms of the statute, appellant forfeited her entitlement to compensation benefits following her October 23, 2006 guilty plea. For this reason, the Office properly terminated appellant's compensation benefits under section 8148(a).⁶

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act provides that a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on her claim before a representative of the Secretary.⁷ Sections 10.617 and 10.618 of the federal regulations implementing this section of the Act provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.⁸ The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.⁹

ANALYSIS -- ISSUE 2

By decision dated February 9, 2007, the Office terminated appellant's compensation and medical benefits effective October 23, 2006. Appellant's letter requesting an oral hearing was dated March 13, 2007, more than 30 days after the February 9, 2007 decision. Thus, it properly found that her request for a review of the written record was not timely filed under section 8124(b)(1) of the Act and that appellant was not entitled to an oral hearing as a matter of right.

The Office then exercised its discretion and determined that the issue in the case could equally well be addressed in a request for reconsideration. As the only limitation on its authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable

⁶ The Board notes that the record contains the appropriate court documents specified by Office procedures. See *Joan Ross*, 57 ECAB ___ (Docket No. 06-887, issued July 24, 2006).

⁷ 5 U.S.C. § 8124(b)(1).

⁸ 20 C.F.R. §§ 10.616, 10.617.

⁹ *Claudio Vasquez*, 52 ECAB 496 (2002).

deductions from known facts.¹⁰ The Board finds that there is no evidence of record that the Office abused its discretion in denying appellant's request. Thus, the Board finds that the Office's denial of appellant's request for an oral hearing was proper under the law and the facts of this case.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation effective October 23, 2006 under 5 U.S.C. § 8148. It further finds that the Office properly denied appellant's request for an oral hearing.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 6 and February 9, 2007 are affirmed.

Issued: November 19, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

¹⁰ *Daniel J. Perea*, 42 ECAB 214 (1990).