

Approved: *Daniel M. Tracer*  
DANIEL M. TRACER  
Special Assistant U.S. Attorney

Before: THE HONORABLE JAMES C. FRANCIS, **14 MAG 948**  
United States Magistrate Judge  
Southern District of New York

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UNITED STATES OF AMERICA : SEALED  
 : COMPLAINT  
 :  
 - v. - : Violation of 18 U.S.C. §§  
 : 1920 and 641  
 SHONTA HOLMES, :  
 : COUNTY OF OFFENSE:  
 Defendant. : NEW YORK  
 :  
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SOUTHERN DISTRICT OF NEW YORK, ss.:

JAMES WOODS, being duly sworn, deposes and says that he is a Special Agent with the Department of Labor, Office of the Inspector General, and charges as follows:

COUNT ONE

1. From at least in or about July 2013, up to and including at least in or about April 2014, in the Southern District of New York and elsewhere, SHONTA HOLMES, the defendant, willfully and knowingly did falsify, conceal, and cover up material facts, and did make false, fictitious, and fraudulent statements and representations, and did make and use false statements and reports knowing the same to contain false, fictitious, and fraudulent statements and entries in connection with an application for and receipt of compensation and other benefits and payment under Title 5, United States Code, Sections 8102 et seq., which benefits exceeded the sum of \$1,000, to wit, HOLMES stated falsely that she was disabled during the periods for which she applied for federal worker's compensation benefits, when in fact she was not.

(Title 18, United States Code, Section 1920.)

COUNT TWO

2. From at least in or about October 2011, up to and including at least in or about May 2014, in the Southern District of New York and elsewhere, SHONTA HOLMES, the defendant, willfully and knowingly did embezzle, steal, purloin, and convert to her own use and the use of another, vouchers, money and things of value of the United States and a department and an agency thereof, to wit, the United States Department of Labor, which exceeded the sum of \$1,000, and did receive, conceal, and retain the same with intent to convert it to her use and gain, knowing it to have been embezzled, stolen, purloined and converted, to wit, HOLMES fraudulently obtained federal worker's compensation benefits to which she was not entitled.

(Title 18, United States Code, Section 641.)

The bases for my knowledge and for the foregoing charges are, in part, as follows:

3. I am a Special Agent with the United States Department of Labor ("DOL"), Office of the Inspector General. I have been personally involved in the investigation of this matter, and I base this affidavit on that personal experience, as well as on my conversations with other law enforcement agents and my examination of various reports and records. Because this affidavit is being submitted for the limited purpose of establishing probable cause for the offenses cited above, it does not include all the facts that I have learned during the course of the investigation. Where the contents of conversations of others are reported herein, they are reported in substance and in part.

The FECA Regulatory Scheme

4. Based on my knowledge and experience derived from this investigation and from my participation in prior investigations into federal worker's compensation fraud, I know the following:

a. Postal Service employees are covered by the Federal Employees' Compensation Act (FECA), which provides tax-free benefits to civilian federal employees who sustain injuries or an occupational disease as a result of their employment. Occupational, as opposed to traumatic, injuries are those that develop over time as a result of an employee's job related duties. Postal employees who sustain injury can receive up to

75 percent of their federal salary if they have at least one dependent. Under FECA, a disabled employee is also entitled to have his or her medical bills paid by FECA benefits. The Postal Service is the largest FECA participant, paying more than \$1 billion in benefits and \$60 million in administrative fees annually.

b. FECA benefits are administered by the Office of Workers' Compensation Programs ("OWCP"), a division of DOL. Pursuant to OWCP guidelines, a claimant must prove that he or she is disabled by furnishing medical documentation and other evidence with his or her work related claim. The employee's claim and supporting medical evidence is then evaluated by the OWCP to determine the claimant's medical impairments and the effect of the impairment on the claimant's ability to work on a sustained basis. The OWCP District Office that processes FECA claims for residents of New Jersey, New York, Puerto Rico, and the Virgin Islands is located in Manhattan, New York.

c. In order to receive FECA benefits, a federal employee who suffers a work-related occupational injury must first complete, sign, and submit to the OWCP a form entitled "Notice of Occupational Disease and Claim for Compensation" (a "Form CA-2"). The Form CA-2 requires the employee to describe the nature of the injury for which he or she is seeking benefits and the circumstances under which he or she sustained it. By signing the Form CA-2, the claimant certifies, "under penalty of law," inter alia, that the injury upon which the claim is based resulted from the claimant's "employment with the United States." Form CA-2 further advises the employee who submits it that:

Any person who knowingly makes any false statement, misrepresentation, concealment of fact or any other act of fraud to obtain compensation as provided by the FECA or who knowingly accepts compensation to which that person is not entitled is subject to civil or administrative remedies as well as felony criminal prosecution and may, under appropriate criminal provisions, be punished by a fine or imprisonment, or both.

d. A claimant who has filed a Form CA-2 and then suffers a recurrence of the disability may file a "Federal Employee's Notice of Recurrence of Disability and Claim for Continuation Pay/Compensation (a "Form CA-2a") to request the resumption of benefits that were discontinued while an employee

was able to return to work. The Form CA-2a, like the Form CA-2 requires the employee to describe the nature of the injury for which he or she is seeking benefits and the circumstances under which he or she sustained it. Like the Form CA-2, the Form CA-2a also contains a certification and warning that any person who engages in any fraud to obtain benefits or improperly accepts benefits "may, under appropriate criminal provisions, be punished by a fine or imprisonment, or both."

e. A claimant who has been receiving FECA benefits for a sustained period of time and who is unlikely to return to work in the near future is placed on the "periodic roll." A claimant included on the periodic roll receives disability compensation automatically every 28 days. To remain on the periodic roll, the claimant must complete, sign and file an annual questionnaire known as Form CA-1032.

f. In addition to filing Form CA-1032 each year, a claimant on the periodic role is required annually to update OWCP regarding the status of his or her disabling condition. The claimant is directed to obtain a narrative medical report from his doctor and to direct his doctor to submit to OWCP either an Attending Physician's Report ("Form CA-20"), if the claimant is totally disabled, or a Work Capacity Evaluation ("Form OWCP-5"), if the claimant is capable of working on a modified or limited basis.

#### The Defendant

5. SHONTA HOLMES, the defendant, resides in the Bronx, New York and currently receives FECA benefits. On her most recent Form CA-1032, HOLMES's claim for benefits includes a single dependent.

#### HOLMES Files for FECA Benefits

6. I have reviewed documents maintained by the United States Postal Service ("USPS") and OWCP regarding SHONTA HOLMES, the defendant. From these documents I know that:

a. HOLMES was employed by the USPS as a postal distributor in a USPS processing and distribution center in Manhattan, New York beginning on or about March 25, 1989. On or about May 18, 2002, HOLMES ceased working due to the development of an occupational injury, Carpal Tunnel Syndrome ("CTS"). HOLMES reported first developing CTS on or about April 17, 2002.

b. On or about October 1, 2002, HOLMES completed, signed, and filed with OWCP in Manhattan a Form CA-2.

On that document, HOLMES stated that on April 17, 2002, she developed a work-related condition, CTS, due to years of repetitive activity through the distribution and sorting of the mails at her job. HOLMES'S form CA-2 was processed by the USPS on November 4, 2002. On or about December 23, 2002, HOLMES received a letter from DOL informing her that her claim for FECA benefits had been accepted.

c. After that time, HOLMES went back to work with the USPS for brief stints between May 18 and November 22, 2002, and then again between April 13 and May 5, 2004. However, on May 5, 2004, HOLMES filed with OWCP in Manhattan a Form CA-2a. On that Form, HOLMES indicated that she could no longer work due to a recurrence of her CTS. On or about August 10, 2004, HOLMES received a letter from DOL informing her that her claim for recurrence of disability had been accepted. Since May 2004, HOLMES has not reported any work activity.

d. After qualifying for benefits in May 2004, HOLMES received from the DOL and signed a notice on "Instructions of Seeking Employment." This notice provided that:

When you are no longer totally disabled because of your injury, you must seek employment which is suitable to your improved condition (including light duty or part-time employment, if applicable). At such time, you should report to the agency where you last worked; it will advise you of your reemployment rights.

HOLMES signed this notice directly below the certification, which stated, in part, that "any falsification or willful omission may result in criminal prosecution."

e. On or about August 5, 2004, HOLMES was placed on the periodic roll. Since that time, she has received regular FECA benefit checks ranging as high as \$3155 per month. On approximately November 13, 2009, HOLMES ceased being an employee of the USPS, but remained on the periodic roll. As of May 3, 2014, HOLMES had received FECA compensation totaling approximately \$426,114.35.

f. Since being placed on the periodic roll in or about August 2004, HOLMES has completed, signed and filed with the OWCP in Manhattan at least nine Form CA-1032s. These Forms are dated, respectively: April 10, 2006; May 30, 2006; May

20, 2007; June 2, 2008; July 16, 2009; June 30, 2010; July 14, 2011; July 26, 2012; and July 16, 2013.

#### HOLMES's Medical Condition

7. I have reviewed medical reports of SHONTA HOLMES, the defendant, from on or about June 29, 2007 through the present. Many of these reports, including the June 29, 2007 report, were prepared by HOLMES's physician ("Doctor-1"). From those reports, I have learned that HOLMES had appointments with Doctor-1 typically during between June 2007 and the present. At these appointments, HOLMES complained of "persistent pain in both hands and neck with radiating pain down her arms with restricted range of motion."

8. On or about January 18, 2012, SHONTA HOLMES, the defendant, attended an appointment with another doctor ("Doctor-2"), scheduled by the DOL to evaluate HOLMES's capacity to work. I have reviewed a copy of Doctor-2's report from this appointment. The report stated that HOLMES could not resume any type of work and that HOLMES was unable to handle even "10 pounds of weight up to one-third at a time even in a sedentary position." Doctor-2 also filled out a form OWCP-5 (Work Capacity Evaluation) which I reviewed. Doctor-2's form OWCP-5 stated that HOLMES had not reached "maximum improvement."

9. On or about July 24, 2012, Doctor-1 submitted a form CA-20 (Attending Physician's Report), which I have also reviewed as part of my investigation. This form stated that SHONTA HOLMES, the defendant, was "permanently and totally disabled." On or about that same time, Doctor-1 also submitted a form OWCP-5 that stated the same.

10. Based on her doctors' reports, such as those mentioned above, SHONTA HOLMES, the defendant, has been coded "PN" by DOL for the purposes of her FECA benefits. This means she has no wage-earning capacity. This is the most severe code for an injury that DOL administers. It means that the claimant's injury is so severe that they will never be able to work in any capacity again.

11. On or about September 10, 2013, SHONTA HOLMES, the defendant, participated in a Current Capability Evaluation (the "Evaluation") to report to OWCP on her present condition. I have reviewed documentation prepared during that Evaluation and I have spoken with the Evaluators who conducted that Evaluation. From this review, I have learned that:

a. During the Evaluation, HOLMES stated that she experiences "extreme" pain every day, and that she engages in certain limited daily activities including a "squeezing ball," a "tens machines," a "daily walk," "exercises," and "some doctors appointment."

b. HOLMES further stated that her condition limits many of her daily activities including bathing, bike riding, doing her hair, driving, laundry, going to the store and sexual activities. In particular, HOLMES stated that her condition prevented her from, among other things, playing "throwball," riding a bike, going to a "party with girlfriend," and doing her hair.

c. With respect to driving, HOLMES stated that she had "significant difficulty" and "usually" needed help from another person. As to lifting, HOLMES stated that the maximum weight she could lift was "6-10 lbs."

d. HOLMES also reported that her doctor had suggested certain therapeutic activities, like exercise, including a tens machines and "exercise at home."

e. In terms of work, HOLMES indicated that she considered herself "totally disabled" and "unable to perform any assignment for the Postal Service."

f. Finally, during the Evaluation, HOLMES reported that on a given day she can spend, among other things, "0" time standing, "0" time squatting, "0" time climbing, "0" time bending, "0" time reaching, "20" minutes sitting, and "15" minutes walking.

12. Following the Evaluation, SHONTA HOLMES, the defendant, signed an Evaluation Form. HOLMES's signature directly followed a certification section in the form stating,

I understand that anyone who fraudulently conceals or fails to report information that would have an effect on any benefits, or who makes a false statement or misrepresentation of a material fact in claiming a payment or benefit under [FECA] may be subject to criminal prosecution, from which a fine and/or imprisonment may result.

HOLMES likewise certified on the Evaluation form that "I certify that the information provided above is true and accurate to the best of my knowledge and belief."

### HOLMES's Physical Activities

13. Beginning on or about October 31, 2011 and continuing until approximately September 11, 2013, other law enforcement agents and I have conducted surveillance of SHONTA HOLMES, the defendant, on numerous occasions both around her place of residence as well as at other public locations such as stores and gyms. On a number of occasions, video footage of HOLMES engaging in shopping and exercise activities was recorded during the surveillance. From my own surveillance, review of video footage, and from speaking with the other law enforcement agents, I have learned the following:

a. On or about December 9, 2011, at approximately 9:45 a.m., HOLMES was observed driving to Bally's Gym (the "Gym") where she spent approximately one hour. After the Gym, HOLMES stopped at the bank, two supermarkets, picked up a passenger and then visited her mother's home. After dropping off the passenger, HOLMES went shopping again. Then HOLMES dropped off her car at a detailing business located in the Bronx, New York, and walked home carrying several shopping bags and a large personal bag. HOLMES's walk home was approximately six tenths of a mile.

b. On or about January 18, 2012, immediately following HOLMES's appointment with Doctor-2, at which it was reported that HOLMES could not resume any type of work, it was observed that HOLMES left the appointment at approximately 2:24 p.m. wearing wrist support devices on both of her wrists. However, after HOLMES drove back home at approximately 2:42 p.m., she was no longer wearing the wrist supports. HOLMES then left her home again at approximately 2:57 p.m. not wearing the wrist supports to go run a number of errands, driving by herself.

c. The next day, on or about January 19, 2012, HOLMES was observed driving to the Gym at approximately 9:25 a.m. where she parked her car and walked into the Gym. She stayed in the Gym until approximately 11:05 a.m. after which she drove to do shopping at a local Staples and the Pear Tree Mall. HOLMES exited the Pear Tree Mall after several minutes pushing a shopping cart full of groceries. HOLMES then loaded the groceries into the trunk and back seat of her car.

d. On or about January 25, 2012, HOLMES was observed driving to the Gym and remained there from approximately 10:00 a.m. until approximately 11:15 a.m. She

then went shopping in both a Fairway Supermarket followed by a 99 cent store. After visiting the 99 cent store, HOLMES drove home, parked near the front of her home and proceeded to carry the groceries from her car and into her home.

e. On or about February 6, 2012, HOLMES was observed driving to the Gym where she remained from before 9:30 a.m. until approximately 9:52 a.m. Before leaving, HOLMES retrieved a large bag from the car parked next to hers, and placed it into her car. HOLMES then drove to the Pear Tree Mall, where she was observed pushing a shopping cart full of groceries. HOLMES then loaded the groceries into her car, drove home, and unloaded the groceries into her home at approximately 10:22 a.m. A little later, at approximately 1:09 p.m., HOLMES was observed exiting her home pushing a shopping cart full of bags. HOLMES then loaded these bags into the trunk and back seat of her car and drove them to a laundromat in the Bronx, New York. HOLMES exited the laundromat at approximately 3:24 p.m. with a shopping cart filled with large bags of laundry and detergent. HOLMES proceeded to load these bags into the trunk and the back seat of her car.

f. On or about February 29, 2012, at approximately 10:15 a.m., HOLMES was observed arriving at the Gym in her car. After parking, HOLMES retrieved a large bag from her car and entered the Gym. She remained in the Gym until approximately 12:00 p.m. when she exited with another female. Shortly after that, HOLMES drove to Fairview Supermarket to do some shopping. After several minutes, HOLMES emerged with a shopping cart full of groceries. HOLMES then placed all these groceries in her car and drove home.

g. On or about August 1, 2012, eight days after HOLMES's appointment with Doctor-1, at which it was reported that HOLMES was "permanently and totally disabled," HOLMES was observed arriving at the Gym at approximately 10 a.m., where she carried a large bag and a mat from her car to the Gym. HOLMES then remained in the Gym for approximately one hour.

h. On or about October 10, 2012, HOLMES was again observed going to the Gym. In the Gym, HOLMES was observed working out with a personal trainer and two other females. As part of her workout, HOLMES was observed performing sit-ups and other aerobic exercises. She was then observed using dumbbell free weights, each weighing approximately 10-20 pounds. HOLMES was holding one of these dumbbells in each hand and performing repetitive strengthening exercises such as bicep curls and chest presses. HOLMES was then observed using a

"Smith Machine," which is a free standing piece of equipment used in weight training. The machine consists of a barbell that is fixed within steel rails, allowing the user only vertical movement. HOLMES engaged in shoulder press exercises with the machine loaded with approximately 50-100 pounds of weights. HOLMES then used a number of other fitness machines in the Gym alongside the trainer and other females.

i. On or about October 24, 2012, HOLMES was again observed going to the Gym. In the Gym, HOLMES used a Stairmaster machine for approximately 10-15 minutes. HOLMES then participated in an "Ultimate Abs" class at the Gym, which was scheduled to run 60 minutes. The class was intended for toning and strengthening, and consisted of cardiovascular exercises and weight training. In the class, HOLMES was observed doing a variety of standing and floor exercises. HOLMES was also observed performing weight training exercises with a straight barbell weighing approximately 25-35 pounds.

j. On or about November 7, 2012, at approximately 10:30 a.m., HOLMES was observed participating in the "Ultimate Abs" class at the Gym, which was scheduled to run for 60 minutes. During the class, HOLMES was observed performing floor and standing aerobic exercises as well as weight training exercises with a straight barbell weighing approximately 15-25 pounds. HOLMES was also observed at the Gym doing inner and outer thigh exercises on two exercise machines for 10-15 minutes. After that, HOLMES was observed exercising on a treadmill for approximately 20 minutes.

k. On or about November 21, 2012, at approximately 9:44 a.m., HOLMES was observed parking at the Gym and carrying a large silver bag over her right shoulder and a roll up mat under her left arm while she entered the Gym. HOLMES then exercised on a Stairmaster machine for approximately 25 minutes. At approximately 10:30 a.m., HOLMES participated in the "Ultimate Abs" class, during which she performed weight training exercises with a straight barbell weighing approximately 15-25 pounds. At approximately 11:41 a.m., HOLMES left the Gym with the silver bag and the mat. Then, at approximately 12:18 p.m., HOLMES was observed exiting a B.J.'s store pushing a shopping cart with bags to her car. HOLMES then unloaded the bags from the shopping cart into her car using both her right and left hands.

l. On or about December 5, 2012, HOLMES was observed at the Gym using an Elliptical trainer, which stimulates stair climbing, walking and running motions, for

approximately 15 minutes. At approximately 10:30 a.m., HOLMES then participated in the "Ultimate Abs" class, during which she performed weight training exercises with a straight barbell weighing approximately 15-25 pounds. After the class, HOLMES was observed exercising for another approximately 5 minutes on a Stairmaster machine.

m. On or about February 13, 2013, at approximately 12:21 p.m., HOLMES was observed at the Gym using a Stairmaster machine for approximately 10 minutes. HOLMES was then approached by one of the Gym's personal trainers (the "Trainer"). Through my investigation of this matter, I have learned that the Trainer is HOLMES's boyfriend. Shortly after that, HOLMES walked to the rear of the Gym with the Trainer and engaged in boxing activities. Specifically, the Trainer was holding a large punching bag while HOLMES and another female took turn punching it while wearing boxing gloves. HOLMES was observed punching the bag rapidly and powerfully four separate times. After the boxing, HOLMES was observed doing squat-to-stand exercises while holding a 25 pound dumbbell. HOLMES engaged in these exercises repeatedly for several minutes while instructing the other female with whom she had done the boxing how to correctly execute the squat-to-stand exercise. After these exercises, HOLMES completed several rounds of chest compression and squatting exercises while Trainer held out resistance bands. Finally, HOLMES, the Trainer and the other female walked over to a stationary weight machine and engaged in several repetitions of assisted pull-ups and assisted dips. HOLMES continued these exercises for several minutes. Photos taken of HOLMES at the Gym on this date are attached hereto as Exhibit A.

n. On or about April 3, 2013, at approximately 1:58 p.m., HOLMES was observed walking to the Gym from her parked car carrying a large silver bag over her right shoulder. Between 2:36 p.m. and 3:15 p.m. that afternoon, HOLMES engaged in continuous exercise at the Gym consisting of using a "Smith Machine," using both 25 and 20 pound dumbbells to perform dumbbell bench presses and an overhead Latissimus Dorsi pull. Photos taken of HOLMES at the Gym on this date, as well as photos of weights used by HOLMES at the GYM on this date, are attached hereto as Exhibit B.

o. On or about September 9, 2013, one day before HOLMES's Current Capability Evaluation with OWCP, at which HOLMES reported that she could engage in limited exercise, that she could lift a maximum of 6-10 pounds, and that she could spend no time bending, squatting, standing or climbing on a

given day, HOLMES was observed at approximately 11:30 a.m. entering the Gym from her car carrying a large bag over her right shoulder. At the Gym, HOLMES was observed using an elliptical machine for several minutes while moving her hands from the elliptical's support handles to above her head. HOLMES then used an incline squat machine, which she loaded and unloaded with various weights by herself. At maximum weight, the machine was loaded with two 45 pound plates on either side.

p. On or about September 11, 2013, one day after HOLMES's aforementioned Current Capability Evaluation with OWCP, HOLMES was observed at approximately 11:14 a.m. entering the Gym carrying a large silver bag over her right shoulder and water bottle in her right hand. At the Gym, HOLMES was observed doing an incline chest press while gripping the handle in either hand. HOLMES then engaged in Romanian Deadlifts, which consist of standing straight upward and bending at the waist while holding a weighted barbell. During the exercise, the barbell is supposed to touch the floor when the exerciser bends, and travel upward as the exerciser returns to a straight upward position. HOLMES then performed cable tricep pull-downs, which consist of grasping handles while extending the arm up and down to engage the tricep muscle. After that, HOLMES completed repetitive bicep curls with what appeared to be a 35 pound barbell with a 2.5 pound weight on either side. Finally, HOLMES completed back squats, which consist of moving the feet backwards and in a crisscross movement.

WHEREFORE, the deponent respectfully requests that a warrant issue for the arrest of SHONTA HOLMES, the defendant, and that she be arrested and imprisoned, or bailed, as the case may be.

  
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JAMES WOODS  
Special Agent  
United States Department of Labor  
Office of the Inspector General

Sworn to before me this  
5th day of May, 2014

  
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THE HONORABLE JAMES C. FRANCIS, IV  
United States Magistrate Judge  
Southern District of New York

EXHIBIT A



EXHIBIT B

