

Approved: _____

ANDREW DeFILIPPIS
Assistant United States Attorney

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

14 MAG 958

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

MICHAEL TOMCHAK, being duly sworn, deposes and says that he is a Special Agent with the United States Postal Service, Office of the Inspector General ("USPS-OIG"), and charges as follows:

COUNT ONE

1. From at least in or about October 2010, up to and including the present, in the Southern District of New York and elsewhere, SAMUEL MUNOZ, 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 \$1000, to wit, MUNOZ submitted applications for federal worker's compensation benefits in which he falsely stated that he did not receive income apart from his benefits, and misrepresented and caused others to misrepresent the severity of his disability during the periods in which he applied for and received such compensation benefits.

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

COUNT TWO

2. From at least in or about October 2010, up to and including the present, in the Southern District of New York and elsewhere, SAMUEL MUNOZ, the defendant, willfully and knowingly did embezzle, steal, purloin, and convert to his 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 his use and gain, knowing it to have been embezzled, stolen, purloined and converted, to wit, MUNOZ fraudulently obtained federal worker's compensation benefits to which he was not entitled.

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

3. I am a Special Agent with USPS-OIG. 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 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. The Federal Employees' Compensation Act ("FECA"), 5 U.S.C. § 1807 et seq., provides compensation to federal employees for injuries sustained during the performance of their workplace duties. An employee may be disabled, and therefore eligible to collect FECA benefits, either due to a sudden, "traumatic injury" or due to a physical or mental condition that develops over time (an "occupational disease").

b. FECA benefits are administered by the Office of Workers' Compensation Programs ("OWCP"), a division of the Department of Labor ("DOL"). 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 traumatic injury must first complete, sign, and submit to the OWCP a form entitled "Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation" (a "Form CA-1"). The Form CA-1 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-1, the claimant certifies, "under penalty of law," inter alia, that the injury upon which the claim is based "was sustained in the performance of duty as an employee of the United States Government." Form CA-1 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. Upon filing a Form CA-1, a claimant's employer must continue paying the claimant's federal salary for an initial 45-day period. After this period, a claimant may obtain FECA benefits by submitting a form entitled "Claim for Compensation" (a "Form CA-7") for each period during which the claimant seeks FECA benefits. Upon approval of a claim, OWCP places the claimant on the "daily roll." To continue receiving FECA benefits on the daily roll, the claimant must file an additional Form CA-7 for each period for which the claimant seeks FECA benefits.

e. Form CA-7 directs the claimant to disclose any work outside the claimant's federal job during the period for which the claimant seeks FECA benefits (including self-employment), and to provide additional information about such outside work.

f. The final portion of the Form CA-7 requires the claimant to sign and certify the following:

I certify that the information provided above is true and accurate to the best of my knowledge and belief. 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. In addition, a felony conviction will result in termination of all current and future FECA benefits.

g. A claimant who has been receiving FECA benefits as part of the daily roll for a sustained period of time and 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 30 days and is required, on an annual basis, to complete, sign and file a questionnaire known as Form CA-1032.

h. Part A of Form CA-1032, labeled "Employment," directs the claimant to "[r]eport ALL employment for which you received a salary, wages, income, sales commissions, piecework, or payment of any kind" during the fifteen months prior to completing the form. Claimants are directed to "[r]eport ALL self-employment or involvement in business enterprises," including "part-time or intermittent" activities. The form requires the claimant to disclose her rate of pay for any such employment activities, including "the value of such things as housing, meals, clothing, and reimbursed expenses." In this regard, the claimant is specifically informed, "[i]f you performed any duties in any business enterprise for which you were not paid, you must show as rate of pay what it would have cost the employer or organization to hire someone to perform the work or duties you did, even if your work was for yourself or a family member or relative." Part B of Form CA-1032, labeled "Volunteer Work," directs the claimant to report any volunteer work including volunteer work for which ANY FORM of monetary or in-kind compensation was received.

i. Immediately following the instructions on reporting employment, Form CA-1032 contains the following warning, printed in all capital letters and in bold font: "SEVERE PENALTIES MAY BE APPLIED FOR FAILUE TO REPORT ALL WORK ACTIVITIES THOROUGHLY AND COMPLETELY."

j. The final portion of the Form CA-1032 requires the claimant to sign and certify the following:

I know that anyone who fraudulently conceals or fails to report income or other information which would have an effect on benefits, or makes a false statement or misrepresentation of a material fact in claiming a payment or benefit under the Federal Employees' Compensation Act may be subject to criminal prosecution, from which a fine or imprisonment, or both, may result.

[. . .]

I certify that all statements made in response to questions on this form are true, complete, and correct to the best of my knowledge and belief. I have placed "Not Applicable" (N/A) or "None" next to those questions that do not apply to me or my claim.

5. I have reviewed documents maintained by the United States Postal Service ("USPS") and OWCP regarding SAMUEL MUNOZ, the defendant. From these documents I have learned that:

a. In 1985, MUNOZ began working for the USPS as an employee in New York, New York.

b. On or about November 21, 2001, MUNOZ completed, signed, and filed a Form CA-1 with the Office of Workers' Compensation Programs ("OWCP") in Manhattan. On that document, MUNOZ stated that on or about November 15, 2001, he sustained a work-related injury when, while he "was working in sack sorter room [he] felt a twing of pain in neck and lower back." MUNOZ complained of injury to his back / neck.

c. After fling his Form CA-1 in November 2001, MUNOZ began to draw FECA benefits and stopped reporting to work.

d. MUNOZ was placed on the periodic roll in or about January 2002. Since that date, MUNOZ has completed, signed and filed with the OWCP annual Form CA-1032s, including those dated October 18, 2010, October 11, 2011, November 8, 2012, and October 26, 2013. On all four of these Form CA-1032s, MUNOZ certified that he had not worked for any employer during the prior 15 months, had not been self-employed or involved in any

business enterprise during that time period, and had not performed any volunteer work.

e. Since being placed on the periodic roll in 2002, MUNOZ has received regular benefits checks totaling more than \$2,400 per month. The OWCP compensation paid to MUNOZ as a consequence of his claimed disability has totaled more than \$432,050. Since October 2010, the OWCP compensation paid to MUNOZ has totaled more than \$120,000.

6. In connection with MUNOZ's receipt of FECA benefits, a physician ("Physician-1") has periodically submitted a Form OWCP-5 summarizing MUNOZ's medical condition. The most recent versions of the form, dated August 29, 2013 and October 28, 2013, indicate that, in Physician-1's opinion, MUNOZ suffers from "neck and lower back" conditions, including "displaced discs, cervical and lumbar." Physician-1 indicates on the forms that MUNOZ is incapable of performing any work.

MUNOZ ENGAGES IN PHYSICAL ACTIVITY

7. On various dates from in or about December 2013 through in or about April 2014, law enforcement agents conducted surveillance of SAMUEL MUNOZ, the defendant. From speaking with one of those agents ("Agent-1") and reviewing the surveillance video, I have learned, among other things, the following:

a. On or about January 16, 2014, Agent-1 observed MUNOZ in the vicinity of his residence with another male. MUNOZ and the other male approached MUNOZ's van, which had a flat tire. Although MUNOZ intermittently used a cane, he stood and walked without the assistance of the cane for much of the time he was under surveillance. Agent-1 observed MUNOZ, among other things, squatting down near the tire of his van, bending down to examine the tire, spraying something from a can onto the tire, and entering and exiting the van. These activities were captured on video.

b. On or about January 23, 2014, Agent-1 observed MUNOZ leave his residence with a female. MUNOZ drove to a nearby store and walked into the store with the female. Approximately thirty minutes later, MUNOZ and the female walked out of the store and MUNOZ pushed a grocery cart to his van. MUNOZ then loaded a grocery bag into the vehicle without the use of his cane. MUNOZ drove to another store where he was observed, among other things, pushing a grocery cart. MUNOZ subsequently returned to his residence where he was seen carrying bags up the stairs to the residence with the assistance

of a cane, returning to his van, and retrieving additional bags. These activities were captured on video.

8. On or about January 29, 2014, I conducted surveillance of SAMUEL MUNOZ, the defendant, during which I observed MUNOZ, among other things, drive to a self-carwash and wash his van without any assistance. While washing his car, MUNOZ operated a high pressure hose and moved around the van while using his upper extremities without apparent physical distress. During the surveillance, I also observed MUNOZ walking without the assistance of a cane. These activities were captured on video.

9. On or about February 4, 2014, I conducted surveillance of SAMUEL MUNOZ, the defendant, during which I observed him engaging in various activities, including, among other things, driving to a grocery store and to a post office; shoveling snow in the vicinity of his residence (including reaching, bending, and lifting the shovel without any apparent physical distress); retrieving grocery bags from his van; and carrying grocery bags up the stairs into his residence both with and without the use of a cane. These activities were captured on video.

MUNOZ RECEIVES COMPENSATION FOR MINISTRY WORK

10. I have reviewed records obtained from Sovereign Bank regarding SAMUEL MUNOZ, the defendant. From these records, I have learned that MUNOZ has received funds from various entities, including a church and an apparent ministry organization ("Ministry-1") during the period from October 2010 to the present. During that period, the deposits from the church and Ministry-1 totaled approximately \$2,600. Moreover, bank records reflect more than \$17,000 in cash deposits into MUNOZ's account during the same time period.

11. In or about November 2013, I visited a religious ministry website that depicted SAMUEL MUNOZ, the defendant, as its founder and contact person. The website described MUNOZ's ministry ("Ministry-2") as a "family ministry founded by Pastor Samuel Munoz, Jr., a Christian living with AIDS." Ministry-2 is further described as a "traveling ministry on wheels" that "visits churches, conventions, hospices, homes, Men/Women and Youth Groups[.]" The website states that Ministry-2 "does not receive any monies for the work we do[.]"

12. On or about, December 4, 2013, an undercover law enforcement agent ("UC-1") conducted a consensually monitored telephone call with SAMUEL MUNOZ, the defendant, in which UC-1 inquired regarding MUNOZ's ministry services. MUNOZ stated

during the call, among other things, that he had spoken at several conferences in the past.

13. During the aforementioned call, UC-1 and MUNOZ made arrangements for MUNOZ to speak in front of a group at a hotel in New Jersey ("Hotel-1") later that month. MUNOZ stated, in substance and among other things, that he typically received payments of between \$250 to \$1,000, but that a payment at the lower end of that range would be sufficient for the speaking engagement proposed by UC-1.

14. On or about December 18, 2013, UC-1 and other undercover law enforcement personnel met with SAMUEL MUNOZ, the defendant, at Hotel-1 prior to his planned speaking engagement. MUNOZ was asked to complete a Postal Service money order in his own name in the amount of \$300 as compensation for his services. MUNOZ stated that he did not feel comfortable completing the money order and asked UC-1 to fill it out with MUNOZ's name on it, which UC-1 did. MUNOZ then took the money order.

15. After the exchange described above, SAMUEL MUNOZ, the defendant, gave a presentation to an assembled group for approximately 45 minutes. During the presentation, he discussed, among other things, his life story and his reliance on God to overcome hardships. MUNOZ remained standing throughout the entire presentation and paced around the room without the use of a cane and without any apparent physical distress.

16. On or about April 4, 2014, personnel from the United States Department of Labor interviewed SAMUEL MUNOZ, the defendant. From my discussions with those personnel, I learned that during the interview, MUNOZ stated, in substance, that he did not receive any income other than his government benefits. MUNOZ also stated that he performed volunteer ministry work, but that he did not receive any income or compensation for that work.

17. I have reviewed an OWCP Current Capability Evaluation Form ("CCE"), dated April 4, 2014, completed by SAMUEL MUNOZ, the defendant, during the aforementioned interview. In the CCE form, MUNOZ indicates he can only stand for 10 to 15 minutes per day, and that he can only walk for 5 minutes per day. MUNOZ also

indicates that he considers himself totally disabled and unable to perform any assignment for the United States Postal Service.¹

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



MICHAEL TOMCHAK
Special Agent
United States Postal Service
Office of the Inspector General

Sworn to before me this
5th of May, 2014



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

¹ In response to the question "Does your accepted medical condition limit your daily activities[,]?" MUNOZ wrote: "Guarded walking. Need to use cane, feel loopy, need to rest/nap often. Alternate sitting/standing every 20 - 30 mins. Take naps every 3 hours. Cognitive issues with speech, memory. Pain constant in legs."