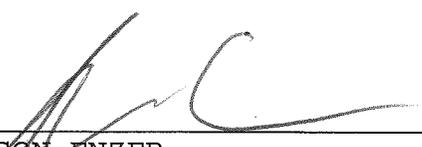


Approved:

  
SAMSON ENZER  
Assistant United States Attorney

14 MAG

933

Before: THE HONORABLE MICHAEL H. DOLINGER  
United States Magistrate Judge  
Southern District of New York

----- X  
:
  
UNITED STATES OF AMERICA : SEALED COMPLAINT
  
:
  
: Violation of 18 U.S.C.
  
-v- : §§ 1920 and 641
  
:
  
PEDRO R. NUNEZ, : COUNTY OF OFFENSE:
  
: NEW YORK
  
Defendant. :
  
:
  
----- X

SOUTHERN DISTRICT OF NEW YORK, ss.:

ANI WHITE, being duly sworn, deposes and says that she 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 September 2012, up to and including at least in or about April 2014, in the Southern District of New York and elsewhere, PEDRO R. NUNEZ, 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, in support of applications for federal worker's compensation benefits, NUNEZ misrepresented that he could not perform certain physical activities, when in fact he was able to and continued performing such physical activities.

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

COUNT TWO

2. From at least in or about September 2012, up to and including at least in or about April 2014, in the Southern District of New York and elsewhere, PEDRO R. NUNEZ, 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, NUNEZ fraudulently obtained federal worker's compensation benefits to which he 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. The Federal Employees' Compensation Act ("FECA"), 5 U.S.C. § 8102 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. Under the statute, an employee who is totally disabled due to a workplace injury and has at least one dependent is entitled to benefits equivalent to 75 percent of his federal salary during the period of his disability. An employee is totally disabled if, following his injury, he has no capacity to earn wages or work in any position. If an employee with at least one dependent is only partially disabled, his FECA benefits are limited to 75 percent of the difference between his federal salary and his residual wage-earning capacity. FECA benefits are untaxed.

c. FECA benefits are administered by the Office of Workers' Compensation Programs ("OWCP"), a division of 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.

d. 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 is seeking benefits and the circumstances under which he sustained it. By signing the Form CA-1, the claimant certifies, "under penalty of law," among other things, 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.

e. 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.

f. 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.

g. 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.

#### PROBABLE CAUSE

#### NUNEZ Files for FECA Benefits

5. I have reviewed documents maintained by the United States Postal Service ("USPS") and OWCP regarding PEDRO R. NUNEZ, the defendant. From reviewing such documents, I have learned, among other things, the following:

a. At all times relevant to the investigation in this matter, NUNEZ has been employed by the USPS as a mail carrier in New Jersey.

b. On or about July 5, 2012, NUNEZ completed, signed, and filed with OWCP in Manhattan a Form CA-1. In that document, NUNEZ asserted that on June 30, 2012, he sustained a work-related injury to his right shoulder when a step broke and caused him to fall.

c. On or about June 30, 2012, NUNEZ stopped reporting to work, and on or about August 20, 2012, NUNEZ began to draw FECA benefits.

d. On or about September 21, 2012, NUNEZ was placed on the daily roll. He received regular FECA benefit checks of about \$1,300 every 28 days while he remained on the daily roll.

e. NUNEZ completed, signed and filed with the OWCP in Manhattan several Forms CA-7. These Forms are dated, respectively: August 29, 2012; September 17, 2012; September 21, 2012; October 5, 2012; October 19, 2012; November 2, 2012; November 16, 2012; November 30, 2012; December 14, 2012; and December 28, 2012. In the August 29, 2012 Form CA-7 and subsequent Forms CA-7, NUNEZ asserted, among other things, that he had worked outside his federal job during the period for which he claimed FECA compensation at a lawn care business named "On the Green Landscaping."

f. After filing for FECA benefits in July 2012, NUNEZ remained out of work until on or about May 9, 2013, when he returned to work in a limited duty capacity.

g. As of April 2014, NUNEZ had received over \$50,000 in FECA benefits, and the USPS had incurred over \$10,000 in medical expenses arising from NUNEZ's claimed injury to his right shoulder.

#### NUNEZ's Misrepresentations

6. From reviewing documents maintained by USPS and OWCP regarding PEDRO R. NUNEZ, the defendant, I have also learned, among other things, the following:

a. In response to the first and second Forms CA-7 filed by NUNEZ in which he reported that he had been working for a lawn care business, the DOL sent a letter dated September 24, 2012 to NUNEZ requesting that he respond to a series of requests for information about this landscaping business. DOL's letter stated, among other things, that before any FECA benefits for wage loss due to disability could be made, NUNEZ must provide the requested information.

b. On or about September 25, 2012, a DOL representative received a telephone call from NUNEZ on which NUNEZ asserted, in substance and in part, that he had not done his lawn care job since July 1, 2012 because he could not due to his injured shoulder.

c. On or about October 3, 2012, NUNEZ submitted a written response to DOL's requests for information about his lawn care work for "On the Green Landscaping." In his response,

NUNEZ asserted, among other things, that he is the sole owner of this business; that he performed lawn care work for this business from April 12 to July 1, 2012; and that he "did hardly any mowing after July 1, 2012." NUNEZ's response further claimed, among other things, that after July 1, 2012, his "girlfriend, Cheryl Pielich, mowed the lawns," with the exception of a single lawn on a steep hill.

d. In that October 2012 response, NUNEZ signed his name under a certification stating:

I understand I must immediately report to OWCP any improvement in my medical condition . . . .

I certify that all the statements made in response to questions on this form are true, complete and correct to the best of my knowledge and belief. . . .

e. On or about December 5, 2012, the USPS sent a letter to NUNEZ reporting that NUNEZ's doctor had submitted a work capacity evaluation of NUNEZ indicating that NUNEZ could return to work on restricted duty. The letter enclosed documentation about the work capacity evaluation indicating that NUNEZ was "[a]ble to lift, push, and/or pull up to 5 pounds" and could reach with his left arm. The letter offered NUNEZ a modified (limited duty) assignment in keeping with those work restrictions.

f. On or about December 19, 2012, NUNEZ sent a response letter rejecting that modified assignment offer. In his response letter, NUNEZ asserted that "the modified assignment offer DOES NOT meet the requirements within my treating physician's restrictions," in that it was not limited to "DESK DUTY ONLY . . . ." NUNEZ further claimed in the response letter that "[a]ccepting a modified assignment that is outside the scope of my physician's restrictions may aggravate my condition or cause re-injury."

#### NUNEZ's Physical Activities

7. I have spoken with another law enforcement agent ("Agent-1"), who has informed me that she conducted surveillance of PEDRO R. NUNEZ, the defendant, on several occasions. Agent-1 has informed me that while conducting surveillance of NUNEZ on or about September 19, 2012 at his residence, Agent-1 observed NUNEZ, among other things, blow leaves from his yard with a

backpack leaf blower that was strapped to his back, and later saw NUNEZ squat in his driveway to spray paint two metal objects.

8. On or about September 20, 2012, Agent-1 and I conducted surveillance of PEDRO R. NUNEZ, the defendant. While doing so, I observed the following:

a. NUNEZ drove with landscaping equipment to a house. After arriving at this house, NUNEZ bent, blew leaves with a rolling leaf blower, cut grass, cut weeds with a weed whacker, and loaded and unloaded equipment from his vehicle.

b. NUNEZ drove to a second house. After arriving at this house, NUNEZ operated a lawn mower, cut weeds with a weed whacker, carried a backpack leaf blower on his back, picked up sticks from the ground, and loaded and unloaded equipment from his vehicle.

c. NUNEZ drove to a third house. After arriving at this house, NUNEZ operated a lawn mower and cut weeds with a weed whacker.

9. From speaking with Agent-1, I know that she conducted surveillance of PEDRO R. NUNEZ, the defendant, on or about March 15, 2013 at his residence. While doing so, Agent-1 observed NUNEZ, among other things, lay on his back on the ground under his car, and peer into the back of the engine while resting his bodyweight on both of his arms and shoulders.

10. I have spoken with another agent ("Agent-2"), who conducted surveillance of PEDRO R. NUNEZ, the defendant, on or about April 30, 2013 at his residence. Agent-2 has informed me that he observed NUNEZ, among other things, hunch over a small gas operated object and work on the object using both hands and arms, and pick the object up and carry it.

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



---

ANI WHITE  
Special Agent  
United States Department of Labor  
Office of the Inspector General

Sworn to before me this  
2nd day of May, 2014



---

THE HONORABLE MICHAEL H. DOLINGER  
United States Magistrate Judge  
Southern District of New York

# UNITED STATES DISTRICT COURT

for the

Southern District of New York

United States of America

v.

PEDRO R. NUNEZ

*Defendant*

Case No. **14 MAG 933**

## ARREST WARRANT

To: Any authorized law enforcement officer

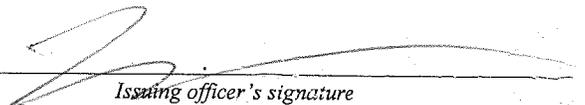
**YOU ARE COMMANDED** to arrest and bring before a United States magistrate judge without unnecessary delay  
(name of person to be arrested) PEDRO R. NUNEZ,  
who is accused of an offense or violation based on the following document filed with the court:

- Indictment       Superseding Indictment       Information       Superseding Information       Complaint
- Probation Violation Petition       Supervised Release Violation Petition       Violation Notice       Order of the Court

This offense is briefly described as follows:

18 U.S.C. §§ 1920 and 641.

Date: 05/02/2014

  
*Issuing officer's signature*

City and state: New York, New York

Hon. Michael H. Dolinger, U.S. Magistrate Judge  
*Printed name and title*

### Return

This warrant was received on (date) \_\_\_\_\_, and the person was arrested on (date) \_\_\_\_\_  
at (city and state) \_\_\_\_\_.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Arresting officer's signature*

\_\_\_\_\_  
*Printed name and title*