

Approved: Andrew DeFilippis
ANDREW DeFILIPPIS
Assistant United States Attorney

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

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: **14 MAG 959**
: SEALED
UNITED STATES OF AMERICA : COMPLAINT
:
:
-v- : Violations of
:
JUANITA TOLBERT, : 18 U.S.C. §§ 1920, 641
:
Defendant. : 42 U.S.C. § 408(a)(4)
:
----- X COUNTY OF OFFENSE:
NEW YORK

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 January 2008, up to and including the present, in the Southern District of New York and elsewhere, JUANITA TOLBERT, 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, TOLBERT submitted applications for federal worker's compensation benefits in which she falsely stated that she did not receive other federal benefits, and misrepresented and caused others to misrepresent the severity of her disability during the periods in which she applied for and received such compensation benefits.

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

COUNT TWO

2. From at least in or about January 2008, up to and including the present, in the Southern District of New York and elsewhere, JUANITA TOLBERT, 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 departments and agencies thereof, to wit, the United States Department of Labor and the Social Security Administration, 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, TOLBERT fraudulently obtained federal worker's compensation benefits and Social Security disability benefits to which she was not entitled.

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

COUNT THREE

3. From at least in or about January 2008, up to and including the present, in the Southern District of New York and elsewhere, JUANITA TOLBERT, the defendant, willfully and knowingly did in a matter within the jurisdiction of the Social Security Administration, having knowledge of an event affecting her continued right to Social Security Disability Insurance Benefit payments, conceal and fail to disclose such an event with the intent to deceive the Social Security Administration, and to fraudulently secure payments when no payments were authorized, to wit, the defendant intentionally concealed her receipt of Department of Labor disability benefits from the Social Security Administration, which allowed her to receive Social Security payments to which she was not entitled to in excess of \$1,000.

(Title 42, United States Code, Section 408(a)(4).)

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

4. I am a Special Agent with the United States Postal Service Office of 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 Regulatory Scheme

5. 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 she is seeking benefits and the circumstances under which 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 D of Form CA-1032, labeled "Other Federal Benefits or Payments," directs the claimant to "report ANY other benefits paid by the federal government apart from those

received through FECA. Claimants are further directed to describe the other benefit if in receipt to include: the type of claim, award, benefit, agency address, claim or file number, amount or value received, weekly or monthly, dates for which benefit is received, and if benefits are received regularly.

i. 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.

j. The United States Social Security Administration is a department and agency of the United States. Among its duties, the Social Security Administration is responsible for the Disability Insurance Benefits Program. This program has provided cash benefits to workers with severe, long-term disabilities, who have worked in Social Security-covered employment for the required length of time. Spouses and dependent children of disabled workers may also be eligible to receive benefits.

k. To qualify for the Disability Insurance Benefit Program, an individual must meet the insured status requirement, be under the age of 65, submit an application with medical and other evidence, and be under a disability as defined in the Social Security Act, codified at 42 United States Code, Sections 416(i) and 423. Specifically, the application for the aforementioned disability benefits requires response to a

question regarding receipt of additional benefits outside of the Social Security Administration to include worker's compensation, public disability, and black lung. Additionally, the application requires the claimant to agree to notify the Social Security Administration if his or her medical condition improves, he or she begins employment or self-employment, and if he or she applies or receives a decision on benefits under any worker's compensation law outside of the Social Security Administration. Finally, the application provides a section for remarks where the claimant can comment on relevant information regarding their application.

1. Upon a finding that a claimant is disabled, the Social Security Administration evaluates the beneficiary's impairments from time to time, to determine continued eligibility for disability cash benefits. The Social Security Administration's ability to properly determine a beneficiary's continued entitlement to the Disability Insurance Benefit program is directly dependent on the Social Security Administration's ongoing access to accurate information regarding the beneficiary's medical condition. The beneficiary is therefore required to report changes in his or her condition to the Social Security Administration.

The Present Investigation

6. I have reviewed documents maintained by the United States Postal Service ("USPS"), OWCP, and the Social Security Administration ("SSA") regarding JUANITA TOLBERT, the defendant. From these documents I have learned that:

a. In 1999, TOLBERT began working for the USPS as a Mail Processing Clerk in Westchester County, New York.

b. On or about May 11, 2007, TOLBERT completed, signed, and filed a Form CA-2 with OWCP in Manhattan. On that document, TOLBERT was registered as reporting a cervical injury.

c. After filing her Form CA-2 in January 2008, TOLBERT began to draw FECA benefits and stopped reporting to work.

d. TOLBERT was placed on the periodic roll in or about October 2007. Since then, TOLBERT has completed, signed and filed with the OWCP six Form CA-1032s, dated from 2008 through the present. On five of the Form CA-1032s, TOLBERT certified that she had not received additional federal benefits other than those provided by FECA. Specifically, the Form CA-1032 poses the question, "Have you received any other Federally

funded or assisted benefits[,]” to which TOLBERT responded as follows:

- i. On a form dated June 15, 2008, TOLBERT answered “no” to this question.
 - ii. On a form dated July 14, 2009, TOLBERT wrote, “I receive Social Security for being totally disabled 8/3/09” in response to this question.
 - iii. On forms dated August 4, 2010, August 18, 2011, and August 15, 2012, TOLBERT answered “no” in response to this question.
 - iv. On a form dated August 7, 2013, TOBERT answered “N/A” in response to this question.
- e. TOLBERT continues to receive OWCP compensation benefits. Since being placed on the periodic roll in 2007, TOLBERT has received regular OWCP benefits checks totaling more than \$1,700 per month. The OWCP compensation paid to TOLBERT as a consequence of her claimed disability from January 2008 to the present has totaled more than \$163,700.

f. From my review of SSA records, I know that on or about January 8, 2008, TOLBERT completed and filed an application for the SSA Disability Insurance Benefit program. SSA records reflect that TOLBERT confirmed orally to SSA personnel that, among other things, she had not filed and did not intend to file for any worker’s compensation benefits, public disability, or black lung benefits. TOLBERT also agreed orally to notify the Social Security Administration of all “events,” as explained to her.¹

g. Records from the Department of Labor reflect that TOLBERT had successfully filed for worker’s compensation and was receiving payment as a result of that claim since in or about 2007, prior to the filing of her SSA claim.

7. I have reviewed records maintained by the Social Security Administration, Department of Labor, and United States Postal Service regarding JUANITA TOLBERT, the defendant. From

¹Based on my training and experience, I know that such “events” include the receipt of federal benefits from another agency and any change in health status affecting one’s eligibility for disability compensation.

these documents, I learned that TOLBERT received overpayment from the Social Security Administration in the amount of \$75,059 due to her failure to report the multiple benefits she was receiving.

8. I have reviewed documents from the Department of Labor regarding JUANITA TOLBERT, the defendant. Those records reflect the following:

a. On or about August 14, 2013, a physician ("Physician-1") completed a Work Capacity Evaluation form regarding JUANITA TOLBERT, the defendant. On the form, Physician-1 indicated, among other things, that TOLBERT was "having severe pain" in her cervical area. Physician-1 also indicated that TOLBERT was "totally disabled" and was unable to, among other things, sit, walk, stand, or reach above her shoulder.

b. On or about January 14, 2014, TOLBERT received a medical examination after complaining of ongoing pain and discomfort in her neck and upper extremities. The examining physician ("Physician-2") stated in a written report, among other things, that TOLBERT "remains 100% disabled and unfit for work."

9. On or about December 31, 2013, January 12, 2014, and January 17, 2014, law enforcement agents conducted surveillance of JUANITA TOLBERT, the defendant. From my participation in the surveillance, my discussions with other law enforcement agents, and my review of video recordings of the surveillance, I learned that, on multiple occasions, TOLBERT walked and stood outdoors without the assistance of any devices and without any apparent physical discomfort. I also learned that TOLBERT was observed operating a motor vehicle on multiple occasions. These activities were recorded on video.

10. Since the date of the surveillance commencing in December 2013, the amount of OWCP benefits TOLBERT received has totaled at least approximately \$7,340.

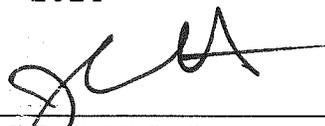
11. I have communicated with personnel at the Social Security Administration who informed me that, from the time she began receiving Social Security disability benefits in or around 2008, JUANITA TOLBERT, the defendant, has not disclosed to the Social Security Administration that she has been receiving OWCP benefits.

WHEREFORE, the deponent respectfully requests that a warrant issue for the arrest of JUANITA TOLBERT, the defendant, and that she 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