

Approved: Richard A. Cooper  
RICHARD A. COOPER  
Assistant United States Attorney

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

14 MAG 961

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UNITED STATES OF AMERICA	: <u>SEALED</u>
	: <u>COMPLAINT</u>
	:
-v-	: Violation of 18 U.S.C.
	: §§ 641 and 1920
ALICE BACA,	:
	: COUNTY OF OFFENSE:
Defendant.	: NEW YORK
	:
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SOUTHERN DISTRICT OF NEW YORK, ss.:

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

COUNT ONE

1. From at least in or about June 2012, up to and including at least in or about April 2013, in the Southern District of New York and elsewhere, ALICE BACA, 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, BACA submitted applications for federal worker's compensation benefits in which she stated falsely that she was disabled during the periods for which she applied for such benefits, when in fact she was not.

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

## COUNT TWO

2. From at least in or about June 2012, up to and including at least in or about April 2013, in the Southern District of New York and elsewhere, ALICE BACA, the defendant, willfully and knowingly did embezzle, steal, purloin, and convert to her own use and the use of another, money and things of value of the United States and of a department and agency thereof, and did receive, conceal, and retain the same with intent to convert it to her own use and gain, knowing it to have been embezzled, stolen, purloined, and converted, to wit, BACA 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 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 no dependents is entitled to benefits equivalent to 66.66 percent of her federal salary during the period of her disability. An employee is totally disabled if, following her injury, she has no capacity to earn wages or work in any position. If an employee without dependents is only partially disabled, her FECA benefits are limited to 66.66 percent of the difference between her federal salary and her residual wage-earning capacity. FECA benefits are untaxed.

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

e. Under DOL regulations, a federal employee who sustains a work-related injury that is successfully treated, but later experiences a spontaneous return of debilitating symptoms, is entitled again to obtain FECA benefits. In such circumstances, the employee must file a "Notice of Recurrence" (a "Form CA-2a").

f. Upon the filing of a Form CA-1 or a Form CA-2a, the federal employer must continue the disabled employee's regular pay during any periods of disability, up to a combined maximum of 45 calendar days for any single injury. In order to obtain compensation beyond this 45-day period, the employee must file a "Claim for Compensation Due to Traumatic Injury or Occupational Disease" (a "Form CA-7"). The Form CA-7 does not permit the claimant to request benefits for prospective periods of disability. Thus, in order to receive benefits on a schedule that replicates her normal pay cycle, the claimant must generally file a new Form CA-7 every two weeks. An employee receiving benefits in this manner is said to be on the "daily roll."

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 not required to file a Form CA-7 on a bi-monthly basis. Instead, each year, the claimant must complete, sign and file a questionnaire known as Form CA-1032.

h. 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.

## THE PRESENT INVESTIGATION

### **BACA Files for FECA Benefits**

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

a. Since 1998, BACA has been employed by the USPS as a mail handler in Kearney, New Jersey.

b. On or about May 18, 2009, BACA completed, signed, and filed with OWCP in Manhattan a Form CA-1. On that document, BACA stated that on May 18, 2009, she sustained a work-related injury when, "while lifting a bundle of mail on [a mail sorting machine] [she] felt a sharp burning pain in [her] left shoulder. Pain going down [her] arm to [her] hand." BACA complained of a "left shoulder muscle injury."<sup>1</sup>

### **BACA Draws FECA Benefits**

c. BACA received continuation of pay from the Postal Service from May 19, 2009 to July 2, 2009. Beginning on or about July 3, 2009, BACA was placed on the daily roll, where she remained until April 18, 2011. On April 18, 2011, BACA was placed on the periodic roll. Since that time, she has received regular FECA benefit checks ranging from approximately \$2,300 to approximately \$2,400 per month. As of April 19, 2013, BACA had received FECA compensation totaling \$133,898.22 and the USPS has incurred medical expenses on BACA's behalf totaling \$17,233.65 since BACA filed her form CA-1 in May 2009.

### **Examination of BACA by an Independent Physician Confirms She Is Capable of Performing Light Work**

6. From my review of documents maintained by the USPS and OWCP, I have learned, among other things, that:

a. A report submitted to OWCP on October 26, 2009 by the treating physician ("Physician-1") for ALICE BACA, the defendant, indicated that certain of BACA's test results "may be compatible with . . . a conscious attempt by [BACA] to portray less than maximum effort for this evaluation." Physician-1 recommended that BACA be permitted to return to work

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<sup>1</sup> BACA had previously been treated for carpal tunnel syndrome in her hands and an injury to her right shoulder.

for light duty, during which she would be restricted to lifting and pushing no more than 20 pounds at a time.

b. On December 3, 2009, a physician ("Physician-2") conducted an examination of BACA at the request of OWCP. Physician-2 recommended that BACA's work be limited to sitting and lifting nothing greater than 15 pounds.

c. On January 23, 2010, BACA returned to work at the USPS on "light duty," with restricted working conditions.

d. On April 30, 2010, BACA was examined by another physician ("Physician-3"), who determined, among other things, that BACA's limitation in overhead reaching was not the result of the injury she sustained on May 18, 2009.

e. On June 2, 2010, BACA filed a request with OWCP to change her treating physician from Physician-3 to another doctor ("Physician-4").

f. On July 9, 2010, Physician-4 filed a report in which he determined that BACA's work be limited to pushing or pulling objects under five pounds.

g. On July 15, 2010, the USPS sent BACA a letter indicating that no work was available that could accommodate the restrictions set forth by Physician-4.

**BACA Performs Yard Work, Drives in Her Car,  
Visits an Amusement Park, Goes Deep Sea Fishing**

7. I have spoken with an agent from the United States Postal Service-Office of the Inspector General ("Agent-1") who, with other law enforcement agents, conducted surveillance of ALICE BACA, the defendant, on a number of occasions between in or about June 2012 and in or about December 2012. From those conversations, I have learned, among other things, that:

a. On or about June 7, 2012, BACA was observed loading items into and unloading items from the trunk of her car at a Home Depot store.

b. On or about June 19, 2012, BACA was observed doing yard work at her home. On that date, BACA was observed using a hose and broom to scrub a large trash can in front of her house, lifting the trash can, and picking up what appears to be a long piece of piping or wood

c. On or about July 24, 2012, BACA went to an amusement park with her family. She spent approximately nine hours at the amusement park, walking around and going on multiple rides.

d. On or about October 4, 2012, BACA went on an approximately ten-hour deep sea fishing trip. During that trip, BACA caught and reeled in approximately ten bluefish. It took at least approximately ten minutes to reel in each fish, and BACA grasped, held, and pulled the fishing pole when reeling in each fish.

**BACA Misrepresents the Nature of  
Her Activities to Federal Agents**

8. From my conversations with Agent-1, I have learned, among other things, that:

a. ALICA BACA, the defendant, was interviewed by DOL representatives on January 10, 2013. On that date, BACA completed and signed a form detailing her assessment of her injuries and capabilities (the "Capabilities Form"). Above BACA's signature, the Capabilities Form reads:

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 the Federal Employees' Compensation Act may be subject to criminal prosecution, from which a fine and/or imprisonment may result.

I certify that the information provided above is true and accurate to the best of my knowledge and belief.

b. BACA represented in the Capabilities Form that:

i. The medical condition of BACA's right arm was "[i]mproving somewhat" and the medical condition of her left arm was "[s]taying the same."

ii. BACA was unable to participate in "bowling, fishing, camping, cleaning, clooking."

iii. BACA's lifestyle was described as "[a]lmost no activity."

iv. BACA could not be rehabilitated into another type of work "because it [involves] movement with shoulder and w[r]ist."

v. BACA can only perform reaching for 2 minutes per day, and grasping for 1 minute per day.

9. From my review of a videotape of the January 10, 2013 interview of ALICE BACA, the defendant, I have learned that BACA said, in substance and in part:

a. BACA had pain running down her arm, and when she picked up "something a little heavy," after holding it "for a little while, [she] can lose strength."

b. She rated her physical pain on an average day a 7 on a scale of 1 to 10.

c. Although she used to enjoy saltwater and freshwater fishing, she has not done so since her injury. BACA said that she could not cast with a fishing rod, but could "probably do just a little bit around the edges dropping it down like that." BACA said that she takes her children to go fishing, but she just watches them because she is unable to fish.

d. If BACA lifts her arm above her head "it would be painful."

e. BACA "feel[s] like [she] is in jail . . . like [she] is locked up in jail you know."

f. BACA sees her doctor approximately every other month to get a cortisone shot in her shoulder.

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



ZACHARY MEISENHEIMER

Special Agent

United States Department of Labor

Office of the Inspector General

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



THE HONORABLE JAMES C. FRANCIS IV

United States Magistrate Judge

Southern District of New York