

Approved: Richard Cooper
PATRICK EGAN/RICHARD COOPER
Assistant United States Attorneys

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

14 MAG 962

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

ALBERT LAROCCA, being duly sworn, deposes and says that he is a Special Agent with the United States Postal Service, Office of Inspector General, and charges as follows:

COUNT ONE

1. From at least in or about April 2013, up to and including at least in or about April 2014, in the Southern District of New York and elsewhere, FAITH PINKNEY, 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, PINKNEY 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 April 2013, up to and including at least in or about April 2014, in the Southern District of New York and elsewhere, FAITH PINKNEY, 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, PINKNEY 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 Postal Service, Office of Inspector General ("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. § 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 while a disabled employee with one dependent can get up to 75 percent of her federal salary. 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 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.

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") as well as any supporting evidence, including medical documentation. 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. The employees 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.

f. Upon the filing of a Form CA-1, 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, although a claimant may file a CA-7 covering a longer period of time. 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 role 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-weekly basis. Instead, each year, the claimant must complete, sign and file a questionnaire known as Form CA-1032.

h. In addition to filing Form CA-1032 each year, a claimant on the periodic roll is required annually to update OWCP regarding the status of her disabling condition. The claimant is directed to obtain a narrative medical report from her doctor and to direct her 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.

i. Employees of the United States Postal Service ("USPS") are covered by FECA. In fact, the USPS is the largest FECA participant, paying more than one billion dollars in benefits and \$60 million in administrative fees every year.

THE PRESENT INVESTIGATION

PINKNEY Files for FECA Benefits

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

a. Since 2006, PINKNEY has been employed by the USPS as a letter carrier in Springfield, New Jersey.

b. On or about August 27, 2009, PINKNEY completed, signed, and filed with OWCP in Manhattan a Form CA-1. On that document, PINKNEY stated that on August 4, 2009, she sustained a work-related injury in that "while walking my route as a mail carrier...I heard a loud snap in my left foot," which was later diagnosed as "a sprain and inflammation of the Achilles tendon which is caused from excessive walking."

c. PINKNEY stopped working her USPS job following her claimed injury on August 4, 2009. Shortly after filing her Form CA-1, PINKNEY began to draw FECA benefits.

d. In or about February 2012, PINKNEY was placed on the periodic roll. PINKNEY remains on disability status and has not returned to work. PINKNEY currently receives \$2,357 in FECA benefits every 28 days on the OWCP roll. To date she has received more than \$109,000 in compensation payments from FECA.

PINKNEY Observed Exercising, Walking and
Engaging in Physical Activity

6. In the course of this investigation, federal law enforcement agents conducted surveillance of FAITH PINKNEY, the defendant, on eighteen separate occasions from in or about April 2013 up to in or about November 2013. I personally participated in such surveillance. From my participation in that surveillance and from my conversations with other law enforcement agents who participated in such surveillance, I have learned among other things, the following:

a. Agents conducting surveillance observed the defendant engaging in various physical activities that are inconsistent with her claim of total disability including, but not limited to, engaging in exercise, standing for prolonged periods of time, climbing stairs without assistance and shopping in grocery stores and malls.

b. With only one exception described more fully in paragraph 7(a) below, PINKNEY moved with no apparent pain or discomfort and without the aid of any medical device such as a cane, crutch, cast or walking boot.

c. Some specific examples of the above-described conduct that I personally observed during surveillance

or on video recordings that were made during surveillance of PINKNEY by other agents include the following:

i. On two occasions in April 2013, I conducted surveillance of PINKNEY and observed, among other things, PINKNEY going shopping at a grocery store in Hillside, New Jersey, walking into the store, carrying bags out of the store to her car and loading the bags into her car. On each occasion, PINKNEY was in no apparent pain or discomfort.

ii. On or about May 14, 2013, PINKNEY was observed participating in a rally for a mayoral candidate in Jersey City, New Jersey. As part of the rally, PINKNEY was observed marching and standing for several hours without apparent pain or discomfort and without using any medical device such as a cane, crutch or walking boot.

iii. On or about October 8, 2013, PINKNEY was observed walking around a 2.2 mile exercise trail in Weequahic Park in Newark, New Jersey, immediately following a rehabilitation appointment where she reported "severe heel pain."

PINKNEY Misrepresents Her Medical Condition to a
Department of Labor Official

7. I have spoken with an official from the Department of Labor ("Official-1") and from my conversations with Official-1, I have learned among other things, the following:

a. On or about August 22, 2013, Official-1 participated in an interview with FAITH PINKNEY, the defendant, in which PINKNEY was asked about her medical condition (the "Interview"). PINKNEY arrived at that the Interview wearing a walking boot. PINKNEY informed Official-1, that she must wear the walking boot for any extended physical activity.

b. During the Interview, PINKNEY told Official-1 that, as a result of her injury she was no longer able to exercise or engage in many physical activities. PINKNEY indicated that she could not stand for very long and could not walk for more than 10 minutes. PINKNEY further indicated that she was unable to climb at all.

c. PINKNEY was asked to fill out a form (the "Form") during the interview. At the top of the Form, it says "The following information is being collected to assist your agency in managing the Worker's Compensation program. The

information you provide may be used to determine whether the claimant can return in a limited duty capacity or enter a vocational rehabilitation program." The Form then asks the applicant a series of questions designed to assess her injury and her capacity to work. PINKNEY filled out and signed the form during the Interview.

8. I have reviewed the Form, and on the Form PINKNEY states, among other things, the following:

a. In response to the question, "On a scale of 1 to 10, how would you describe your physical pain on an average day?" with 1 representing "Minimal" pain and 10 representing "Extreme" pain, PINKEY circled 9.

b. In response to the question, "On a scale of 1 to 10, how would you describe your physical pain today?" PINKNEY circled 7, which falls between "Strong" pain and "Severe" pain.

c. In response to the question, "Since your accepted medical condition, how long are you able to perform daily activities (i.e. Walking, running, exercising)," PINKNEY wrote, "No running, exercising, but I can walk maybe 15 minutes."

d. In response to the question, "Please indicate the number of hours and/or minutes per day that you can perform the following activities," PINKNEY indicated that she can stand for 15 minutes, she can walk for 10 minutes, and she cannot climb at all.

e. In the section that asked PINKNEY to check the box that "best describes our average abilities over the past month," PINKNEY indicated that she has "significant difficulty" walking, standing up from a sitting position and reaching for an object. PINKNEY further indicated that she has "slight difficulty" getting in or out of vehicle, climbing stairs and bending over to pick an item up from the floor.

f. At the end of the Form, there is a certification that reads:

I understand that anyone who fraudulently conceals or fails to report the 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.

PINKNEY's signature appears under this certification.

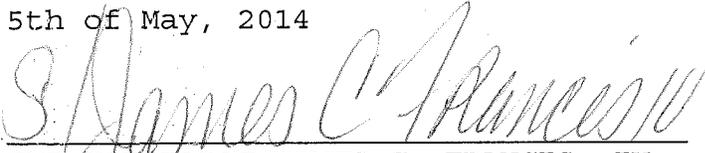
9. I personally conducted surveillance of PINKNEY on the day before the Interview, the day of the Interview, and the day after the Interview. On the day before the Interview, I observed PINKNEY shopping at a mall with no walking boot. On the day after the Interview, I again observed PINKNEY walking without a walking boot.

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



ALBERT LAROCCA
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