

14 MAG 963

Approved: Daniel M. Tracer
DANIEL M. TRACER
Special Assistant U.S. Attorney

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

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UNITED STATES OF AMERICA	:	<u>SEALED</u>
	:	<u>COMPLAINT</u>
	:	
-v-	:	Violation of 18 U.S.C. §§
	:	1920 and 641
RONALD JAMES WERNER,	:	
	:	COUNTY OF OFFENSE:
Defendant.	:	NEW YORK
	:	

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SOUTHERN DISTRICT OF NEW YORK, ss.:

PETER NOZKA, being duly sworn, deposes and says that he 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 December 2008, up to and including at least in or about May 2014, in the Southern District of New York and elsewhere, RONALD JAMES WERNER, 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, WERNER submitted applications for federal worker's compensation benefits in which he stated falsely that he was unemployed during the periods for which he applied for such benefits, when in fact he was not.

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

COUNT TWO

2. From at least in or about December 2008, up to and including at least in or about May 2014, in the Southern District of New York and elsewhere, RONALD JAMES WERNER, 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, WERNER 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 an "occupational disease" that develops over time.

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 his federal salary during the period of his disability whereas an employee with dependants is entitled to 75 percent. An employee is totally disabled if, following his injury, he has no capacity to earn wages or work in any position. FECA benefits also provide for the coverage of an employee's medical bills during his or her period of disability. 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 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.

e. A claimant who has filed a Form CA-1 and then suffers a recurrence of the disability may file a "Federal Employee's Notice of Recurrence of Disability and Claim for Continuation Pay/Compensation (a "Form CA-2a") to request the continuation or resumption of benefits that would otherwise be discontinued. The Form CA-2a, like 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. Like the Form CA-1, the Form CA-2a also contains a certification and warning that any person who engages in any fraud to obtain benefits or improperly accepts benefits "may, under appropriate criminal provisions, be punished by a fine or imprisonment, or both."

f. A claimant who has been receiving FECA benefits for a sustained period of time and who 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 month. To remain on the periodic roll, the claimant must complete, sign and file an annual questionnaire known as Form CA-1032.

g. 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 "a family business" and any "part-time or intermittent" activities. The form requires the claimant to disclose his or her rate of pay for any such employment activities, including "the value of such things as housing, meals, clothing, and reimbursed expenses."

h. 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 FAILURE TO REPORT ALL WORK ACTIVITIES THOROUGHLY AND COMPLETELY."

i. Part B of Form CA-1032 requires the claimant to state whether, during the prior fifteen months, he or she has "perform[ed] any volunteer work including volunteer work for which ANY FORM of monetary or in-kind compensation was received."

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.

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

The Defendant

5. RONALD JAMES WERNER, the defendant, resides in Colts Neck, New Jersey and currently receives FECA benefits. On his most recent Form CA-1032, WERNER's claim for benefits included no dependents.

WERNER Files for FECA Benefits

6. I have reviewed documents maintained by the U.S. Navy and OWCP regarding RONALD JAMES WERNER, the defendant. From these documents I know that:

a. Prior to October 4, 2005, WERNER had been employed as a civilian firefighter at the U.S. Navy Weapons Station Earle in Colts Neck, New Jersey.

b. On or about October 4, 2005, WERNER completed, signed, and filed with OWCP in Manhattan a Form CA-1. On that document, WERNER stated that on September 22, 2005, he sustained a work-related traumatic injury when he slipped and fell on a hose in his fire department, which resulted in a twisting of his knee. Shortly after that time, WERNER began receiving FECA benefits due to his injury.

c. On or about March 22, 2006, WERNER was allowed to return to work to perform "sedentary work only." However, on or about June 8, 2007, WERNER filed with OWCP in Manhattan a Form CA-2a based on continued pain and deterioration in his right knee. On or about March 19, 2008, WERNER's Form CA-2a was accepted by the OWCP following a decision in WERNER's favor by the Hearings and Review Examiner. Since June 2007, WERNER has not reported to work with the U.S. Navy.

d. In or about 2008, WERNER was placed on the periodic roll. Since that time, he has received regular FECA benefit checks ranging as high as \$4531.64 per month. While on the periodic roll between on or about April 13, 2008 until approximately on or about March 8, 2014, WERNER has received FECA compensation totaling approximately \$340,812.

e. Since being placed on the periodic roll in or about November 17, 2008 WERNER has completed, signed and filed with the OWCP in Manhattan at least five Form CA-1032s. These Forms are dated, respectively: December 30, 2008; January 6, 2010; January 19, 2011; January 17, 2012; and January 14, 2013. On the January 14, 2013 Form CA-1032 WERNER stated, among other things, that he had not worked for any employer during the past fifteen months, and that he had not been "self-employed or involved in any business enterprise" in the past fifteen months. WERNER further reported not earning any income from either employment or any other "business enterprise" during this time period. WERNER also provided a home address (the "Home Address") and a cell phone number on this form (the "Cell Number").

WERNER's Medical Condition

7. I have reviewed a January 23, 2012 Form OWCP-5 for RONALD JAMES WERNER, the defendant, by his primary care physician. The report states that WERNER is unable to perform his usual job or another type of work even with restrictions. The report further states that there is no anticipation of "an increase in the number of hours" that WERNER will be able to work, and that the restrictions will continue to apply for an "unknown" length of time.

8. I have also reviewed a May 2, 2013 Form OWCP-5 for RONALD JAMES WERNER, the defendant, prepared by a second doctor. The report states that WERNER is "permanently unable to work" due to a "[t]otal knee replacement." The report states that WERNER had reached his "maximum medical improvement" and

that he would be unable to, among other activities, sit, walk, stand, reach, twist, bend or operate a motor vehicle to work.

WERNER Works for "Werner's Home Improvements"

9. I have reviewed publically available material on the internet relating to home improvement and construction businesses. According to its company profile, "Werner's Home Improvements" is a private company classified under "roofing, siding and sheet metal work," which earns approximately \$110,000 annually. The company is owned by a relative of RONALD JAMES WERNER, the defendant, (the "Owner") and is located at the Home Address.

10. Between May and October 2013, other law enforcement agents and I have conducted surveillance of RONALD JAMES WERNER, the defendant, at various locations. On a number of occasions, video footage of WERNER at such locations was recorded during the surveillance. From my own surveillance, review of video footage, and from speaking with the other law enforcement agents, I have learned the following:

a. On or about May 29, 2013, law enforcement agents observed WERNER and a truck bearing a prominent display of "Werner's Home Improvements" (the "Truck") at a residential location in Middletown, New Jersey ("Worksite-1"). On or about June 20, 2013, law enforcement agents again observed the Truck at Worksite-1 as well as a sign advertising "Werner's Home Improvements" services on the property. The agents observed that active work was being done on the home at Worksite-1 by "Werner's Home Improvements."

b. On or about July 24, 2013, law enforcement agents followed WERNER from his home in Colts Neck, New Jersey to Builders General Store, a remodeling business in Little Silver, New Jersey. WERNER was observed walking without any apparent discomfort into the store. On July 26, 2013, a law enforcement agent visited Builders General Store and asked a sales person there to recommend a contractor. One of the contractors recommended by the sales person was WERNER. The sales person provided WERNER's name and the Cell Number, and stated that WERNER was highly recommended, that he had known WERNER for years, and that WERNER was experienced and reliable.

c. On or about August 13, 2013, at approximately 3:30 p.m., WERNER was observed driving a white pickup truck and arriving at Worksite-1. At Worksite-1, WERNER was observed walking without difficulty and loading a small aluminum step ladder from the location into the truck.

d. On or about August 16, 2013, law enforcement agents observed WERNER going to a Lowes Store in Holmdel, New Jersey ("Lowes"). Lowes is a hardware store that sells, among other things, building and construction materials. Inside Lowes, WERNER was observed gathering and purchasing building material including numerous 2x4's.

e. On or about August 19, 2013, law enforcement agents observed the Truck in the driveway of a residential location in Port Monmouth, New Jersey, (the "Parking Site"). The Truck had been observed parking in the Parking Site on many prior occasions for extended periods of time. At approximately 6:47 a.m. an individual ("Employee-1") drove the Truck out of the Parking Site to a residential location in Red Bank, New Jersey to pick up another individual, and then drove to a residential location in Upper Freehold, New Jersey ("Worksite-2"). The agents observed active construction underway at Worksite-2. Later that morning, the agents observed another individual arrive at Worksite-2, who the agents had also seen during prior observations at Worksite-1. At 9:47 a.m. that morning, WERNER arrived at Worksite-2 in a pickup truck containing building materials. All of the assembled individuals then unloaded the building materials from the truck while engaged in conversation with WERNER.

f. On or about August 20, 2013, law enforcement agents observed WERNER again headed toward Worksite-2 with a truck loaded with building materials. After arriving at Worksite-2, WERNER backed the truck up to the work area and WERNER and others unloaded the building materials. Then WERNER and the others loaded the truck up again with different building materials and WERNER departed Worksite-2. Photos of WERNER engaged in this activity at Worksite-2 are attached hereto as Exhibit-A.

g. On or about August 29, 2013, law enforcement agents observed WERNER picking up pieces of wood and placing them in a truck at Worksite-1. WERNER was also observed at Worksite-1 climbing stairs onto the property's deck and passing materials to construction workers from the ground. WERNER was then observed leaving Worksite-1 and traveling to Worksite-2. At Worksite-2, WERNER was observed removing materials from the

back of a truck and passing them through windows to the interior of the house.

h. On or about September 12, 2013, law enforcement agents observed the Truck departing from the Parking Site in the morning, being driven by Employee-1. After Employee-1 arrived at a residential location in Middletown, New Jersey ("Worksite-3"), he was joined by WERNER and another individual. At Worksite-3, WERNER was then observed assisting another individual in loading a refrigerator into the back of a white pickup truck. WERNER then left Worksite-3 and traveled to a recycling center in Red Bank, New Jersey. At the recycling center, WERNER was observed unloading various appliances from the white pickup truck onto the premises. After WERNER left, the law enforcement agents were informed by a cashier at the recycling center that WERNER was a contractor who had been in business for 30 years, and had been doing business with the recycling center for years.

i. On or about September 24, 2013, a law enforcement agent observed Employee-1 in the Truck departing the Parking Site in the morning and heading to Worksite-1. At Worksite-1, WERNER and Employee-1 were observed alongside a construction trailer belonging to "Werner's Home Improvements." Later that day, at approximately 1:00 p.m., WERNER was observed carrying a large bag of trash on the site and dumping it into the trailer.

j. On or about October 2, 2013, a law enforcement agent observed WERNER at Lowes loading building materials that he had purchased into a truck. A photo of WERNER engaged in this activity at Lowes is attached hereto as Exhibit-B.

11. As part of my investigation, I have also reviewed video footage from three different Lowes stores provided to me by the Lowes stores on or around December 6, 2013. The footage covers various dates at the Holmdel, New Jersey location; October 17 and 26, 2013 at the Hamilton, New Jersey location; and various dates at the Brick, New Jersey location. This footage depicts RONALD JAMES WERNER, the defendant, purchasing building materials at the Lowes Stores. I have also obtained receipts of purchase from these three Lowes stores for purchases made by WERNER from July 21 to October 17, 2013 at the Holmdel location, and from August 14 to August 28 and from October 16 to October 17, 2013 at the Hamilton location. These receipts also evidence numerous purchases of building material by WERNER. I have also reviewed information from WERNER's Lowes credit card.

From this information, I have learned that that WERNER made purchases from the Lowes stores totaling approximately \$180,776.56 in total between 2010 and 2013.

12. On or about February 27, 2013, RONALD JAMES WERNER, the defendant, was contacted by OWCP to inquire about an indication that OWCP had received that WERNER was involved in a business enterprise whereas WERNER's Form CA-1032 from January 14, 2013, stated that he was not. No response was received from WERNER.

WERNER Derives Income from the Rental of Real Properties

13. I have reviewed public records concerning the ownership and transfer of real property. These records show that as of February 5, 2013, RONALD JAMES WERNER, the defendant, owned or co-owned with the Owner thirteen different real properties, not including the Home Address. I have also reviewed publically available property listings at the Middletown Township Tax Office in Middletown, New Jersey. These records show that as of February 12, 2013, WERNER owned or co-owned with the Owner eight of the properties identified in the records.

14. On or about May 2, 2014, other agents and I went to speak with the individuals who were living in certain of these properties. From those interviews, I learned the following:

a. An individual ("Renter-1") living at a residential property in Middletown, New Jersey, pays rent of \$1250 per month to RONALD JAMES WERNER, the defendant. Renter-1 has been renting his or her residence from WERNER for approximately one year.

b. An individual ("Renter-2") living at a different residential property in Middletown, New Jersey, pays a monthly rent to the Owner. Renter-2 has been renting his or her residence from the Owner for approximately six years, and whenever Renter-2 needs repair and construction, WERNER comes over to do it.

c. An individual ("Renter-3") living at a different residential property in Middletown, New Jersey, pays rent of \$1500 per month to WERNER. Renter-3 has been renting his or her residence from WERNER for approximately three years.

15. While other agents and I were interviewing Renter-1, Renter-2, and Renter-3, I was informed by a relative

of RONALD JAMES WERNER, the defendant, that WERNER also owned another property nearby at a different residential address in Middletown, New Jersey. From speaking with the individual ("Renter-4") living at this address, I learned that Renter-4 pays rent of \$975 per month to WERNER. Renter-4 has been renting his or her place of living from WERNER for approximately seven years.

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

pnozka

PETER NOZKA
Special Agent
United States Department of Labor
Office of the Inspector General

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

JCF

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

Exhibit-A

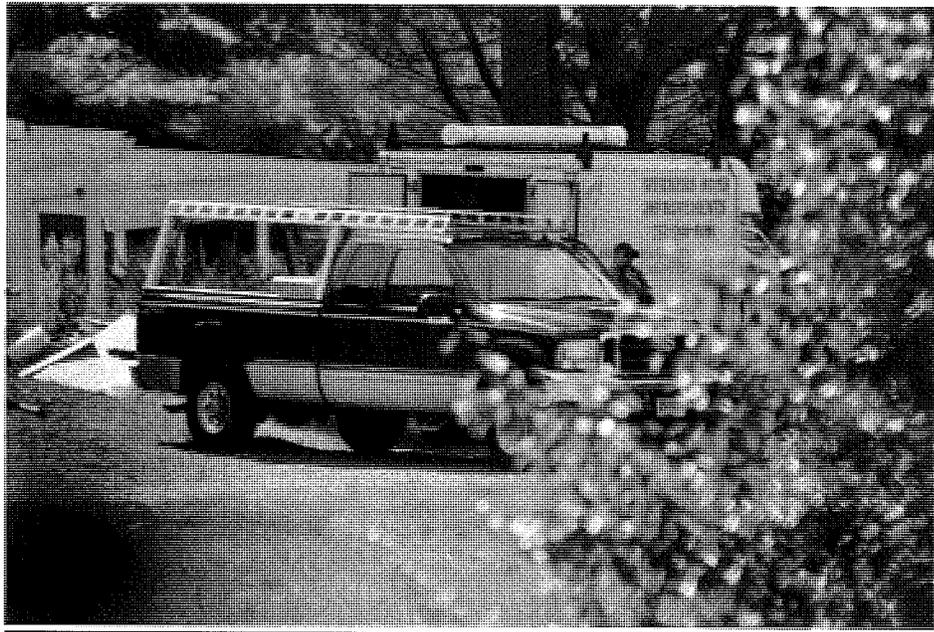


Exhibit-B

