

United States Court of Appeals
For the Eighth Circuit

No. 17-1826

United States of America
Plaintiff - Appellee

v.

Patrick Jon Evers
Defendant - Appellant

Appeal from United States District Court for the
District of Minnesota - St. Paul

Submitted: March 16, 2018
Filed: April 25, 2018
[Unpublished]

Before GRUENDER, MURPHY, and KELLY, Circuit
Judges.

PER CURIAM.

Appellant Patrick Evers was an employee of the United States Postal Service (Postal Service) who began receiving workers compensation benefits after a back injury in 2010. The Postal Service eventually became suspicious of Evers' workers compensation

eligibility, and the Postal Service Office of Inspector General (OIG) initiated an investigation. An OIG investigator posed as a Postal Service vocationalrehabilitation counselor and interviewed Evers with the stated purpose of determining whether he could ever return to work or be eligible for vocational rehabilitation. During this taped "ruse interview," Evers made a number of statements describing his weightlifting habits. During a subsequent seven hour interview by OIG investigators, Evers admitted that he had not told the truth about his weightlifting routine during the ruse interview.

A jury convicted Evers of one felony count of making false statements to obtain federal employees compensation, 18 U.S.C. § 1920. The district court¹ rejected Evers' challenge to the sufficiency of the evidence and denied his motion to suppress the confession he made to OIG investigators. Evers appeals.

First, Evers argues that there was insufficient evidence to support his conviction because his false statements were not "material," and even if they had been, they had not caused a loss of more than \$1,000. We review sufficiency of the evidence *de novo*, viewing the evidence "in the light most favorable to the government . . . [,] accepting all reasonable inferences drawn from the evidence that support the jury's verdict." United States v. Johnson, 519 F.3d 816, 821 (8th Cir. 2008) (citation omitted).

¹ The Honorable Michael J. Davis, United States District Judge for the District of Minnesota.

The elements of the felony crime of making false statements to obtain federal workers compensation are: (1) knowingly and willfully making a false statement of fact or concealing or covering up a fact; (2) that is material; (3) made in connection with an application for or receipt of workers compensation benefits; (4) in excess of \$1,000. § 1920. "[I]f the amount of the benefits falsely obtained does not exceed \$1,000," the crime is a misdemeanor. Id. A false statement is material if, "viewed alone," it has "a natural tendency to influence, or [be] capable of influencing, the decision of the decisionmaking body to which it was addressed." United States v. Whitaker, 848 F.2d 914, 916 (8th Cir. 1988) (first quotation); United States v. Gaudin, 515 U.S. 506, 509 (1995) (citation omitted) (second quotation). "Materiality does not require proof that the government actually relied on the statement." United States v. Baker, 200 F.3d 558, 561 (8th Cir. 2000). "A false statement can be material even if the agent to whom it is made knows that it is false." Whitaker, 848 F.2d at 916.

We conclude a reasonable jury could have found Evers' false statements to be material. The OIG investigator who conducted the ruse interview testified that if Evers had been honest during the interview, she would have taken steps to help him get back to work which would have led to a curtailment of his workers compensation benefits. See, e.g., United States v. Slaton, 801 F.3d 1308, 1315 (11th Cir. 2015) (upholding a jury verdict based on false statements made to an OIG investigator during a ruse interview). Additionally, the Department of Labor (DOL) claims examiner assigned to the Evers case testified that the extent of Evers' weightlifting would have been relevant to the determination of whether he was

eligible for workers compensation. See, e.g., United States v. Waldren, 431 F. App'x 374, 376-77 (6th Cir. 2011) (concluding there was evidence of materiality when a DOL claims examiner testified that the applicant's activities would have been relevant because they indicated he had skills applicable to other jobs). The evidence was sufficient to support the jury verdict as to materiality.

There was also sufficient evidence that Evers' false statements caused a loss greater than \$1,000. After the ruse interview, Evers received tens of thousands of dollars in workers compensation benefits. We conclude the jury could have reasonably concluded that if Evers had not lied during the ruse interview, he could have returned to work in some capacity and would not have continued to receive benefits well in excess of \$1,000.

Second, Evers argues the district court erred by denying his motion to suppress his confession, which he argues was involuntary. "Where a court denies a motion to suppress statements, we review its factfinding under a clearly erroneous standard ... [and] the court's application of law to those facts *de novo*." United States v. Jones, 275 F.3d 673, 678 (8th Cir. 2001). "We will affirm the district court's denial of a motion to suppress evidence unless it is unsupported by substantial evidence, based on an erroneous interpretation of applicable law, or, based on the entire record, it is clear that a mistake was made." Id. at 678-79.

Involuntary statements are inadmissible at trial for any purpose. Michigan v. Harvey, 494 U.S. 344, 351 (1990). A statement is voluntary if it is "the

product of an essentially free and unconstrained choice by its maker." Schneckloth v. Bustamonte, 412 U.S. 218, 225 (1973) (citation omitted). In a non-custodial interview, a statement is involuntary when, based on the totality of the circumstances, "it was extracted by threats, violence, or express or implied promises sufficient to overbear the defendant's will and critically impair his capacity for self- determination." United States v. LeBrun, 363 F.3d 715, 724 (8th Cir. 2004) (en banc) (citation omitted). To determine whether a statement was involuntary, "[t]he court must look at the 'conduct of the officers and the characteristics of the accused.'" Id. (citation omitted). The government must prove by a preponderance of the evidence that a challenged statement was voluntary. Id.

The district court did not clearly err in concluding that Evers' confession was voluntary. It was not clear error to conclude Evers was not particularly susceptible to having his will overborne—he is 53 years old, a high school graduate, literate and understands English, and has no issues with mental faculties. Nor was it clear error to conclude the investigators' activities were not coercive or overreaching. Although the interview took many hours, Evers drove himself to it and received and initialed a Garrity warning. See Simmons v. Bowersox, 235 F.3d 1124, 1133 (8th Cir. 2001) ("Questioning a suspect for six or seven hours is not unconstitutionally coercive *per se*."). By his own account, Evers felt free to leave the conference room but remained for "damage control." Investigators never displayed weapons or handcuffs and did not block the door. Instead, they told Evers he could leave at any time and would not be arrested at the end of the

interview. Evers was offered food, water, and breaks. He described the tone of the interview as "cordial." Thus it was not clear error to deny his motion to suppress his confession.

We affirm.

**United States District Court
District of Minnesota**

UNITED STATES OF AMERICA

v.

Patrick Jon Evers

JUDGMENT IN A CRIMINAL CASE
Case Number: 15-cr-114 (1) (MJD/TNL)
USM Number: 18530-041

Frederick Goetz
Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s):
- pleaded *nolo contendere* to counts(s) which was accepted by the court.
- was found guilty to count 2s of the Superseding Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18:1920	FALSE STATEMENT TO OBTAIN FEDERAL EMPLOYEES' COMPENSATION	9/10/14	2s

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence

is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on counts 1s and 3s of the Superseding Indictment.
 Count(s) (is)(are) dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of any material change in economic circumstances.

April 4, 2017
Date of Imposition of Judgment

s/Michael J. Davis
Signature of Judge

MICHAEL J. DAVIS,
Senior United States
District Judge
Name & Title of Judge

April 5, 2017
Date

PROBATION

You are hereby sentenced to probation for a term of:
3 years.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (*check if applicable*) Based on the defendant's opioid use for back pain, the U.S. Probation Office shall watch this closely and request drug testing if the defendant shows signs of addiction or over use.

4. You must cooperate in the collection of DNA as directed by the probation officer. (*check if applicable*)
5. You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside,

work, are a student, or were convicted of a qualifying offense. (*check if applicable*)

6. You must participate in an approved program for domestic violence. (*check if applicable*)
7. You must make restitution in accordance with 18 U.S.C. §§ 2248, 2259, 2264, 2327, 3663, 3663A, and 3664. (*check if applicable*)
8. You must pay the assessment imposed in accordance with 18 U.S.C. § 3013.
9. If this judgment imposes a fine, you must pay in accordance with the Schedule of Payments sheet of this judgment.
10. You must notify the court of any material change in your economic circumstances that might affect your ability to pay restitution, fines, or special assessments.

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

STANDARD CONDITIONS OF PROBATION

As part of your probation, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of the

time you were sentenced, unless the probation officer instructs you to report to a different probation office or within a different time frame.

2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so.

If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an

organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.

13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at www.uscourts.gov.

Defendant's Signature_____ Date

Probation Officer's Signature_____ Date

ADDITIONAL PROBATION TERMS

1. If not employed at a regular lawful occupation, as deemed appropriate by the probation officer, the defendant may be required to perform up to 20 hours of community service per week until employed. The defendant may also participate in training, counseling, daily job search, or other employment-related activities, as directed by the probation officer.
2. The defendant shall provide the probation officer access to any requested financial

information, including credit reports, credit card bills, bank statements, and telephone bills.

3. The defendant shall be prohibited from incurring new credit charges or opening additional lines of credit without approval of the probation officer.
4. The Defendant shall perform 300 hours of community service during the 3 year probation period. This condition is equal to 100 hours of community service for each year of probation. The Defendant shall work with the U.S. Probation Office to find speaking engagement opportunities for the Defendant to share his story with the youth in the community.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
Totals: \$100.00		\$12,000	\$51,181.64

The determination of restitution is deferred until. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment,

each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C.

§3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name and Address of Payee</u>	<u>**Total Loss</u>	<u>Restitution Ordered</u>	<u>Priority Percentage</u>
US Department of Labor – OWCP PO Box 37117 Attention: PCC Washington, DC. 20013-0711		\$51,184.64	
<u>TOTALS:</u>	<u>\$0.00</u>	<u>\$51,181.64.</u>	<u>0.00%</u>

Restitution amount ordered pursuant to plea agreement \$.

The defendant must pay interest on the restitution and the fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. §3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. §3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:
 the interest requirement is waived for the fine restitution.

the interest requirement for the: fine restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015,
Pub. L. No. 114-22.

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994 but before April 23, 1996.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A Lump sum payment of \$ 63,281.64 is due immediately.
 - not later than , or
 - in accordance C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below);
- C or Payment in equal (e.g., weekly, monthly, quarterly) installments of \$ over a period of (e.g. months or years), to commence (e.g. 30 or 60 days) after the date of this judgment; or
- D Payment in equal (e.g., weekly, monthly, quarterly) installments of \$ over a period of (e.g. months or years), to commence (e.g. 30 or 60 days) after the release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within (e.g. 30 or 60 days) after release from imprisonment. The court will set

the payment plan based on an assessment of the defendant's ability to pay at the time; or.

F Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are to be made to the clerk of court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several
Defendant and Co-Defendant Names and Case
Numbers (including defendant number), Total
Amount, Joint and Several Amount, and
corresponding payee, if appropriate:

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court
cost(s):

The defendant shall forfeit the defendant's
interest in the following property to the United
States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including costs of prosecution and court costs.

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

MEMORANDUM OF LAW & ORDER

Criminal File No. 15-114 (MJD/TNL)

(1) PATRICK JON EVERSON,

Defendant.

LeeAnn K. Bell and Kevin S. Ueland, Assistant
United States Attorneys, Counsel for Plaintiff.

Frederick J. Goetz, Goetz & Eckland PA, Counsel for
Defendant.

I. INTRODUCTION

This matter is before the Court on Defendant's Motion for Judgment of Acquittal or, in the Alternative, New Trial as to Count 2. [Docket No. 102] Because the Court concludes that the evidence is sufficient for a reasonable jury to find Defendant guilty of Count 2 beyond a reasonable doubt and because no miscarriage of justice has occurred, Defendant's motion is denied.

II. BACKGROUND

The Superseding Indictment charged Defendant Patrick Jon Evers with Count 1: False Statement to Obtain Federal Employees' Compensation, in violation of 18 U.S.C. § 1920; Count

2: False Statement to Obtain Federal Employees' Compensation, in violation of 18 U.S.C. § 1920; and Count 3, False Statements Relating to Health Care Matters, in violation of 18 U.S.C. § 1035. [Docket No. 51] Count 1 alleged that Defendant made a false statement on May 30, 2014, in a certified Claim Compensation form claiming compensation for leave without pay for the time period from May 19, 2014, through May 30, 2014. Count 2 alleged that Defendant made a variety of false statements during a September 10, 2014, ruse interview. Count 3 alleged that, from on or about August 22, 2013, through on or about November 14, 2014, Defendant made false statements during treatment regarding his pain and physical capabilities.

On March 21, 2016, the jury acquitted Defendant on Counts 1 and 3 and convicted Defendant on Count 2. He now moves for a judgment of acquittal or, in the alternative, for a new trial on Count 2.

III. DISCUSSION

A. Standard for Motion for a New Trial

Under Rule 33 of the Federal Rules of Criminal Procedure, the Court may vacate any judgment and grant a new trial if the interest of justice so requires.

The decision to grant or deny a motion for a new trial based upon the weight of the evidence is within the sound discretion of the trial court. While the district court's discretion is quite broad—it can weigh the evidence, disbelieve witnesses, and grant a new trial even where there is substantial evidence to sustain the verdict, there are

limits to it. Unless the district court ultimately determines that a miscarriage of justice will occur, the jury's verdict must be allowed to stand.

United States v. Campos, 306 F.3d 577, 579 (8th Cir. 2002) (citations omitted).

[M]otions for new trials based on the weight of the evidence generally are disfavored, and the district court's authority to grant a new trial should be exercised sparingly and with caution. The jury's verdict must be allowed to stand unless the evidence weighs heavily enough against the verdict [such] that a miscarriage of justice may have occurred.

United States v. Johnson, 474 F.3d 1044, 1050-51 (8th Cir. 2007) (citations omitted).

B. Standard for Judgment of Acquittal

Under Federal Rule of Criminal Procedure 29(a), "the court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction." In deciding on the motion, the Court does "not weigh the evidence or assess the credibility of witnesses; that is the province of the jury." United States v. White, 794 F.3d 913, 918 (8th Cir. 2015). The Court views the evidence and all reasonable inferences from it in the light most favorable to the verdict. Id. "Drawing all reasonable inferences in favor of the verdict, there must be an interpretation of the evidence that would allow a reasonable minded jury to find the defendant[] guilty beyond a reasonable doubt." Id. (citation omitted). "This strict standard permits overturning a

jury's guilty verdict only if no reasonable jury could find the defendant guilty beyond a reasonable doubt." Id.

C. Count 2

As to Count 2, the Superseding Indictment alleges:

On or about September 10, 2014, in the State and District of Minnesota, the defendant, Patrick Jon Evers, did knowingly and willfully falsify, conceal and cover up a material fact and did knowingly and willfully make and use a false statement and report knowing the same to contain a false, fictitious and fraudulent statement in connection with the application for and receipt of compensation and payment under the Federal Employees' Compensation Act. Specifically, during an interview relating to the application and receipt of compensation and payment under the Federal Employees' Compensation Act, the defendant represented, among other things, that he was unable to lift more than twenty-one to thirty pounds repetitively, represented that he did not use any free weights while exercising, represented that in conducting bench press exercises he had someone else put weights on the weight bar for him, represented that he could lift up to approximately ninety- five to one hundred pounds when conducting bench press exercises, represented that he could perform triceps pushdown exercises if he did so while standing up against a wall with his back supported, represented that his overall life style included almost no activity, and represented that he had

significant difficulty bending over to the floor when, in fact, the defendant knew these representations were false, all in violation of Title 18, United States Code, Section 1920.

The elements of a violation of 18 U.S.C. § 1920 are:

One, that the defendant knowingly and willfully made a false statement of fact, or made a false statement that concealed or covered up a fact;

Two, that the fact was material;

Three, that the defendant did so in connection with the application for or receipt of compensation or other benefit or payment under Title 5, United States Code, Section 8101 *et seq.*; and,

Four, that the amount of compensation, benefit, or payment falsely obtained exceeded \$1,000.00.

([Docket No. 94] Final Jury Instruction No. 9.) “A ‘material fact’ is a fact that would naturally influence or is capable of influencing a decision concerning the application for or receipt of federal worker’s compensation benefits. Whether a statement is ‘material’ does not depend on whether anyone was actually deceived or misled.” (*Id.*)

D. Materiality

Defendant argues that, even if the jury found that all of the statements alleged in Count 2 were false, there was insufficient evidence for the jury to

find beyond a reasonable doubt that any of the statements were material.

1. Materiality Standard

“The materiality inquiry focuses on whether the false statement had a natural tendency to influence or was capable of influencing the government agency or official. Materiality does not require proof that the government actually relied on the statement.” United States v. Baker, 200 F.3d 558, 561 (8th Cir. 2000) (citing United States v. Gaudin, 515 U.S. 506, 509 (1995); United States v. Hicks, 619 F.2d 752, 754-55 (8th Cir. 1980)). “Deciding whether a statement is ‘material’ requires the determination of at least two subsidiary questions of purely historical fact: (a) ‘what statement was made?’ and (b) ‘what decision was the agency trying to make?’” United States v. Gaudin, 515 U.S. 506, 512 (1995).

[M]ateriality involves only the capability of influencing an agency’s governmental functions, i.e., does the statement have a natural tendency to influence or is it capable of influencing agency decision? The issue is whether the statements, viewed alone, were capable of influencing the function of the [agency]. It is irrelevant what the agent who heard the statement knew at the time the statement was made. A false statement can be material even if the agent to whom it is made knows that it is false.

United States v. Whitaker, 848 F.2d 914, 916 (8th Cir. 1988) (citations omitted).

2. Discussion

The trial produced compelling evidence that Defendant made false statements during the September 10, 2014 ruse interview, as charged in Count 2. First, Defendant, himself, testified that he lied during the ruse interview. Second, the jury was able to compare the statements made by Defendant regarding his physical limitations with the undercover surveillance footage taken of his exercise routine at L.A. Fitness on May 20, 2014, and June 24, 2014. Thus, it is beyond dispute that a reasonable jury could conclude that Defendant made false statements during the ruse interview.

Furthermore, there was ample evidence for a reasonable jury to find beyond a reasonable doubt that Defendant's false statements were material; that is, that Defendant's false statements about his physical capabilities were capable of influencing a decision about whether he was entitled to compensation or whether he could return to work with or without restrictions. See, e.g., United States v. Anderson-Bagshaw, 509 F. App'x 396, 415 (6th Cir. 2012) ("The test for materiality does not demand that [the defendant's] benefits would have been discontinued or reduced absent any given misstatement. Instead, the question is whether [the defendant's] false statements were capable of influencing the decision maker to which she made them.").

Here, Heather Ziegler, a Senior Claims Examiner with Department of Labor Office of Workers' Compensation Programs ("DOL-OWCP"), testified that knowing the extent of Defendant's physical abilities, as depicted in the May 20, 2014,

surveillance video would have been relevant to the DOL-OWCP's decision regarding whether he was entitled to receive FECA benefits. See United States v. Waldren, 431 F. App'x 374, 376-77 (6th Cir. 2011). She further testified that information revealed in the surveillance video regarding Defendant's physical abilities could potentially have caused the DOL-OWCP claims examiner to request an updated opinion from Defendant's treating physician and to seek a second opinion regarding Defendant's eligibility from another doctor. See United States v. Moore, 29 F. App'x 222, 225 (6th Cir. 2002). Zeigler also testified that the DOL-OWCP relies on medical evidence supplied by doctors in determining benefits decisions and assumes that those doctors have full information.

In this case, Dr. Matthew Monsein testified that, upon viewing the depictions of Defendant's physical abilities in the surveillance videos, his reaction was that he would have liked to talk to Defendant about why he was able to do the physical activities depicted in the videos, that the exercises that Defendant did in the videos could have impacted Monsein's course of treatment of Defendant, that what he viewed in the video was potentially inconsistent with what Monsein knew, that what Monsein viewed in the videos would potentially impact the work restrictions that he had determined applied to Defendant, and that he would have wanted to have known about Defendant's gym activity so that Monsein could make a fair assessment as to whether Defendant would be able to return to work. He testified that Defendant's abilities with regard to individual exercises, as well as Defendant's overall pain level and activity depicted in the video, could have impacted his decision. Monsein further testified

that not every video of Defendant's activities would have been relevant; for instance, a video of Defendant sitting in a chair for ten minutes would not have been information that he wanted to follow up on. Overall, Monsein's testimony supports a finding that Defendant's misrepresentations during the ruse interview, which contradicted the activities depicted in the surveillance videos, were material to Monsein's opinion regarding Defendant's ability to work. In turn, Monsein's opinion was relied upon by DOL-OWCP.

Additionally, all of the doctors who testified at trial admitted that, in crafting Defendant's work restrictions, they relied substantially on Defendant's subjective statements about his pain and his representations of his physical capabilities. Furthermore, a finding of materiality is supported by Defendant's testimony that, at the time he participated in the ruse interview, he believed that the interview was going to focus on his physical abilities and that the purpose of the interview was to determine his physical capabilities and whether he could return to work. With that belief in mind, Defendant admitted that he intentionally lied about his physical abilities during the ruse interview. A reasonable inference from Defendant's testimony is that he believed his lies were material to the DOL-OWCP's decision to continue his benefits or require him to return to work. Additionally, Special Agent Rebecca Wayerski testified that, during the January 22, 2015 interview, Defendant told her that he was not honest with the ruse interviewer regarding his weightlifting abilities because he was afraid that, if he was honest, his work restrictions would be changed.

Furthermore, Wayerski testified that, if

Defendant had given truthful answers during the ruse interview, rather than misrepresentations about his physical abilities and activity level, the investigators could have worked with the USPS to find employment for Defendant, rather than seeking criminal prosecution.

Overall, the Court concludes that there is substantial evidence upon which a reasonable jury could find, beyond a reasonable doubt, that Defendant's statements as alleged in Count 2 were false and material and that Defendant was guilty beyond a reasonable doubt. Additionally, the Court concludes that the jury's well-supported verdict must be allowed to stand and no miscarriage of justice will occur by denying the motion for a new trial.

E. Amount of Benefits Received

Defendant argues that there was no evidence that he received any federal workers' compensation benefits as a result of the false statements that he made during the ruse interview on September 10, 2014. He asserts that the benefits he received were issued as a result of his submissions of the CA-7 forms and his statements to his doctors; however, the jury acquitted him of the Counts related to his statements in a CA-7 form and his statements to his doctors. Thus, the Court should reduce Count 2 from a felony to a misdemeanor.

1. Standard for Amount of Benefits Received

Title 18 U.S.C. § 1920 provides for a maximum term of imprisonment of not more than five years, "but if the amount of the benefits falsely obtained

does not exceed \$1,000, such person shall be punished by a fine under this title, or by imprisonment for not more than one year, or both."

The Jury Instructions instructed the jury that Count 2 had four elements:

One, that the defendant knowingly and willfully made a false statement of fact, or made a false statement that concealed or covered up a fact;

Two, that the fact was material;

Three, that the defendant did so in connection with the application for or receipt of compensation or other benefit or payment under Title 5, United States Code, Section 8101 *et seq.*; and,

Four, that the amount of compensation, benefit, or payment falsely obtained exceeded \$1,000.00.

(Jury Instruction No. 9.)

Section 1920 establishes two levels of sentencing depending on the amount of benefits that a defendant "falsely obtained." Absent a finding that a defendant received more than \$1000 in falsely obtained benefits, the maximum sentence for a § 1920 offense is one year of imprisonment. If a defendant is found to have received more than \$1000 in falsely obtained benefits, the statutory maximum increases to five years' imprisonment. Because a finding that the amount of falsely obtained benefits exceeds

\$1000 increases the maximum punishment to which a defendant is exposed, it, for a felony offense that must be submitted to the jury and proven beyond a reasonable doubt.

United States v. Catone, 769 F.3d 866, 873-74 (4th Cir. 2014) (citation omitted). “[T]he plain meaning of the statute requires that the jury find [] a causal link [between the false statement and his receipt of more than \$1,000 in workers’ compensation benefits] for a defendant to be subject to the statute’s enhanced penalty regime.” United States v. Hurn, 368 F.3d 1359, 1362 (11th Cir. 2004).

The jury was instructed:

In determining whether the amount of benefits alleged to have falsely been obtained exceeds \$1,000, the amount is calculated based on the difference between the amount of benefits the defendant actually received and the amount he would have received had he not made the alleged false material statement.

(Jury Instruction No. 9.) The Eighth Circuit has indicated that an even lower standard might apply: “[T]he plain terms of [18 U.S.C. § 1920] pertain to ‘the amount of the benefits obtained,’ not the amount of benefits obtained minus the amount that would have been obtained if no false statement had been made.” United States v. Henry, 164 F.3d 1304, 1310 (10th Cir. 1999), quoted with approval in United States v. Banks, 123 F. App’x 246, 248 (8th Cir. 2005). Here, the Government met its burden even under the more stringent standard set forth in the Jury Instructions and applied by the jury.

2. Discussion

Defendant lied about his workouts and physical abilities during the ruse interview in order to avoid having work restrictions changed and being required to return to a modified job and forego benefits.

Defendant believed that the lies were capable of influencing the DOL-OWCP's decision about his continued receipt of workers' compensation benefits. As noted previously, there was ample evidence that his misstatements were, in fact, material; that is, his false statements were capable of influencing the DOL-OWCP's benefits decision. By lying, Defendant delayed admitting, as he later did to Wayerski during the January 2015 interview, that he could, in fact, probably return to work.

On September 19, 2014, nine days after the ruse interview, Defendant filed a CA-7 form claiming compensation for the time period between September 8 and September 19, 2014. (Govt. Ex. 43.) Nancy Schmitz, United States Postal Service ("USPS") health and resource management specialist, testified that Defendant received at least \$1,500 in compensation benefits for the September 8- 19, 2014 time period. Defendant continued to submit CA-7 forms and receive compensation throughout 2014 after the ruse interview. In 2015, he received an additional \$39,681.64 in compensation and \$2,156.20 in medical benefits. (See Govt. Ex. 9.) The jury was correctly instructed that it was required to find, beyond a reasonable doubt, that the amount of compensation, benefit, or payment falsely obtained exceeded \$1,000. Here, the evidence supports a reasonable jury's finding that if Defendant had not lied during the ruse interview, and had told the truth regarding his physical capabilities, he could have

returned to work in some capacity and would not have continued to receive benefits – totaling far more than \$1,000 – after that date. The Court concludes that there was sufficient evidence for a reasonable jury to find beyond a reasonable doubt that Defendant received more than \$1,000 in falsely obtained benefits. This result does not create a miscarriage of justice.

Accordingly, based upon the files, records, and proceedings herein, **IT IS HEREBY ORDERED:**

Defendant's Motion for Judgment of Acquittal or, in the Alternative, New Trial as to Count 2 [Docket No. 102] is **DENIED**.

Dated: August 8, 2016 s/ Michael J. Davis
Michael J. Davis
United States District Court