U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HOWARD A. FREDRICKS and DEPARTMENT OF THE AIR FORCE, ANDERSON AIR FORCE BASE, Guam

Docket No. 03-1506; Submitted on the Record;
Issued November 6, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant was entitled to augmented compensation on the basis that his mother is a dependent under section 8110(a)(4) of the Federal Employees' Compensation Act.

On January 8, 1982 appellant, then a 51-year-old manager of a golf course, slipped and injured his back. The Office of Workers' Compensation Programs initially accepted his claim for contusion to the right shoulder cervical spine, right hip and lower back; and later for a generalized anxiety disorder. Appellant received compensation for periods of total disability.[1]

In an October 28, 2002 letter, appellant requested that the Office accept his mother as a dependent and augment his compensation from the basic 66 2/3 rate to the 75 percent rate. Appellant indicated that he paid approximately $2,000.00 per month toward his mother's monthly expenses of approximately $3,000.00. He further indicated his mother's assets included $2,000.00 in a savings account and $1,000.00 in jewelry. Appellant stated that his mother's income consisted of $1,032.70 from social security with $58.70 deducted for medical care.

In a March 26, 2003 decision, the Office denied appellant's claim finding that his mother did not qualify as a dependent under the Act.

The Board finds that appellant is not entitled to augmented compensation because his mother does not qualify as a dependent under section 8110(a)(4) of the Act.

[1] The Office terminated appellant's compensation, effective November 8, 1997, but an Office hearing representative later reversed the termination determination and reinstated appellant's compensation.

Section 8110(a)(4) of the Act states: "For the purpose of this subsection, 'dependent' means parent, while wholly dependent on and supported by the employee."[2] In *William L. Rogers*,[3] the Board defined "wholly dependent" as follows:

> "The generally accepted understanding of 'wholly dependent,' ... is that the person claiming such dependency status must have no consequential source or means of maintenance other than the earnings of the employee."[4]

The Board has held that a person may be wholly dependent on the employee though the person claiming may have some slight earnings or savings of her own or some other slight property. Such disregard of slight earnings, savings, or property is consistent with the generally accepted view that disregards inconsequential sources or means of maintenance.[5]

In *Joan L. Harris* case,[6] the Board found that the employee was not entitled to augmented compensation because her mother did not qualify as a dependent under section 8110(a)(4) of the Act. The question in that case was whether the receipt of $284.30 per month in social security benefits by the employee's mother was *de minimis*. This amount represented 20 percent of the mother's income while the employee contributed approximately 80 percent of her monthly expenses. The Board found that the receipt of such benefits was not an inconsequential or slight source of maintenance and affirmed the Office's decision finding that the employee's mother was not wholly dependent on the employee for her support.

Similarly, the Board finds in the present case that the receipt by appellant's mother of $1,032.70 per month in social security benefits, which represents approximately one third of her income, is not an inconsequential or slight source of maintenance so as to qualify her as being "wholly dependent" on appellant within the generally accepted understanding of section 8110(a)(4) of the Act. Accordingly, the Office's determination that appellant's mother is not a qualified dependent pursuant to 5 U.S.C. § 8110 was correct.

On appeal, appellant argued that his mother is dependent on him paying $2,000.00 monthly towards her nursing facility expenses. The terms of the Act are specific as to the method and amount of payment of compensation; neither the Office nor the Board has the authority to enlarge the terms of the Act nor to make an award of benefits under any terms other than those specified in the statute.[7] The Office is bound to apply the definition of dependent found in 5 U.S.C. § 8110.

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[2] 5 U.S.C, § 8110(a)(4).

[3] *William L. Rogers*, 1 ECAB 191 (1948).

[4] *Id*. at 194.

[5] *See Josephine Bellardita*, 48 ECAB 362 (1997).

[6] *Joan L. Harris* 33 ECAB 1620 (1982).

[7] *See Virginia Chappell (William F. Chappell)*, 45 ECAB 275 (1993).

The decision of the Office of Workers' Compensation Programs dated March 26, 2003 is hereby affirmed.

Dated, Washington, DC
November 6, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member