

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BARBARA J. HILL and U.S. POSTAL SERVICE,  
EXPRESS MAIL OFFICE, Washington, D.C.

*Docket No. 97-871; Submitted on the Record;  
Issued April 20, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant was not entitled to augmented compensation based on claiming her minor grandchild, of whom she had legal custody, as a dependent under section 8110 of the Federal Employees' Compensation Act.

On March 8, 1988 appellant, a 47-year-old administrative clerk, filed a Form CA-1 claim for traumatic injury, claiming that she sustained injury to her knees on that date when she fell. The Office accepted appellant's claim for contusion of her lower legs, recurrent reactive synovitis, and chondromalacia of the right and left patellae. Appellant stopped working on July 24, 1990 and has not returned to work since that date. The Office placed appellant on the periodic compensation rolls. Appellant began receiving compensation at the augmented rate beginning August 13, 1991.

In a November 1, 1996 decision, the Office found that appellant was not entitled to compensation at the augmented rate. The Office noted that while appellant had legal custody of her grandchild, there was no provision under the Act for a grandchild to be considered a dependent in this situation.

In her December 20, 1996 appeal letter to the Board, appellant contends that because she has legal custody of her granddaughter, she should be regarded as her dependent, and therefore she is entitled to compensation at the augmented rate.<sup>1</sup>

The Board finds that the Office properly determined that appellant is not entitled to augmented compensation based on her claiming her minor grandchild, of whom she had legal custody, as a dependent under section 8110 of the Act.

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<sup>1</sup> On February 21, 1997 the Office issued a decision waiving recovery of a \$14,037.34 overpayment of compensation. This decision is not before the Board on the present appeal.

Section 8110 of the Act, entitled Augmented Compensation for Dependents, provides in pertinent part that the term “dependent” includes an unmarried child “while living with the employee or receiving regular contributions from the employee towards his support.”<sup>2</sup> The term “child” is further defined in the Act’s definition section at 8101(9), as follows:

“Child means one ... who is under 18 years of age or over that age and incapable of self-support, and includes stepchildren, adopted children, and posthumous children, but does not include married children.”<sup>3</sup>

The Board has previously held that a “grandchild” is not among the categories of persons included in the term “child” for purposes of the Act. In the case of *Louis L. Jackson, Sr.*,<sup>4</sup> the Board noted that the definition of the term “child” in section 8101(9) of the Act provides for three specific relationships in addition to the biological relation between a parent and his or her natural child. The Board stated that there are other close relationships between an adult and a child, such as that between a legal guardian and a ward which are not included.<sup>5</sup> Section 8110 of the Act defines the class of persons who qualify as “dependents” and thereby come within the scope of the Act for purposes of augmented compensation. This section makes provision that only a member of the class of children specifically defined as a “child” of the injured employee will entitle the latter to augmented compensation for dependents. Further, the Board noted that the term “grandchild” is separately defined under section 8101(10) of the Act and appears only in section 8133 of the Act which provides for those classes of persons as specifically defined who are eligible for death benefits.<sup>6</sup> While Congress allowed grandchildren as a class of persons eligible for death benefits under section 8133, Congress did not include a grandchild in the definition of dependents for purposes of augmented compensation under section 8110. Therefore, appellant is not eligible for augmented compensation based on her guardianship of her grandchild.

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<sup>2</sup> 5 U.S.C. § 8110(3).

<sup>3</sup> 5 U.S.C. § 8101(9).

<sup>4</sup> 39 ECAB 423 (1988).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

The decision of the Office of Workers' Compensation Programs dated November 1, 1996 is hereby affirmed.

Dated, Washington, D.C.  
April 20, 1999

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member