

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LILL ROLLINS and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, Pa.

*Docket No. 97-2780; Submitted on the Record;
Issued June 16, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
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 grandchildren, of whom she had legal custody, as a dependent under section 8110 of the Federal Employees' Compensation Act

On April 13, 1993 appellant, then a 54-year-old clerk, filed a Form CA-1 claim for traumatic injury, claiming that she sustained an injury to her right wrist, thumb and forearm when she pulled mail from a case on April 12, 1993. The Office accepted appellant's claim for de Quervain's disease of the right wrist.¹ On December 19, 1996 the Office granted appellant a schedule award for an 11 percent permanent impairment of the right arm for the period August 7, 1996 to April 4, 1997, for a total of 34.32 weeks of compensation. Pursuant to this schedule award, appellant began receiving compensation at the augmented rate beginning August 7, 1996.

In a February 26, 1997 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 grandchildren, there was no provision under the Act for a grandchild to be considered in this situation.

In a final decision dated July 8, 1997, the Office found that appellant was without fault in the creation of the overpayment, but that the circumstances of her case did not warrant a waiver of the overpayment.

¹ The Office denied appellant's claim for recurrence of disability due to de Quervain's disease by decision dated and finalized on June 6, 1994. Appellant appealed this decision, which the Office affirmed by decisions dated May 22 and November 1, 1995.

In her appeal letter to the Board, appellant contends that because she has legal custody of her grandchildren, they should be regarded as her dependents, and that therefore she is entitled to compensation at the augmented rate.

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

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.”² 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.”³

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.*,⁴ 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.⁵ Section 8110 of the Act defines the classes 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 classes 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.⁶ While Congress allowed grandchildren as a class of persons eligible for death benefits under section 8133, Congress did not specifically define that class of persons as dependents for purposes of augmented compensation under section 8110. Therefore, appellant is not eligible for augmented compensation based on her guardianship of her grandchildren.

² 5 U.S.C. § 8110(3).

³ 5 U.S.C. § 8101(9).

⁴ *Louis L. Jackson, Sr.*, 39 ECAB 423 (1988).

⁵ *Id.*

⁶ *Id.*

The decisions of the Office of Workers' Compensation Programs dated July 8 and February 26, 1997 are hereby affirmed.

Dated, Washington, D.C.
June 16, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member