

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLINE D. JONES claiming as widow of PETER L. OLCOTT and U.S.
POSTAL SERVICE, POST OFFICE, Jacksonville, FL

*Docket No. 03-745; Submitted on the Record;
Issued July 17, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant is entitled to survivor's benefits following her remarriage after the employee's death.

On January 14, 1992 appellant filed a claim for survivor's benefits due to the December 12, 1991 death of the employee, Peter L. Olcott, from injuries that occurred in the performance of duty on November 29, 1991.¹ On March 16, 1992 the Office of Workers' Compensation Programs accepted that the employee's death on December 12, 1991 was employment related and granted appellant compensation until she died or remarried and compensation to the employee's minor son until he died, married, reached the age of 18 or, if mentally incapacitated, until he became capable of self-support.

By letter dated February 18, 1994, appellant informed the Office that she had remarried on January 30, 1994 and that she understood that she would no longer be eligible for on-going compensation, but was entitled to a lump sum equal to 24 times her monthly compensation. A copy of the marriage certificate to James Jones was attached. The Office paid appellant a lump sum of compensation for 24 months from January 30, 1994 to January 30, 1996.

On July 11, 2001 appellant notified the Office that she wished to file a second claim for death benefits due to the employee's death. She noted that she had previously received compensation for the employee's death which stopped when she remarried at the age of 49. Appellant advised that she became widowed when her current husband, Mr. Jones, died September 24, 2000, that she was 56 years old and wished to reinstate her survivor's benefits.

In a letter dated August 1, 2001, the Office advised appellant that entitlement to survivor's benefits ends when a beneficiary spouse remarries before age 55 (or 60 depending on the date of remarriage) and may only be reinstated if the marriage had been annulled. The Office

¹ Appellant was born December 14, 1944.

noted that a beneficiary, who remarries and is subsequently divorced does not again become entitled to benefits and further stated that the Federal Employees' Compensation Act does not allow for the reinstatement of survivor's benefits if the second husband or wife dies. By decision dated August 13, 2001, the Office denied appellant's claim for benefits as a valid marriage had existed between her and her deceased husband, Mr. Jones, noting that the Act does not allow for reinstatement of benefits if a subsequent spouse dies.

In a letter dated September 4, 2001, appellant requested an oral hearing that was held on January 29, 2002 wherein she testified. She stated that under section 8133(b), in the paragraph following (3), the Act states: "A widow or widower who has entitlements to benefits under this title derived from more than one husband or wife shall elect one entitlement to be utilized." Appellant argued that a twice widowed person may choose to receive compensation resulting from the death of either spouse, not just from the most recent spouse. Accordingly, she contended that she was entitled to reinstatement of survivor's benefits for the death of the employee, her former husband Mr. Olcott. By decision dated March 15, 2002, an Office hearing representative affirmed the denial of appellant's claim for reinstatement of survivor's benefits.

The Board finds that appellant is not entitled to further survivor's benefits.

Appellant contends that she should receive additional compensation benefits as her remarriage, following the death of the employee, ended upon the death of her second husband, Mr. Jones. She further contends that section 8133(b) of the Act should be interpreted as allowing a twice widowed person the option to choose to receive compensation from the death of either spouse, not just from the most recent spouse.

It is well established that the Act is a remedial statute and should be broadly and liberally construed in favor of the employee to effectuate its purpose and not in derogation of the employee's rights.² The primary rule of statutory construction, however, is to give effect to legislative intent, and it is well settled that, in arriving at intent, the words in a statute should be construed according to their common usage.³

The Board finds that the Office's determination that appellant is not entitled to additional compensation benefits due to the death of the employee is reasonable in light of the language of the statute, legislative history and Board precedent.

Section 8133(b) of the current Act, in relevant part, states that compensation payable under subsection (a) of this section, is paid from the time of death until a widow or widower dies or remarries before reaching age 55 (or 60, depending on the date of the remarriage).⁴ A caveat provides that a widow or widower who has entitlements to benefits under this title derived from more than one husband or wife shall elect one entitlement to be utilized.

² *Stephen R. Lubin*, 43 ECAB 564, 569 (1992).

³ *Id.*

⁴ Subsection (a) of 5 U.S.C. § 8133 refers to the percentage of monthly pay to the appropriate parties of the deceased employee, whose death resulted from an injury sustained in the performance of duty. 5 U.S.C. § 8133(a).

In this case, appellant was in receipt of monthly compensation payments from the death of the employee, Mr. Olcott, on December 12, 1991 until she married Mr. Jones on January 30, 1994. Appellant, who was born on December 14, 1944, was 49 years old at the time of her remarriage. As she remarried prior to age 55, pursuant to section 8135(b) of the Act, the Office paid appellant a lump sum equal to 24 times the monthly compensation payment to which she was entitled.

In 1990, Congress amended the death benefits and lump-sum provisions of the Act to provide that the Office would pay compensation benefits from the time of death of the employee until a widow or widower died or remarried before reaching the age of 55 and that a lump sum was payable upon remarriage prior to age 55.⁵ The Office procedure manual states that entitlement to benefits ends with a spouse's remarriage before age 55 (or 60, depending on the date of the remarriage) and benefits may be reinstated only if the marriage is annulled.⁶ Further, it specifically provides that a beneficiary who remarries and is subsequently divorced does not again become entitled to benefits.⁷ In the instant case, appellant was 49 years old at the time of her remarriage to Mr. Jones. This marriage, however, ended due to his death. There is no provision for reinstatement of compensation following remarriage due to the death of the spouse in either the Act or Office procedures.⁸ Thus, appellant is not entitled to reinstatement of compensation benefits under these circumstances.

Appellant contends that section 8133(b) of the current Act should be interpreted to allow a twice widowed person the option to choose to receive compensation from the death of either spouse, not just from the most recent spouse. She references the caveat which provides that "A widow or widower, who has entitlement to benefits *under this title* derived from more than one husband or wife shall elect one entitlement to be utilized."⁹ (Emphasis added.) It is readily apparent that the election of entitlement to benefits applies to the situation whereby the survivor had more than one spouse who died while in the performance of their federal duty. The Office hearing representative found and the record supports, that there is no indication that Mr. Jones was a federal employee whose death on September 24, 2000 resulted from an injury sustained in the performance of duty. Accordingly, appellant's circumstances do not fit the situation for entitlement to survivor benefits from the death of more than one spouse.

Neither the Board nor the Office has the authority to enlarge the terms of the Act as specified in the statute.¹⁰ Therefore, appellant is limited to the compensation benefits specifically granted in the Act, in effect, at the time she made her initial claim in 1991. She

⁵ 5 U.S.C. §§ 8133(b), 8135(b) (1990).

⁶ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Death Claims*, Chapter 2.0700.7(b) (November 1996).

⁷ *Id.*

⁸ See *Mary C. Anderson-Paine (Robert O. Anderson)*, 47 ECAB 148 (1995).

⁹ 5 U.S.C. § 8133(b) (1990).

¹⁰ *Ralph W. Moody*, 42 ECAB 364, 370, (1991); *Robert Atchison*, 41 ECAB 83 (1989); *Edith C. Alter*, 32 ECAB 995 (1981).

remarried prior to age 55 and had received her lump-sum provision. There is no indication that her circumstances warranted a reinstatement of compensation benefits.

The decision of the Office of Workers' Compensation Programs dated March 15, 2002 is hereby affirmed.

Dated, Washington, DC
July 17, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member