

**United States Department of Labor
Employees' Compensation Appeals Board**

RAYMOND KAUFMAN, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Hicksville, NY**

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**Docket No. 04-104
Issued: March 2, 2004**

Appearances:

Andrew J. Schatkin, for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman

DAVID S. GERSON, Alternate Member

WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On October 20, 2003 appellant filed a timely appeal of decisions of the Office of Workers' Compensation Programs dated November 8, 2002 and September 25, 2003, which found that appellant was not entitled to augmented compensation at the rate of three-fourths after appellant's divorce. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue on appeal is whether the Office properly determined that appellant was not entitled to augmented compensation at the rate of three-fourths after the date his divorce became final.

FACTUAL HISTORY

On August 20, 1986 appellant, then a 57-year-old tractor-trailer operator, filed a claim alleging that on August 16, 1986 he injured his back when closing a trailer door. The Office accepted that appellant sustained low back pain, sciatica, lumbar stenosis, radiculopathy and

functional overlay. He stopped work on August 18, 1986 and returned to limited duty on February 16, 1988. He was off work for intermittent periods thereafter and received appropriate compensation, stopping work completely on November 23, 1988.

Thereafter, in the course of developing the claim, the Office referred appellant to several second opinion physicians and also to impartial medical examiners. On April 2, 2001 appellant filed a Form EN1032 in which he indicated he had a wife as a dependent. In a benefits statement dated November 5, 2001, the Office noted that appellant was being paid at the three-fourths pay rate. The Office advised that if appellant had one or more dependents he was entitled to compensation at the augmented rate of three-fourths rather than the two-thirds rate. The Office further noted that events such as marriage, divorce and separation may affect his compensation and should be reported to the Office promptly.

In a CA-25 ACPS daily roll payment statement dated November 13, 2001, the Office noted that appellant's compensation rate had changed from three-fourths to two-thirds as appellant had informed the Office that he was now divorced. In a benefits statement dated November 30, 2001, the Office noted that appellant was being paid at the two-thirds rate.

By letter dated December 5, 2001, appellant indicated that his compensation check had been reduced from the augmented rate of three-fourths to two-thirds rate after informing the Office that he was no longer married. He disagreed with the reduction in compensation benefits because he stated that he was required to pay spousal support by a court order and was therefore still supporting his ex-wife although they were not married.

In a CA-25, ACPS daily roll payment statement dated December 17, 2001, the Office indicated that appellant submitted proof of a court-ordered support payment. The Office determined that appellant would be paid the difference between the two-thirds compensation rate and the three-fourths compensation rate for the period November 4 to December 1, 2001. The Office compensation history reveals that appellant was paid compensation at the augmented rate of three-fourths for a qualifying dependent from the period December 30, 2001 to May 18, 2002.

In a Form CA-1032 dated April 11, 2002, appellant advised that he was not married and had no dependents. In a separate letter of the same date, appellant indicated that he was divorced on November 6, 2001.

By letter dated May 1, 2002, the Office notified appellant that his statement that he was divorced on November 6, 2001 and making court-ordered support payments to his ex-wife in the amount of \$700.00 was insufficient to establish that appellant was entitled to an augmented compensation rate of three-fourths for a qualifying dependent. In a letter date stamped May 7, 2002, appellant responded to the Office and attached a copy of the court order for his divorce.

In a letter dated May 23, 2002, the Office notified appellant that he would receive gross benefits of \$2,155.00 less health benefits of \$92.56 for a net benefit payment of \$2,062.44. In a letter date stamped June 14, 2002, appellant indicated that he disagreed with the compensation computations and believed he was entitled to a higher compensation amount as his wife had been taken off his medical benefits and he had been divorced.

In a CA-25 ACPS periodic roll payment statement dated June 4, 2002, the Office indicated that appellant's compensation rate was the two-thirds rate because he was divorced. In a June 14, 2002 benefits statement, the Office indicated that, for the period May 19 to June 15, 2002, appellant would be paid at the appropriate two-thirds pay rate for a claimant without a qualifying dependent opposed to the augmented pay rate of three-fourths for a claimant with dependents.

By decision dated November 8, 2002, the Office determined that appellant was not entitled to compensation benefits at the augmented rate of three-fourths because he did not have a qualifying dependent as set forth in the Federal Employees' Compensation Act, and his former wife did not constitute a dependent.

In a letter dated November 28, 2002, appellant requested an oral hearing before an Office hearing representative. The hearing was held on July 28, 2003. By decision dated September 25, 2003, the hearing representative affirmed the prior decision of the Office.

LEGAL PRECEDENT

Under 5 U.S.C. § 8110 of the Act,¹ a claimant is entitled to compensation at the augmented rate of 75 percent (or three-fourths rate) of his or her monthly pay if he has dependents as defined by the Act. Section 8110 specifically indicates:

(a) For the purpose of this section, "dependent" means --

(1) a wife, if --

(A) she is member of the same household as the employee;

(B) she is receiving regular contributions from the employee for her support; or

(C) the employee has been ordered by a court to contribute to her support;

(2) a husband, if --

(A) he is a member of the same household as the employee; or

(B) he is receiving regular contributions from the employee for his support.²

¹ 5 U.S.C. § 8101 *et seq.*

² 5 U.S.C. § 8110(a)(1).

ANALYSIS

On appeal appellant contends that, as his former wife received \$445.00 in court-ordered support payments following their divorce on November 6, 2001, he was entitled to claim her as a dependent under the Act. He submitted a copy of his divorce decree and settlement agreement which indicates that the divorce became final on November 6, 2001.³

Under section 8110 of the Act,⁴ a former spouse does not come within the meaning of the term “wife.”⁵ Therefore, even though appellant’s former wife still received court-ordered support payments, the Board finds that she does not qualify as a dependent under section 8110(a)(2).⁶ Section 8110 specifies a “wife” as a “dependent” under one of three alternative situations, including where she is receiving regular contributions from the employee for her support. However, a former wife does not come within the meaning of the term “wife.” Therefore, even though appellant contributes to the support of his former wife, the Board finds that, as they were no longer married, she does not qualify as a “dependent.”⁷ His payments to her do not entitle him to augmented compensation. Therefore, appellant is not entitled to augmented compensation at the three-fourths rate after November 6, 2001, the date his divorce became final.

CONCLUSION

The Board finds that the Office properly determined that appellant was not entitled to augmented compensation at the rate of three-fourths after the date his divorce became final.

³ The record indicates that appellant continued to receive compensation at the augmented rate until May 18, 2002.

⁴ 5 U.S.C. § 8110(a)(1).

⁵ See *Blaine E. Bedeger*, 48 ECAB 418 (1997); *Linda F. Green*, 39 ECAB (1988); *William S. Cappeller*, 28 ECAB 262 (1977).

⁶ 5 U.S.C. § 8110(a)(1)(A)-(C).

⁷ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the September 25, 2003 and November 8, 2002 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 2, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member