



pulposus at C6-7.<sup>1</sup> Appellant attempted to return to light duty on May 9, 2000 but stopped working on May 15, 2000 and has not worked since that time.

By letter to the Office dated February 11, 2002, appellant requested augmented compensation on the grounds that her adult daughter was unable to work effective January 2002 and was dependent upon her for support. By letter dated March 6, 2002, appellant informed the Office:

“My daughter was on disability from October 1996 to September 1999 because of a severe latex reaction that caused immune system and cardiac complications, including heart failure. After numerous heart procedures and surgeries, including implanted pacemaker and computerized cardiac reveal monitor, she was released for work in September 1999. She continued to work until January 7, 2002 when she was placed on indefinite disability, per the physician’s note I sent in with my letter of February 2002.

“My initial accepted workers’ comp[ensation] disability was from June to September 1996, after my first cervical spine neurosurgery. My recurrent accepted disability was initially approved starting late October 1999, the time of my second cervical spine neurosurgery. However, because of my appeal, DOL [Department of Labor] retroactively accepted my disability back to May 1999, when I left work because of my recurrent condition. At that time, my application for compensation was submitted, through my employer, noting my daughter as a dependent because of her disability. With the exception of 20 hours I worked in May 2000, per DOL-directed return-to work order, I have been disabled and not working. During the 20 hours I worked in May 2000, I experienced a reinjury because my employer’s agree-to accommodations were not in place. This was noted in a subsequent application for compensation submitted through my employee to DOL. Because of the reinjury, a third cervical spine neurosurgery was done on August 17, 2000, which [led] to complications. A reoperation, fourth cervical spine neurosurgery, was done on August 19, 2000. I have been on permanent disability since that time. Given the above information, please advise if my circumstances might justify a review and reconsideration for a change in my benefits from 66 and 2/3 to 75 because of my daughter’s disability and dependency on me for support.”

By letter dated August 1, 2002, the Office requested additional information from appellant. The Office specifically requested a birth certificate establishing that the child claimed as dependent was in fact her daughter; a report from a physician documenting her daughter’s past and present medical conditions, explaining that her daughter was incapable of self-support as of May 17, 1999, when appellant became disabled, and is currently incapable of self-support, and the reasons for said incapacity; and copies of her daughter’s pay stubs or confirmation from her

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<sup>1</sup> The record indicates that appellant sustained a previous work-related injury to her cervical spine had preexisting degenerative disc disease and osteoarthritis at C4-6 with spondylosis and spinal stenosis. The Office authorized surgery on June 4, 1996 for a cervical discectomy and fusion at C6-7 and on October 28, 1999 for cervical laminectomy.

employers indicating the dates on which she started and stopped working from April 1999 through the present, and the amounts she earned.

Appellant submitted a copy of her daughter Kelli's birth certificate, dated January 27, 1969; a November 25, 2002 letter from Arrowhead Regional Medical Center, which stated that Kelli had been employed there since September 9, 1999 as a registered nurse, was out on disability from May 4 to August 20, 2001, and went out on disability on January 7, 2002 and has not returned to work since that time; a Form EN1032 in which appellant requested augmented compensation on the basis of having a dependent daughter; and a January 14, 2003 report from Dr. Allan Schwandt, Board-certified in internal medicine, who stated that appellant was placed on disability for an immune deficiency disorder from November 1998 to August 1999 and was released to work in September 1999. He indicated that appellant had continued problems with her heart, which resulted in a surgical implant of a cardiac loop recorder/monitor in August 2000 and her fifth cardiac ablation in November 2000. Dr. Schwandt stated, however, that "through all this, Kelli remained working until May 2001, when she experienced an exacerbation of a back injury." He related that due to this back injury, Kelli underwent lumbar spine surgery on June 20, 2001 and was released to return to work on August 20, 2001. Dr. Schwandt advised that Kelli has been on continual total disability since January 7, 2002, is incapable of self-support and has relied solely on her mother for all her needs. Appellant also submitted physical therapy progress reports dated March 5, 2003.

By letter dated May 5, 2003, appellant advised the Office that she wished to amend her request for augmented compensation for the following periods: May 16 to August 17, 2001; and January 17, 2002 to April 20, 2003.

By decision dated May 14, 2003, the Office denied appellant's request for augmented compensation for her daughter. The Office cited Chapter 2.811 of the Federal (FECA) Procedure Manual, Part 2 -- "Children over 18," which provides guidelines for Children over 18 who are incapable of self-support. That section states:

"When claims are made by or for children over 18 who are physically or mentally incapable of self-support, the claims examiner must investigate the extent and expected duration of the illness involved.

"Eligibility. To be entitled to benefits a child over 18 must have been incapable of self-support by reason of a mental or physical disability at the time the claimant became eligible for employment due to economic conditions, lack of job skills, etc.;

"Definition. A claimant is incapable of self-support if his or her physical or mental condition renders him or her unable to obtain and retain a job, or engage in self-employment that would provide a sustained a living wage. This determination must be based on medical evidence. When medical evidence demonstrates incapacity for self-support, this determination will stand unless refuted by the sustained work performance."

The Office stated that, based on the evidence appellant submitted, appellant's daughter experienced periods of total disability, recovered and subsequently returned to work, which was not sufficient grounds to establish that she was permanently disabled. The Office stated that appellant's daughter took disability leave, but remained employed. In addition, from 1999 through 2002 the records from Arrowhead Regional Medical Center indicated that she had earned income.

The Office also rejected appellant's claim that appellant's daughter was disabled at the time appellant became disabled on May 19, 1999. The Office noted that it did not accept that appellant was totally disabled until the date of her surgery, October 28, 1999, at which time her daughter had actually returned to duty, in September 1999. Lastly, the Office stated that because appellant's daughter was on disability leave from her job, she was not unemployed. Instead, she was not working during the disability periods, and as noted above she continued to have income from her job in each of the years that she was disabled. This established that she was able to sustain employment. The Office therefore denied appellant's claim for disability compensation as she failed to meet the criteria to establish her as a dependent child and during all of the years involved she retained her employment and actually had earned income.

By letter dated May 7, 2004, appellant requested reconsideration. Appellant argued that the Office misinterpreted the law in its May 14, 2003 decision by improperly distinguishing between temporary and permanent adult, disabled dependents. Appellant also contended that the Office erred by failing to find that her daughter was disabled for the periods in which she requested augmented compensation. Appellant submitted a July 23, 2003 payroll register which reflected the payroll records of appellant's daughter from October 6, 1999 through July 23, 2003. These records indicated that appellant's daughter worked full time, aside from intermittent periods of disability, from October 6, 1999 through January 2002, when she was placed on disability.

By decision dated August 2, 2004, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

### **LEGAL PRECEDENT**

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.<sup>2</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>3</sup>

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<sup>2</sup> 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

<sup>3</sup> *Howard A. Williams*, 45 ECAB 853 (1994).

### **ANALYSIS**

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by the Office; and she has not submitted relevant and pertinent evidence not previously considered by the Office. While appellant did submit evidence pertaining to the relevant issue of whether appellant was entitled to augmented compensation for the periods requested; *i.e.*, the July 23, 2003 payroll register containing her daughter's payroll records from October 6, 1999 through July 23, 2003, which indicated that she worked full time from October 1999 through January 2002, when she was placed on disability, this evidence is cumulative and repetitive of evidence appellant previously submitted and supports contentions previously rejected by the Office. The Office stated in its May 14, 2003 decision that appellant's daughter was not a dependent because she was still on disability leave from her job during this period, listed on the payroll and receiving income, and was therefore not unemployed. The Office therefore found that appellant failed to meet the criteria to establish her daughter as a dependent child during this period. The July 2003 payroll register submitted by appellant, therefore, does not establish that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

### **CONCLUSION**

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of his claim under 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 2, 2004 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Issued: August 4, 2005  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board