U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATIE E. HALL and U.S. POSTAL SERVICE,
POST OFFICE, Capitol Heights, Md.

Docket No. 97-465; Submitted on the Record;
Issued December 8, 1998

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant was not entitled to augmented compensation commencing May 3, 1991.

In the present case, the Office accepted that appellant sustained internal derangement of the left knee causally related to her federal employment. By decision dated October 24, 1995, the Office determined that appellant was not entitled to augmented compensation under the Federal Employees' Compensation Act. In a letter dated November 17, 1995, the Office advised appellant that it had made a preliminary determination that an overpayment of $1,967.91 had occurred during the period May 3, 1991 to September 17, 1995 because appellant had erroneously been paid compensation at the augmented rate for a claimant with a dependent.

Appellant requested a prerecoupment hearing, which was held on July 31, 1996. By decision dated October 11, 1996, the Office hearing representative found that appellant was not entitled to augmented compensation commencing May 3, 1991 and therefore an overpayment was created. The hearing representative further determined that recovery of the overpayment would defeat the purpose of the Act and therefore waiver of the overpayment was granted.[1]

The Board has reviewed the record and finds that the Office properly found that appellant was not entitled to augmented compensation.

Under 5 U.S.C. § 8110, a claimant is entitled to augmented compensation at the rate of 75 percent of her monthly pay if she has a dependent. Under this section a dependent includes an "unmarried child, while living with the employee or receiving regular contributions from the

[1] Since recovery of the overpayment was waived, the Board will limit its review of the October 11, 1996 decision to the adverse finding that an overpayment was created because appellant was not entitled to augmented compensation in this case.

employee toward his support," and who is either under 18 years of age or incapable of self-support because of physical or mental disability.[2]

In this case, appellant has submitted an order, dated July 19, 1983, from the Orphan's Court for Prince George's County, Maryland, establishing that she was appointed guardian for the person and property of her nephew, David A. Lane. Appellant also submitted evidence indicating that her nephew was classified as learning disabled.

The initial question, however, is whether appellant's nephew is a "child" as defined under section 8110. The Act provides that a "'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 specifically held that a nephew is not a "child" under section 8101(9), and the guardian of a nephew is not entitled to augmented compensation under the Act.[4] As the Board noted in *Hudson*, nephews are not among the categories of persons included in the term "child" for purposes of the Act. The definition of "child" covers three specific relationships, in addition to the biological one between a person and her natural child. There are other close relationships, such as that between a legal guardian and a ward, which are not included.[5]

Accordingly, the Board finds that appellant's nephew was not a "child" under section 8101(9), and therefore cannot be a dependent for the purposes of augmented compensation under section 8110 of the Act. The Office properly found that appellant was not entitled to augmented compensation in this case.

[2] 5 U.S.C. § 8110(3).

[3] 5 U.S.C. § 8101(9).

[4] *Aretha Hudson*, 28 ECAB 169 (1977).

[5] *Id.*; *see also Louis L. Jackson, Sr.*, 39 ECAB 423 (1988) (a grandchild is not a child under section 8101(9)). Both of these cases note the principle of statutory construction known as *expressio unis est exclusio alterius*, whereby the expression of specific persons or things in a statute implies an intent to exclude all others.

The decision of the Office of Workers' Compensation Programs dated October 11, 1996 is affirmed.

Dated, Washington, D.C.
December 8, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member