U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BARBARA E. HARSH and U.S. POSTAL SERVICE,
POST OFFICE, Santa Ana, Calif.

*Docket No. 95-2003; Submitted on the Record;*
*Issued March 9, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly denied augmented compensation and authorization for Rolfing therapy.

The Board has duly reviewed the evidence on appeal and finds that the Office properly denied augmented compensation.

When an injured employee loses pay due to temporary total disability resulting from an injury, compensation is payable at the rate of 66 2/3 percent of the pay rate established for compensation purposes. The compensation rate is increased to 75 percent when the employee has 1 or more dependents. "Dependents" include a wife or husband.[1] "Dependents" also include an unmarried child under 23 years of age who is a full-time student and has not completed 4 years of schooling beyond the high school level.[2] A "student" is defined as an individual under 23 years of age who has not completed 4 years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at a defined institution.[3]

In its July 21, 1994 decision, the Office denied augmented compensation on the grounds that appellant's daughter was not a bona fide full-time student. The record supports the Office's decision. On July 9, 1993 appellant completed Form EN1618-0288 and indicated that her 20-year-old daughter began attending Kent State University in January 1993, that she was not now regularly pursuing a full-time course of study but would return full time in January 1994, and that she expected to complete her education in January 1997. A March 2, 1994 letter from the University stated that appellant's daughter attended the spring 1993 semester "and part of the

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[1] 20 C.F.R. § 10.301(b); *see* 5 U.S.C. §§ 8105(a), 8110.

[2] 20 C.F.R. § 10.127.

[3] 5 U.S.C. § 8101(17).

spring 1994 semester." More specifically, the university stated that appellant's daughter attended from January 19 to May 14, 1993 and from January 18 to February 21, 1994. Appellant explained on July 8, 1994 that her daughter left school in February 1994 due to a medical condition but would be returning to the University in August 1994.

Because appellant's daughter has been unable to "regularly" pursue a full-time course of study, for reasons medical or otherwise, she is not a considered "student" or a "dependent" for purposes of augmented compensation. The Board notes, however, that nothing in this decision precludes appellant from requesting augmented compensation for any subsequent period that her daughter is able to regularly pursue a full-time course of study prior to the age of 23.

The Board also finds that the Office abused its discretion in denying authorization for Rolfing therapy.

Section 8103(a) of the Federal Employees' Compensation Act[4] provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability, or aid in lessening the amount of any monthly compensation. The Office must therefore exercise discretion in determining whether the particular service, appliance, or supply is likely to effect the purposes specified in the Act.[5]

In its July 21, 1994 decision, the Office denied authorization for Rolfing therapy, but a conflict in medical opinion existed as to whether this therapy was likely to give relief or reduce the degree or the period of any disability. On May 6, 1993 the Office requested that appellant's attending physician, Dr. Kevin R. Wandler, a Board-certified psychiatrist, explain the reason appellant needed Rolfing therapy. Dr. Wandler responded on November 16, 1993 requesting payment for several of the referrals he made. One of these was in February 1993 to a psychologist who was treating appellant's post-traumatic stress through Rolfing therapy. Dr. Wandler stated that progress notes at that time supported the need for this therapy and that an enclosed letter from this psychologist outlined the positive therapeutic results. On January 4, 1994 the Office requested that Dr. Wandler explain in medical terms the reason appellant needed Rolfing therapy. When Dr. Wandler failed to respond, the Office referred appellant to a second opinion physician, Dr. Alvin C. Burstein, a Board-certified psychiatrist. The Office asked Dr. Burstein to respond to the following:

> "The claimant has been and is continuing to be treated by numerous people. Many prescriptions, such as self-defense classes, rolfing, and homeopathic treatment were given. Please advise if those treatments and prescriptions are appropriate for treatment of the accepted conditions."

Dr. Burstein responded as follows on February 10, 1994:

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[4] *Id.* § 8103(a).

[5] *See Marjorie S. Geer*, 39 ECAB 1099 (1988) (the Office has broad discretionary authority in the administration of the Act and must exercise that discretion to achieve the objectives of section 8103).

> "I know of no evidence in the accepted psychiatric literature which would support the use of these treatment modalities. There is some suggestion that self defense classes are a useful form of education of people who have been victimized and have inadequate sense of their self competence. Other treatments listed must be considered highly experimental."

Because appellant's attending physician supported the need for Rolfing therapy and cited its positive therapeutic results, while the Office referral physician considered the treatment to be highly experimental and unsupported by the accepted literature, the Board finds that a conflict in medical opinion exists on whether Rolfing therapy is likely to give relief or reduce the degree or the period of any disability. Because the Office did not resolve the disagreement between the attending and referral physicians before issuing its decision on the matter, the Board finds that the Office abused its discretion in denying authorization. The Board will affirm the July 21, 1994 decision on the issue of augmented compensation and will set aside the decision on the issue of authorization for Rolfing therapy. The Board will remand the case for resolution of the conflict in medical opinion and for an appropriate final decision on this issue.

The July 21, 1994 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further action consistent with this opinion.

Dated, Washington, D.C.
March 9, 1998

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member