U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT LEE O'BRIEN and U.S. POSTAL SERVICE,
POST OFFICE, Santa Barbara, CA

Docket No. 97-1000; Submitted on the Record;
Issued November 5, 1999

DECISION and ORDER

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

The issue is whether appellant is entitled to augmented compensation on the basis that his mother qualified as a dependent under section 8110(a)(4) of the Federal Employees' Compensation Act.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office of Workers' Compensation Programs extends only to those final decisions issued within one year prior to the filing of the appeal.[1] As appellant filed his request for appeal on January 13, 1997, the only decision before the Board is the January 11, 1996 decision denying modification of a December 22, 1995 decision. The Board has no jurisdiction to review the most recent merit decision of record, the June 26, 1997 decision of the Office.[2]

The Board has duly reviewed the case record in the present appeal and finds that appellant is not entitled to augmented compensation because his mother did not qualify as his dependent under section 8110(a)(4) of the Act.

Section 8110(a)(4) of the Act states the following: "For the purpose of this subsection, 'dependent' means parent, while wholly dependent on and supported by the employee."[3] In *William L. Rogers,*[4] the Board defined "wholly dependent" as follows:

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[1] 20 C.F.R. §§ 501.2(c), 501.3(d)(2). On January 22, 1998 the Board issued an order denying the Director of the Office motion to dismiss; *see* Order Denying Motion to Dismiss Appeal dated January 22, 1998 which contains an explanation of why this claim is timely.

[2] On his appeal form, appellant listed other aspects of his case with which he disagrees. The Board notes, however, that appellant's contentions appear to arise from letters which the Office wrote to appellant. These letters were informational in nature and did not purport to be final decisions of the Office on any aspect of appellant's claim; *see William A. Giovanoni,* 39 ECAB 230 (1987).

[3] 5 U.S.C. § 8110(a)(4).

> "The generally accepted understanding of 'wholly dependent' ... is that the person claiming such dependency status must have no consequential source as means of maintenance other than the earnings of the employee."

The Board went on to note that it had been held that a person may be wholly dependent on the employee though the person claiming may have some slight earnings or savings of his own or some other slight property. Such disregard of slight earnings, savings, or property is consistent with the generally accepted view which disregards inconsequential sources or means of maintenance, and it is entirely consistent with the legal maxim *'de minimis non curat lex'* (meaning that in respect to small matters the law does not take notice.)

In *Joan L. Harris*,[5] the Board found that the claimant was not entitled to augmented compensation because her mother did not qualify as a dependent under section 8110(a)(4) of the Act. The question in that case was whether the receipt of $284.30 per month in social security benefits by the claimant's mother was *de minimis.* The Board found that the receipt of such benefits was not an inconsequential or slight source of maintenance and affirmed the Office's decision finding that the claimant's mother was not wholly dependent on the employee for her support.

Similarly, the Board finds in the present case that the receipt by appellant's mother of $980.00 per month in social security benefits is not an inconsequential or slight source of maintenance so as to qualify her as being "wholly dependent" within the generally accepted understanding of section 8110(a)(4) of the Act. Accordingly, the Office's determination that appellant's mother was not a qualified dependent pursuant to 5 U.S.C. § 8110 was correct.

Appellant requested reconsideration alleging that his mother is dependent wholly on and supported by him. He stated that he supplies his mother with room and board, maintains her medical records, oversees her medication, and transports her to and from all appointments. Appellant additionally alleged that Internal Revenue Service classifies a person as a dependent if one contributes to over half of their support. The terms of the Act [6] are specific as to the method and amount of payment of compensation; neither the Office nor the Board has the authority to enlarge the terms of the Act nor to make an award of benefits under any terms other than those specified in the statute.[7] The Office is therefore bound to apply the definition of dependent found in 5 U.S.C. § 8110.

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

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[4] 1 ECAB 191 (1948).

[5] 33 ECAB 1620 (1982).

[6] 5 U.S.C. §§ 8101-8193.

[7] *See Virginia Chappell (William F. Chappell)*, 45 ECAB 275 (1993).

Dated, Washington, D.C.
November 5, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member