

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRAN M. HISLER and GALLAUDET UNIVERSITY, KENDALL
DEMONSTRATION ELEMENTARY SCHOOL, Washington, DC

*Docket No. 98-1010; Submitted on the Record;
Issued November 16, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly rescinded acceptance of appellant's claim, effective May 3, 1996, on the basis that she was not an "employee" pursuant to 5 U.S.C. § 8101(1)(A) of the Federal Employees' Compensation Act.

On July 28, 1987 appellant, then a 30-year-old former occupational therapist, filed an occupational disease claim, alleging that factors of her employment caused Epstein-Barr virus and migraine headaches. She had stopped work on June 17, 1986. By letter dated March 7, 1988, the Office accepted that these conditions were employment related, and later accepted that she sustained employment-related chronic fatigue syndrome for which she received appropriate compensation. Following an inquiry from the employing establishment regarding its workers' compensation claims, by letter dated April 1, 1996, the Office proposed to terminate appellant's compensation benefits and, by decision dated May 3, 1996, terminated her compensation, effective that day. On June 6, 1996 appellant requested a hearing. By decision dated July 18, 1996, an Office hearing representative denied the request, finding that it had not been timely filed. On May 2, 1997 appellant, through counsel, requested reconsideration, and by decision dated November 7, 1997, the Office denied modification of the May 3, 1996 decision finding that the Office had properly rescinded acceptance of the claim. The instant appeal follows.

The Board finds that the Office met its burden of proof to rescind acceptance of appellant's claim as appellant is not an employee pursuant to 5 U.S.C. § 8101(1)(A) of the Act.

A claimant of benefits under the Act¹ has the burden to establish all the necessary elements of her claim, including that, at the time of injury, she was a civil employee of the

¹ 5 U.S.C. §§ 8101-8193.

United States.² For purposes of determining entitlement to compensation benefits under the Act, an “employee” is defined, in relevant part, as:

“[A] civil officer or employee in any branch of the Government of the United States, including an officer or employee of an instrumentality wholly owned by the United States.”³

In this case, appellant, an employee of Gallaudet University, contended that she was an “employee” under the Act. In the case of *Barbara L. Riggs*,⁴ the Board found that, in order to establish that she was an “employee” entitled to compensation pursuant to section 8101(1)(A), appellant must establish that Gallaudet University is either a part of a branch of the United States Government or that it is wholly owned by the United States. The Board noted that, unlike the United States Postal Service which was established as an independent establishment of the executive branch of the Government of the United States, Gallaudet University is not by statute a part of any branch of the United States Government. Moreover, Gallaudet University is not wholly owned by the United States as is the Smithsonian Institution, which was established as a trust instrumentality of the United States. Thus, because Gallaudet University is neither a part of any branch of the United States Government nor wholly owned by it, appellant is not an “employee” under the Act.⁵

Section 8128(a) of the Act⁶ provides that the Director of the Office may review an award for or against payment of compensation at any time on his own motion and, in accordance with the facts found on review, end, decrease, or increase the compensation awarded. The Board therefore finds that the Office properly reopened appellant’s claim pursuant to section 8128(a) of the Act. Thus, as employees of Gallaudet University, such as appellant, are not “employees” for purposes of the Act, the Office provided new legal argument and met its burden to rescind acceptance of appellant’s claim.⁷

² *Dennis G. Nivens*, 47 ECAB 926 (1995).

³ 5 U.S.C. § 8101(1)(A); *see also* 20 C.F.R. § 10.5(a)(11).

⁴ 50 ECAB ____ (Docket No. 97-1322, issued November 6, 1998).

⁵ *Id.*

⁶ 5 U.S.C. § 8128(a).

⁷ *See Shelby J. Rycroft*, 44 ECAB 795 (1993); *John C. Smith*, 42 ECAB 396 (1991).

The decision of the Office of Workers' Compensation Programs dated November 7, 1997 is hereby affirmed.

Dated, Washington, D.C.
November 16, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member