

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEON J. MORMANN and DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF PRISONS, U.S. PENITENTIARY, Atlanta, GA

*Docket No. 99-1945; Submitted on the Record;
Issued September 21, 2000*

DECISION and ORDER

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

The issue is whether appellant has a dependent who would entitle him to receive augmented compensation.

On December 11, 1987 appellant, then a 34-year-old correctional officer, filed a claim for emotional stress, stating that, beginning on November 23, 1987, rioting Cuban detainees held him as a hostage for 11 days. He stopped working on December 14, 1987 and received continuation of pay for the period December 14, 1987 through January 27, 1988. He transferred to another employing establishment in Tucson, Arizona, in January 1988 but worked intermittently thereafter until he stopped working on May 5, 1988. The Office of Workers' Compensation Programs accepted appellant's claims for stress reaction and post-traumatic stress syndrome and began payment of temporary total disability effective July 16, 1988. At the time appellant listed two dependents, his wife Linda and a daughter Christina, born August 20, 1978.

The Office informed appellant in a July 23, 1998 letter that his daughter could continue to be considered a dependent under certain circumstances. The Office asked appellant to submit proof if anyone else could be considered his dependent. He was advised that a common law wife could be considered a dependent under the Federal Employees' Compensation Act depending on the applicable state law. Appellant initially indicated that his daughter would be attending college but, on August 29, 1998, stated that she would not be attending college and was no longer his dependent.¹ The Office reduced appellant's compensation effective August 16, 1998 from 3/4 to 2/3 of his weekly pay. In a September 17, 1998 letter, the Office informed appellant it had made a preliminary determination that he had received a \$5,103.12 overpayment in compensation because he had been paid improperly at an augmented rate of compensation from August 20, 1996, when his daughter became 18 years old, through August 16, 1998. The Office

¹ The record submitted on appeal does not contain the Office's July 23, 1998 letter to appellant or his immediate response to the letter. The record also does not contain the Office's September 17, 1998 letter but does contain the memorandum supporting the letter.

further found appellant was without fault in the creation of the overpayment and informed him of the grounds on which he could seek waiver of recovery of the overpayment.

In a December 15, 1998 letter, appellant asserted that he was without fault because he had presumed he was in a common law marriage under Georgia law. In a January 13, 1999 decision, the Office found that appellant had not established that he had a common law marriage under Georgia law. In a January 17, 1999 letter, appellant requested a review of the written record by an Office hearing representative, contending that he had met the requirements of Georgia law to establish that he had a common law marriage. In a June 7, 1999 decision, the Office hearing representative found that appellant had not established that he had a common law wife and, therefore, could not claim her as a dependent under the Act.

The Board finds that appellant has not established that he has any dependents who would entitle him to claim augmented compensation under the Act.

Under section 8110² of the Act a claimant is entitled to augmented compensation at 3/4 of his weekly pay if he has one or more dependents. A wife qualifies as a dependent if she is a member of the same household as the claimant, receives regular contributions from the claimant for her support or the claimant is under court order to contribute to her support.³ A child is entitled to be considered a dependent if he or she is under 18 years of age, is over 18 but is incapable of self-support because of a physical or mental disability, or is an unmarried student under 23 years of age who has not completed 4 years of education beyond the high school level and is currently pursuing a full-time course of study at a qualifying college or university.⁴

Appellant's daughter, Christina, became 18 years old on August 20, 1996. The record contains no evidence that she is disabled due to a physical or mental condition. She, therefore, would not be a dependent unless she was an unmarried student attending a full-time course of study at a college or university. Appellant did not submit any evidence to show his daughter was a student. She, therefore, did not qualify as a dependent under the Act.

Appellant contended that his ex-wife had become his common law wife and, therefore, qualified as a dependent. Questions affecting relationship, such as the validity of marriage or divorce, are determined by the statutory and decisional domestic relations law of the jurisdiction where the alleged marriage took place.⁵ In this case, Georgia statutes ended recognition of common law marriages after January 1, 1997 but continued to recognize common law marriages contracted prior to that date.⁶ Appellant contended that he had a valid common law marriage prior to January 1, 1997. In Georgia, the existence of common law marriage requires the

² 5 U.S.C. § 8110.

³ 5 U.S.C. § 8110(a)(1).

⁴ 5 U.S.C. § 8101(17).

⁵ *Mary Bee McCabe (Estate of George S. Sampio)*, 35 ECAB 218 (1983).

⁶ GA. CODE ANN. § 19-3-1.1(G).

capacity to contract and is determined by whether the man and woman held themselves out to be married, an agreement of marriage and consummation of marriage.⁷

In a November 18, 1989 CA-1032 form, appellant only indicated his daughter as a dependent. He submitted a newspaper article, dated December 4, 1989, which indicated that he was divorced. In CA-1032 forms dated November 18, 1991, September 29, 1992 and October 2, 1993, appellant only listed his daughter as a dependent. In a January 9, 1994 health insurance form, appellant listed his former wife, his daughter and Kimberly Holmes, born December 15, 1991, as family members for health insurance purposes. In CA-1032 forms dated October 3, 1994 and October 4, 1995, appellant indicated that he was not married and listed his daughter as a dependent. In a series of office notes beginning October 11, 1995, Dr. David W. Aycock, a psychologist, indicated that appellant was living with his ex-wife. In an April 8, 1997 report, Dr. Frederic K. Kratina, a Board-certified psychiatrist, reported that appellant was divorced from his wife who had since been remarried and divorced by a second husband. In a January 8, 1995 health insurance form, appellant listed his ex-wife, his daughter, Kimberly Holmes and Emily Holmes as family members. In an August 6, 1997 health insurance form, appellant listed no family members. In a September 15, 1998 report, Dr. R Bruce Prince, a Board-certified psychiatrist, reported that appellant divorced his wife in January 1988. Dr. Prince related that she married another individual but she and appellant began living together again in 1995. He reported that appellant's ex-wife had two children. In the September 21, 1998 overpayment recovery form, appellant explained that the overpayment occurred because his daughter was living with him through August 1998 and was pregnant until she gave birth to a granddaughter on November 23, 1997. He stated that since he provided support for both of them in the period in question, he considered them to be dependents. In a November 10, 1998 life insurance form, appellant listed his ex-wife and daughter as beneficiaries.⁸

The Office hearing representative found, on the basis of Dr. Prince's September 15, 1998 report, that appellant's ex-wife was not able to contract a common law marriage with appellant prior to January 1, 1997 because she was still married to her second husband. Dr. Kratina, however, indicated in his April 8, 1997 report that appellant's ex-wife had divorced her second husband. The record does not indicate whether such a divorce occurred before or after January 1, 1997 so it is unclear whether appellant's ex-wife had the capacity to contract a common law marriage prior to January 1, 1997. The record, however, casts doubt on whether appellant and his ex-wife held themselves out to be married at any time prior to January 1, 1997. Appellant listed his ex-wife and her children as family members on his health insurance forms. The office notes of Dr. Aycock showed that appellant was living with his ex-wife beginning in October 1995. However, in the CA-1032 forms submitted up through October 5, 1995, appellant

⁷ *Bowen v. Hunter*, 525 S.E.2d 744, 751 (Ga. Ct. App. 1999).

⁸ The Office hearing representative referred to an October 2, 1998 CA-1032 form in his decision, noting that appellant indicated that he was not married but indicated that his spouse was living with him. He also referred to an October 3, 1998 letter from appellant, noting that he was divorced on January 15, 1988 but had been involved with his ex-wife and her two children for the prior two years. Neither of these documents is contained in the case record submitted on appeal. The hearing representative also referred to a May 24, 1997 letter from appellant to his health insurance carrier that his ex-wife was separated from her second husband. That letter also is not contained in the case record submitted on appeal.

indicated that he was not married and claimed only his daughter as a dependent. In the September 21, 1998 overpayment recovery form, he again commented that he considered his daughter to be a dependent. He made no mention of a common law marriage with his ex-wife until October 1998. He did not submit any evidence that he and his ex-wife had held themselves out as married prior to January 1, 1997, that they had the capacity to contract a marriage, that they had made an agreement of marriage and had consummated the agreement. Appellant, therefore, has not established that he had contracted a common law marriage with his ex-wife prior to January 1, 1997 as required for a common law marriage under Georgia law. He, therefore, has not established that she can be considered as a dependent, thereby entitling him to augmented compensation after August 20, 1996.

The decisions of the Office of Workers' Compensation Programs, dated June 7 and January 13, 1999, are hereby affirmed.

Dated, Washington, DC
September 21, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member