

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BARBARA J. HASKELL and U.S. POSTAL SERVICE,  
POST OFFICE, Lakeside, CA

*Docket No. 00-1087; Submitted on the Record;  
Issued July 10, 2002*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issues are: (1) whether an overpayment of \$2,774.22 occurred in appellant's case; (2) whether the Office of Workers' Compensation Programs properly determined that appellant was at fault and therefore not entitled to waiver of the overpayment; and (3) whether the Office properly determined that appellant should repay the overpayment by deducting \$75.00 every four weeks from her compensation.

Appellant's claim, filed on October 29, 1986 after she twisted her back while loading mail bags on October 15, 1986, was accepted for a lumbar strain and herniated disc. The Office authorized a lumbar laminectomy on February 16, 1988, a lumbar laminotomy on January 21, 1989 and further back surgery on June 28, 1989. Appellant stopped work in December 1989 and did not return. Subsequently, the Office accepted a depressive disorder as work related.

While receiving compensation, appellant completed several annual affidavits of earnings and employment (Form CA-1032). These forms contain the following statement:

"The basic rate of compensation is 66 2/3 percent of the applicable pay rate if the claimant has no eligible dependents. Compensation is payable at 75 percent of the applicable pay rate if one or more dependents are eligible for compensation. You must therefore answer the questions below to ensure that your compensation is paid at the correct rate. You may claim additional compensation for a dependent if you have a spouse who is a member of your household."

Appellant notified the Office on February 10, 1996 that she married on February 5, 1996, and claimed her husband as a dependent on a completed earnings form dated June 2, 1996. On March 15, 1996, the Office sent a check for \$190.93, representing the difference from February 5 through March 2, 1996 between the two-thirds rate and the augmented three-quarters rate paid to claimants with dependents.

On February 4, 1998 the Office informed appellant of its preliminary determination that an overpayment of compensation \$2,774.22 had occurred because she separated from her husband in October 1996 but was paid augmented benefits until October 1997. The Office found that appellant was at fault in creating the overpayment because she had not paid support to her husband during that time and therefore had no eligible dependents to qualify for the augmented rate.

Appellant stated in a February 28, 1998 letter that she notified the Office that her husband, who is disabled, had moved to northern California for medical reasons and that she had not knowingly accepted any benefits to which she was not entitled. Appellant completed an overpayment recovery questionnaire. She stated that when her husband left for Sacramento, they were still married and that she believed that she would join him up north or that he would return to San Diego. She added that she still paid for her husband's health insurance premiums, which were deducted from her monthly compensation, and that reconciliation between them was still possible at that time.

The record indicates that appellant's monthly health insurance premium was \$37.80 in March 1996 for self-only coverage. After her marriage, appellant added her husband to her health coverage and her premium rose to \$126.10 a month. In March 1997, the premium dropped to \$87.24 a month. On January 9, 1998 appellant asked that her health insurance coverage be changed to self only, which occurred effective January 4, 1998.

During an April 14, 1998 telephone conference with the Office, appellant explained that when her husband left, she gave him \$300.00 in cash and sent him money orders for about \$100.00 in November and December and \$50.00 in January 1997, when she decided not to reconcile with her husband. Appellant added that she did not realize that a spouse living in a different household would not qualify as a dependent and thus did not inform the Office of her change in dependent status.

On October 6, 1999 the Office issued a final decision that appellant was at fault in creating the overpayment. The Office found that appellant had a monthly income of \$1,670.42, with reasonable and necessary expenses of \$1,404.00, leaving approximately \$236.00 in discretionary income. The Office directed repayment at the rate of \$75.00 every four weeks from continuing compensation.

The Board finds that this case is not in posture for decision.

The basic rate of compensation under the Federal Employees' Compensation Act<sup>1</sup> is 66 and two-thirds percent of the injured employee's monthly pay.<sup>2</sup> When the employee has one or more dependents as defined by the Act, she is entitled to have her compensation augmented at eight and one-third percent.<sup>3</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> 5 U.S.C. § 8105(a).

<sup>3</sup> 5 U.S.C. § 8105(b).

Under the Act, a husband may be a dependent if: “(A) he is a member of the same household as the employee; or (B) he is receiving regular contributions from the employee for his support; or (C) the employee has been ordered by a court to contribute to his support.”<sup>4</sup> The record is clear that appellant’s husband was not a member of the same household and that she was not ordered by a court to contribute to his support. Therefore, the issue is whether appellant was providing regular contributions to her husband’s support, thus qualifying him as a dependent.

In this case, the record indicates that appellant paid health insurance premiums for a plan that covered both her and her husband from March 1996 through at least the end of 1997, coinciding with the period of the overpayment, October 1996 to October 1997.

The Board has held that the test for determining dependency under the Act is whether the person claimed as a dependent “looked to and relied, in whole or in part, upon the contributions of the employee as a means of maintaining or helping to maintain a customary standard of living.”<sup>5</sup>

In the case of *Sam R. Ekovich*,<sup>6</sup> the Board considered the situation in which an employee made regular contributions for health insurance that covered both the employee and the spouse. The Board found that the spouse was not a dependent, based on the facts that the employee had never told his spouse that he had maintained health insurance coverage and that the spouse had purchased her own coverage. Therefore, the Board reasoned that the spouse could not have looked to and relied upon the employee’s regular contribution that paid for health insurance.

This case requires further factual development because there is little evidence in the record about the financial situation of appellant’s husband. Appellant indicated that her husband was disabled and had moved from the household to obtain medical treatment. Additional relevant factual information would include the husband’s current employment (if any), the amount of his income and monthly expenses (including medical expenses), and any opportunity he had to purchase health insurance on his own. Such information is necessary for the Office to determine whether the husband relied on the health insurance provided by appellant to a degree sufficient to establish him as a dependent in this case.

Accordingly, the case will be remanded to the Office to secure additional relevant information. After such further development as it deems necessary, the Office should issue a *de novo* decision.

The October 6, 1999 decision of the Office of Workers’ Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

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<sup>4</sup> 5 U.S.C. § 8110(a)(2).

<sup>5</sup> *Helyn E. Girmann*, 11 ECAB 557, 559 (1960); see also *Santos Bonilla Orsini*, 35 ECAB 1121, 1122 (1984) (finding that appellant failed to establish that the employee’s contributions provided a “means of maintaining or helping to maintain a customary standard of living”).

<sup>6</sup> 37 ECAB 113 (1985).

Dated, Washington, DC  
July 10, 2002

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member