

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANET K. GEORGE, claiming as widow of ANGELOS GEORGE and
DEPARTMENT OF THE NAVY, NAVAL AIR WARFARE CENTER, Lakehurst, NJ

*Docket No. 03-1951; Submitted on the Record;
Issued November 3, 2003*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly determined the amount of appellant's and her four surviving children's compensation in accordance with sections 8133(a)(1)-(2), 8101(6), (9) and 8116(d)(2) of the Federal Employees' Compensation Act.

This is the second appeal in the present case. In a December 3, 2002 decision, the Board affirmed the Office's decision dated February 4, 2002. The Board found that the Office properly determined the amount of appellant's and her four surviving children's compensation. The facts and circumstances of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.¹

In a letter dated March 24, 2003, appellant requested reconsideration and alleged that the Office misinterpreted sections 8133(a)(1)-(2), 8101(6), (9) and 8116(d)(2) of the Act. She specifically indicated that the interpretation of the augmented compensation in a case of a death as set forth in section 8133(a)(2) should be interpreted the same as in a case of disability as set forth in section 8110, which would therefore eliminate the need to apply section 8116 to offset any Social Security Administration monies against the Act's benefits received in a death case.

In a decision dated June 19, 2003, the Office determined that, under sections 8133(a)(1)-(2), 8101(6), (9) and 8116(d)(2) of the Act, appellant and her four children were entitled to the compensation at the rate of 75 percent of the decedent's salary. The Office determined that appellant was entitled to compensation at the rate of 45 percent and 15 percent for each child, not to exceed a total of 75 percent of the decedent's monthly pay. The Office specifically indicated that 5 U.S.C. § 8110, augmented compensation for dependents, is inapplicable in this matter as it

¹ Docket No. 02-825 (issued December 3, 2002).

applies to disability claims, and that 5 U.S.C. § 8133(a)(2), compensation in case of death, applies in this matter as appellant's husband is deceased.

The Board finds that the Office properly determined the amount of appellant's and her four surviving children's compensation in accordance with sections 8133(a)(1)-(2), 8101(6), (9) and 8116(d)(2) of the Act.

On appeal, appellant alleges that the Office improperly interpreted 5 U.S.C. § 8133(a)(2) of the Act, which applies to compensation in case of death, and believes this statute should be applied pursuant to 5 U.S.C. § 8110, which addresses augmented compensation for disability claimants. She indicated that 5 U.S.C. § 8133(a)(2) provides that compensation equal to the percentage of monthly pay of the deceased employee to the widow would be 45 percent and 15 percent for each child not to exceed a total of 75 percent. Appellant noted that if 5 U.S.C. § 8110 and 5 U.S.C. § 8133(a)(2) were interpreted similarly the total of 75 percent compensation payment would be considered the widow's money, not the children's and, therefore, this would allow the children to receive social security benefits for which there would be no offset as set forth in section 8116(d)(2) of the Act.²

The Board has previously addressed the contentions raised by appellant in its decision dated December 3, 2002 in which it found that the Office properly determined the amount of appellant's compensation in accordance with sections 8133(a)(1)-(2), 8101(6), (9) and 8116(d)(2) of the Act. Similarly, the Office issued a merit decision on June 19, 2003 which also addressed these same concerns. It appears as though appellant is raising the same allegations as previously addressed and has provided no new argument or authority in support of her contention that the Office misinterpreted sections 8133(a)(1)-(2), 8101(6), (9) and 8116(d)(2) of the Act.

As noted in the Board's previous decision, the terms of the Act are specific as to the method and amount of payment of compensation and 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.³ The Board previously explained the allocation of compensation under 5 U.S.C. § 8133 and 20 C.F.R. § 10.410.⁴

As appellant was the employee's widow and the decedent had four children, she was entitled to 45 percent of the employee's monthly pay pursuant to section 8133(a)(2) of the Act.⁵ As section 8101(9) of the Act defines "child," the decedent's four children were also entitled to compensation.⁶ However, appellant elected that Krystina and Kaitlyn receive benefits under the Act and that Kelly and Kerry receive social security benefits. Thus, Krystina and Kaitlyn were eligible to receive compensation. As the total compensation cannot exceed 75 percent of the

² 5 U.S.C. § 8116(d)(2).

³ See *Virginia Chappell*, 45 ECAB 275 (1993); *Edward G. Ferris*, 38 ECAB 460, 462 (1987).

⁴ *Supra* note 1.

⁵ See *Wanda Avant*, 40 ECAB 1155 (1989).

⁶ 5 U.S.C. § 8101(9).

employee's pay, the 30 percent remaining, after payment of 45 percent to the widow, must be divided equally among the children who elected to receive benefits under the Act.⁷ Therefore, the children were entitled to 15 percent each of the decedent employee's monthly pay. Therefore, the Board finds that the Office properly determined the amount of compensation appellant and the decedent's children were entitled to under the Act.⁸

On the present appeal, appellant alleges that 5 U.S.C. § 8133(a)(2), which applies to compensation in a case of death, should be applied consistently with 5 U.S.C. § 8110, which addresses augmented compensation for disability claimants. However, she provides no authority to support this argument and there is no authority in the Act to mix or match provisions.⁹ Rather, the Board has held that, for augmented compensation purposes, the definitions in section 8133 do not apply to section 8110. The Board noted that section 8110 of the Act defines the classes of persons who qualify as "dependents" and thereby come within the scope of the Act for purposes of augmented compensation and that section 8133 of the Act provides for those classes of persons as specifically defined who are eligible for death benefits. In this case, appellant's husband is deceased and, therefore, section 8110 is inapplicable as it applies to disability claims not death claims.¹⁰

⁷ See Federal (FECA) Procedure Manual, Chapter 2.700, Exhibit 1 (January 1987), which indicates that, in the event there is a widow and three or more children, the widow is entitled to 45 percent, and the children are entitled to the remaining 30 percent divided equally. See *Beverly Grunder (Franklin W. Grunder)*, 36 ECAB 459 (1985).

⁸ The Board notes that at the time the Office issued its decision appellant was not in receipt of social security benefits and therefore the issue of whether there was the appropriate offset, as set forth in section 8116(d)(2) of the Act, is not before the Board.

⁹ 5 U.S.C. §§ 8101-8193.

¹⁰ See *Paul Raymond Kuyoth*, 27 ECAB 498, 503-04 (1976); *Anthony Greco*, 3 ECAB 84, 85 (1949) (the Board has final authority to determine questions of law and fact).

The decision of the Office of Workers' Compensation Programs dated June 19, 2003 is hereby affirmed.

Dated, Washington, DC
November 3, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member