



establish that she sustained a right leg condition due to the accepted injury.<sup>1</sup> In an October 4, 2002 decision, the Board found that appellant was not entitled to a schedule award for an emotional condition under 5 U.S.C. § 8107.<sup>2</sup> The history of the case is provided in the Board's prior decisions and is incorporated herein by reference.

Appellant continued to receive compensation for wage loss based on the augmented rate for an injured employee with a dependent pursuant to 5 U.S.C. § 8110. She periodically submitted a Form EN1032 regarding employment, volunteer work, dependents and receipt of other federal benefits. The EN1032 provides an explanation as to who may be considered as a dependent for the purposes of the Federal Employees' Compensation Act. In an EN1032 dated March 8, 2004, appellant reported as dependents her two daughters, Sharonta Harris, born January 30, 1978, and LaKayla Harris, born May 27, 1983. Appellant also identified as a dependent a granddaughter, Jasmyn Sims, born February 15, 2001.

In a letter dated April 6, 2004, the Office noted that appellant had claimed as dependents daughters aged 26 and 20, as well as a granddaughter. The Office indicated that an unmarried child over 18 may be a dependent if the child cannot support herself because of mental or physical disability, and an unmarried child under age 23 may be a dependent if a full-time student who has not completed four years of school beyond the high school level. With respect to her granddaughter, the Office advised appellant that she may be considered a dependent only if appellant legally adopted the child. The Office advised appellant that she needed to submit evidence with respect to the eligibility of the claimed dependents, such as evidence regarding adoption, mental or physical disability, or full-time school status. Appellant was advised that, if she did not submit a response, her compensation would be reduced to 66 2/3 percent of the applicable pay rate, and the reduction would be effective 15 months from March 8, 2004, the date of the EN1032. The Office enclosed a Form CA-1615 with respect to student status.

The record indicates that the Office again requested evidence regarding dependent eligibility in a letter dated May 7, 2004. There is no indication of record that appellant responded to the request for information regarding the dependent status of the individuals claimed.

By decision dated June 14, 2004, the Office suspended appellant's entitlement to augmented compensation as of June 14, 2004. The Office stated that augmented compensation would be restored if appellant submitted evidence showing entitlement to augmented compensation.

### **LEGAL PRECEDENT**

The basic rate of compensation under the Act is 66 2/3 percent of the injured employee's monthly pay. Where the employee has one or more dependents as defined in the Act, she is entitled to have basic compensation augmented at the rate of 8 1/3 percent, for a total of 75

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<sup>1</sup> Docket No. 01-2261 (issued April 25, 2002).

<sup>2</sup> Docket No. 02-203 (issued October 4, 2002).

percent of monthly pay.<sup>3</sup> Under the Act a dependent includes “an unmarried child, while living with the employee or receiving regular contributions from the employee toward his support,” who is either under 18 years of age, or over 18 years of age and “incapable of self-support because of physical or mental disability.”<sup>4</sup> The Act further provides that compensation payable for a child that would otherwise end at the time she reaches 18 years of age shall continue if she is a student as defined by 5 U.S.C. § 8101.<sup>5</sup>

The Office’s regulations provide that “an employee who is receiving augmented compensation shall be periodically required to submit a statement as to any dependents, or to submit supporting documents such as birth or marriage certificates or court orders, to determine if he or she is still entitled to augmented compensation.”<sup>6</sup> According to section 10.536, “If an employee fails to submit a requested statement or supporting document within 30 days of the date of the request, [the Office] will suspend his or her right to augmented compensation until [the Office] receives the requested statement or supporting document. At that time, [the Office] will reinstate augmented compensation retroactive to the date of suspension, provided that the employee is entitled to receive augmented compensation.”<sup>7</sup>

### ANALYSIS

In this case, the March 8, 2004 EN1032 submitted by appellant reported three dependents: a 26-year-old daughter, Sharonta Harris, a 20-year-old daughter, LaKayla Harris, and a 3-year-old granddaughter, Jasmyn Sims. On its face the EN1032 does not establish any of the three individuals as eligible for dependency status under the Act. Sharonta Harris could be a dependent only if she was living with appellant or receiving regular contributions for support from appellant, and if she was incapable of self-support because of a physical or mental disability. LaKayla Harris could be a dependent under the same circumstances, or if she was a full-time student who had not completed four years beyond high school. With respect to the granddaughter, section 8110 does not include a grandchild as a dependent. The Act does define a “child” to include an adopted child<sup>8</sup> and, therefore, if appellant had legally adopted Jasmyn Sims, she could be considered a dependent.

With respect to any of the identified individuals, appellant was required to submit supporting evidence to establish their eligibility as dependents under the Act. Section 10.535 of the Office’s regulations indicates that a claimant shall be required to submit necessary evidence to support entitlement to augmented compensation. The Office specifically advised appellant of

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<sup>3</sup> 5 U.S.C. § 8110(b); *see also* William G. Dimick, 38 ECAB 751 (1987).

<sup>4</sup> 5 U.S.C. § 8110(a)(3).

<sup>5</sup> *Id.* 5 U.S.C. § 8101(17) defines student as a individual under 23 years of age who has not completed four years of education beyond the high school level and is regularly pursuing a full-time course of study.

<sup>6</sup> 20 C.F.R. § 10.535(c) (2004).

<sup>7</sup> 20 C.F.R. § 10.536 (2004).

<sup>8</sup> 5 U.S.C. § 8101(9) provides that “child” includes stepchildren, adopted children and posthumous children, but does not include married children.

the evidence necessary to establish continuing entitlement to augmented compensation in this case, and of the consequences for failure to respond.<sup>9</sup> Appellant did not submit any relevant evidence with respect to the claimed dependents. Under section 10.536 of the regulations, the Office properly suspended entitlement to augmented compensation as the necessary evidence was not received.

**CONCLUSION**

The Board finds that appellant did not submit requested evidence with respect to the claimed dependents, and the Office properly suspended entitlement to augmented compensation pursuant to 20 C.F.R. § 10.536.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision Office of Workers' Compensation Programs dated June 14, 2004 is affirmed.

Issued: January 13, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>9</sup> The Office appeared to indicate in the April 6 and May 7, 2004 letters that compensation would be reduced retroactively for the 15-month period covered by the Form EN1032, but the actual decision suspended augmented compensation as of June 14, 2004.