



inguinal hernia. On October 1, 2004 appellant underwent authorized surgical repair. He filed a (Form CA-7) claim for compensation for the period October 1 to 29, 2004, claiming Lois Stewart as a dependent, noting that she was his common-law wife. He also submitted an October 14, 2004 statement from PNC Bank noting that he and Ms. Stewart had opened a joint account on January 25, 1991.

By letter dated November 1, 2004, the Office informed appellant that further evidence was needed to support his entitlement to augmented compensation. It cited to section 151.44 of the Pennsylvania code which required that in order for a common-law marriage to exist, the parties must be legally free to marry, there must be some type of holding out to the public of their marital relationship and the marital union must be effectuated through the use of words expressing present intent and content. The Office requested that appellant submit supporting evidence to demonstrate that the requirements for a common-law marriage under Pennsylvania law had been met.

On November 9, 2004 appellant returned a signed affidavit indicating that he acknowledged that his relationship with Ms. Stewart met the requirements for a common-law marriage. He submitted supporting documentation, including a divorce decree indicating that he and Joyce Ann Kravic were divorced effective May 19, 1983, a March 15, 1989 lease agreement showing that, beginning March 15, 1989, he and Ms. Stewart leased an apartment in Pittsburgh, Pennsylvania. Mary Frances Mastromatteo submitted a statement dated November 7, 2002 in which she noted that she had known appellant and Ms. Stewart for about 15 years as neighbors. In a November 7, 2004 statement, Kathleen and George F. Bucsek stated that they had been friends with appellant and Ms. Stewart since 1990 and they had traveled and socialized together. The Bucsek's stated: "[t]hey consider themselves married -- as do we and their many friends and relatives. [He] always refers to [her] as his wife and she refers to him as her husband. We have always referred to them as husband and wife." In an undated statement, Bill Higgins attested that he had known appellant as a coworker and personal friend for 15 years and that Ms. Stewart had lived with appellant as his common-law wife during those years. Appellant submitted a third CA-7 claim form for the period October 30 to November 15, 2004, again claiming Ms. Stewart as a dependent. He returned to limited duty on November 16, 2004.

By decision dated November 30, 2004, the Office found that appellant was not entitled to augmented compensation on the grounds that he did not meet the Pennsylvania requirement to establish a common-law marriage as found in 55 PA Code 151.44 because he did not submit evidence "to support that an exchange or ceremony expressing the intent that an effectuation of marriage occurred."

On December 8, 2004 appellant requested review of the written record. He returned to full duty on December 22, 2004. In a decision dated April 27, 2005, an Office hearing representative affirmed the November 30, 2004 decision. On May 25, 2005 appellant, through his attorney, requested reconsideration and submitted a February 4, 2005 statement in which Veronica J. Farr, appellant's aunt, stated that appellant had been living with Ms. Stewart as his common-law wife since March 1989 and had always introduced her as such to all family members. In a February 5, 2005 statement, Ms. Bucsek reiterated her prior comments. Appellant also submitted a mortgage account statement from Fleet Bank dated June 30, 2003, showing that both appellant and Ms. Stewart were mortgagors, a letter addressed to both from

PNC Bank dated October 14, 2004 noting that they had opened a joint account on January 25, 1991 and an Equitable Gas billing statement dated September 3, 2004 in both their names.

By decision dated June 7, 2005 and finalized on June 8, 2005, the Office denied modification of the April 27, 2005 decision, finding that appellant failed to submit evidence to support that there had been some form of ceremony or exchange through words expressing intent of union. On July 8, 2005 appellant, through his attorney, again requested reconsideration and submitted a signed affidavit, dated June 30, 2005, in which appellant and Ms. Stewart attested that since approximately January 1990 they had lived together as husband and wife, referring to each other as husband and wife. The statement continued: “at that time we agreed that we considered ourselves to be married and recognized the existence of our love for each other and the union to each other that had arisen.” The statement concluded that they had remained together since that time “and have at all times considered ourselves to be married up to the present and continuing.”

In a decision dated October 13, 2005, the Office denied further merit review, finding that the statement provided was repetitious as it did not “provide any confirmation that there was a ceremony or exchange of intent required to recognize this union.”

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8110 of the Federal Employees’ Compensation Act<sup>1</sup> provides that a claimant is entitled to augmented compensation at three-quarters or 75 percent 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.<sup>2</sup> 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.<sup>3</sup>

The statutory provision for common-law marriage is contained in section 1103 of Title 23, Domestic Relations, of the Pennsylvania Consolidated Statutes. The Pennsylvania legislature abolished common-law marriage by statute in 2004 and it became effective on January 1, 2005. The provision, however, specifically provides that “nothing in this part shall be deemed or taken to render any common-law marriage otherwise lawful and contracted on or before January 1, 2005, invalid.”<sup>4</sup> The statutory provision in place prior to the 2004 amendment stated: “This part shall not be construed to change the existing law with regard to common-law marriage.”<sup>5</sup> The provision does not contain a statutory definition.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> 5 U.S.C. § 8110(a)(1).

<sup>3</sup> *Leon J. Mormann*, 51 ECAB 680 (2000); *Mary Bee McCabe (George S. Sampio)*, 35 ECAB 218 (1983).

<sup>4</sup> 23 Pa. Cons. Stat. § 1103 (2004).

<sup>5</sup> 23 Pa. Cons. Stat. § 1103 (2003).

The definition of common-law marriage as established by the Pennsylvania Supreme Court provides that “a common-law marriage can only be created by the exchange of words in the present tense [*verba in praesenti*’], spoken with the specific purpose that the legal relationship of husband and wife is created by that.”<sup>6</sup> If the parties are available, direct evidence regarding the requisite exchange of words is preferred and testimony regarding the mutually expressed intent to marry may refer to a past event.<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

Appellant contends that he is entitled to augmented compensation because he has a dependent, a common-law wife, Ms. Stewart. The domestic relations law of the Commonwealth of Pennsylvania is applicable in this case.<sup>8</sup> The Board notes that the Office’s reliance on section 151.44 of the Pennsylvania code of regulations<sup>9</sup> was in error. The Board has long held that questions affecting relationship, such as the validity of a marriage, are determined by the statutory and decisional domestic relations law of the jurisdiction where the alleged marriage took place.<sup>10</sup> The Office therefore erred in relying on the Pennsylvania regulatory code rather than on statutory and decisional domestic relations law.<sup>11</sup>

The statutory provision for common-law marriage is contained in section 1103 of Title 23, Domestic Relations, of the Pennsylvania Consolidated Statutes. This provision abolished common-law marriage on January 1, 2005 but specifically provides that “nothing in this part shall be deemed or taken to render any common-law marriage otherwise lawful and contracted on or before January 1, 2005, invalid.”<sup>12</sup>

The definition of common-law marriage as established by Pennsylvania Supreme Court was discussed in *Staudenmayer v. Staudenmayer*.<sup>13</sup> The court stated that in Pennsylvania, “a common-law marriage can only be created by the exchange of words in the present tense [*verba in praesenti*’], spoken with the specific purpose that the legal relationship of husband and wife is

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<sup>6</sup> *Staudenmayer v. Staudenmayer*, 714 A.2d 1016 (Pa. 1998).

<sup>7</sup> *PNC Bank Corporation v. Workers’ Compensation Appeal Board*, 831 A.2d 1269, 1284 (Pa. Commw. 2003).

<sup>8</sup> *Leon J. Mormann*, *supra* note 3.

<sup>9</sup> See *The Blue Book, A Uniform System of Citation*, 17<sup>th</sup> ed. 2000 at 229.

<sup>10</sup> *Supra* note 3.

<sup>11</sup> Furthermore, section 151.44 of the Pennsylvania code is in regard to provisions for specified relatives covered under Pennsylvania’s temporary assistance for needy families (TANF). The regulatory definition of common-law marriage found in section 151.44 is as follows: “A common-law marriage exists when the parties living together are legally free to marry, that is single, divorced or widowed and are living as husband and wife by mutual agreement. A common-law marriage may exist if a man and woman are living together and are considered as husband and wife by the community.”

<sup>12</sup> 23 Pa. Cons. Stat. § 1103 (2004).

<sup>13</sup> 714 A.2d 1016 (1998).

created by that.”<sup>14</sup> In *PNC Bank Corporation v. Workers’ Compensation Appeal Board (Stamos)*,<sup>15</sup> a Pennsylvania lower court relied on *Staudenmayer* and noted that this rule applied when the parties were able to testify regarding the exchange of words. It stated that, if the parties were not available, a rebuttable presumption in favor of common-law marriage is allowed where there is sufficient proof of cohabitation and reputation of marriage in the community.<sup>16</sup> The *PNC Bank* case found that, if the parties were available, direct evidence regarding the requisite exchange of words was preferred and noted testimony regarding the mutually expressed intent to marry was always going to refer to a past event.<sup>17</sup> In this case, the issue of whether appellant is entitled to augmented compensation at the 75 percent rate depends on the sufficiency of testimony regarding the exchange of words of the intent to marry and thus establish a common-law marriage under Pennsylvania law.<sup>18</sup>

While appellant submitted a number of supportive statements and financial documents prior to the June 8, 2005 decision he had submitted no personal statements or affidavits in which he and Ms. Stewart attested to their relationship. Therefore, he failed to establish that they had entered into a common-law marriage under Pennsylvania law such that he would be entitled to augmented compensation for a dependent.<sup>19</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

To require the Office to reopen a case for merit review under section 8128(a) of the Act, section 10.606(b)(2) of Office regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.<sup>20</sup> Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>21</sup> Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary

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<sup>14</sup> *Id.* at 1020.

<sup>15</sup> *PNC Bank Corporation v. Workers’ Compensation Appeal Board*, 831 A.2d 1269 (Pa. Commw. 2003); citing *Staudenmayer v. Staudenmayer*, 714 A.2d 1016 (Pa. 1998). In the *PNC Bank* case, the court determined that common-law marriage should be abolished but found that under present law a common-law marriage existed between John Kretz, who was claiming death benefits and a deceased employee of PNC Bank Corporation, Janet Stamos.

<sup>16</sup> *Id.* at 1272-73.

<sup>17</sup> *Id.* at 1284.

<sup>18</sup> The Board further notes that the *PNC Bank* case determined that clear and convincing evidence was the proper burden of proof. *Id.*

<sup>19</sup> *Supra* note 2.

<sup>20</sup> 20 C.F.R. § 10.606(b)(2).

<sup>21</sup> 20 C.F.R. § 10.608(b).

value and does not constitute a basis for reopening a case.<sup>22</sup> Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>23</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that the Office improperly denied merit review in its October 13, 2005 decision as the evidence submitted by appellant with his July 8, 2005 reconsideration request is relevant and pertinent new evidence not previously considered.<sup>24</sup> The case will therefore be remanded to the Office.

In a June 30, 2005 affidavit, appellant and Ms. Stewart declared that in January 1990 they “agreed that we considered ourselves to be married” and had lived together since that time. This affidavit constitutes relevant and pertinent new evidence related to the underlying issue in this case. It raises the question of whether the definition of common-law marriage under Pennsylvania law as outlined by the *Staudenmayer* case has been met. This new evidence was not previously considered by the Office. The Board finds this evidence sufficient to require further review of the case on its merits.<sup>25</sup> The case will therefore be remanded for the Office to consider the June 30, 2005 affidavit, together with the previously submitted evidence of record, to determine if appellant has established the existence of a common-law marriage under Pennsylvania law such that he would be entitled to augmented compensation.

### **CONCLUSION**

The Board finds that appellant failed to meet his burden of proof to establish that he was entitled to compensation at the augmented rate at the time the Office issued its June 8, 2005 decision. The Office, however, improperly denied appellant’s request for a merit review pursuant to section 8128(a) of the Act in its October 13, 2005 decision.

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<sup>22</sup> *Helen E. Paglinawan*, 51 ECAB 591 (2000).

<sup>23</sup> *Kevin M. Fatzer*, 51 ECAB 407 (2000).

<sup>24</sup> 20 C.F.R. § 10.606(b)(2).

<sup>25</sup> 20 C.F.R. 10.606(b)(2); see *Donald T. Pippin*, 54 ECAB 631 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated June 8 and April 27, 2005 be affirmed. The decision dated October 13, 2005 is set aside and the case remanded for further merit review consistent with this decision of the Board.

Issued: April 14, 2006  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board