

were included in her monthly compensation checks. An August 10, 2004 medical report indicated that appellant lived with her family and was not married.

While receiving compensation, appellant completed several annual affidavits of earnings and employment (Form CA-1032). The most recent of these forms was sent by the Office to appellant on December 5, 2005. It contained the following statements:

“A claimant who has no eligible dependents is paid compensation at 66 2/3 percent of the applicable pay rate. A claimant who has one or more eligible dependents is paid compensation at 75 percent of the applicable pay rate. You must answer the questions below to ensure your compensation is paid at the correct rate.

“You may claim compensation for a dependent if you have a ... husband or wife who lives with you.

“You may also claim compensation for a husband, wife or dependent who does not live with you if a [c]ourt has ordered you to pay support to that person. Finally, you may claim compensation for (a) a husband or wife ... even if that person does not live with you, as long as you make regular direct payments for his or her support.”

The form asked whether appellant was claiming compensation on account of any dependents, whether she was married and whether she made regular direct payment for her husband's support. Appellant did not complete and submit this questionnaire to the Office.

By letter to the Office dated October 18, 2006, appellant's attorney asserted that appellant was entitled to the augmented 75 percent compensation rate because, although separated from her husband, he was still covered by her health insurance. The attorney stated that “this was a regular expense that cost her a significant percentage of her periodic compensation payment. Appellant did not contribute in any other way to her husband's support.”

By decision dated October 27, 2006, the Office informed appellant's attorney that appellant was being properly compensated at the 66 2/3 percent rate. It stated:

“For the purpose of compensation, a dependent is defined as ‘a wife or a husband residing with the employee or receiving regular support payments him or her, either court ordered or otherwise.’ As she is separated from her husband she is not entitled to receive compensation at the [75 percent] rate unless she is able to establish that she is paying him support payments. That [appellant's] husband remains on her health benefits is immaterial. This is evidenced by [the Act's] allowance of former spouses to remain on an employee's health benefits for up to 36 months after dependency has clearly passed.”

LEGAL PRECEDENT

The basic rate of compensation under the Act¹ is 66 2/3 percent of the injured employee's monthly pay.² 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.³

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."⁴ 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.

ANALYSIS

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."⁵ In the case of *Sam R. Ekovich*,⁶ 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. Therefore, contrary to the Office's finding that health insurance coverage is an immaterial fact in determining dependency, the Board has previously found that it can in fact establish dependency for an estranged spouse.

The record reflects that appellant paid health insurance premiums for a plan that covered both her and her family, including her estranged spouse, since December 2002. On appeal appellant alleges that her estranged spouse did rely on this health insurance coverage. This case requires further factual development because there is little evidence in the record about the financial situation of appellant's husband. Additional relevant factual information would include the husband's current employment (if any), the amount of his income and monthly expenses

¹ 5 U.S.C. §§ 8101-8193.

² 5 U.S.C. § 8105(a).

³ 5 U.S.C. § 8110(b)(1).

⁴ 5 U.S.C. § 8110(a)(2).

⁵ *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").

⁶ 37 ECAB 113.

(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.⁷

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.

CONCLUSION

The Board finds that the case is not in posture for decision. The October 27, 2006 decision of the Office is set aside and the case is remanded for further action consistent with this decision.

ORDER

IT IS HEREBY ORDERED THAT the October 27, 2006 decision of the Office of Workers' Compensation Programs is set aside and remanded for further adjudication in compliance with this decision of the Board.

Issued: June 11, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁷ See *Barbara J. Haskell*, Docket No. 00-1087 (issued July 10, 2002).