



syndrome. Appellant underwent a right carpal tunnel release on April 5, 2006 and a left carpal tunnel release on June 7, 2006.

On February 26, 2008 appellant filed a claim for a schedule award. She listed her mother as a dependent on the claim form. By decision dated July 3, 2008, the Office granted appellant schedule awards for a five percent permanent impairment to each upper extremity. The awards ran for 31.2 weeks from August 16, 2006 to March 22, 2007. The Office paid compensation at the rate of  $66 \frac{2}{3}$  of appellant's weekly compensation applicable to claimants without dependents.

On September 17, 2008 appellant's attorney requested that the Office pay her compensation at the augmented rate of 75 percent of her weekly compensation applicable to claimants with dependents. He submitted a 2007 federal income tax return (Form 1040) showing that appellant claimed her mother as a dependent.

By letter dated September 26, 2008, the Office requested that appellant provide additional information supporting her contention that her mother was a dependent as defined under the Federal Employees' Compensation Act.<sup>1</sup>

On October 1, 2008 appellant completed a dependent checklist provided by the Office. She indicated that her mother was unmarried and received \$470.00 monthly as supplemental security income (SSI) from the Social Security Administration.

By decision dated October 22, 2008, the Office denied appellant's request for augmented compensation. It determined that her mother did not qualify as a dependent under the Act as she received SSI income and thus was not totally dependent on appellant.

On October 30, 2008 appellant, through her attorney, requested a telephone hearing. At the telephone hearing, held on February 11, 2009, she related that her mother lived with her and received SSI but no other form of benefits except for Medicare and Medicaid. Appellant asserted that her mother was unable to walk and had dementia. She paid for her mother's meals and personal items, cared for her, administered her medication and transported her to medical appointments. Appellant's attorney argued that the SSI income that her mother received was inconsequential and did not disqualify her as a dependent under the Act. The attorney asserted that appellant's mother would be a ward of the state if it were not for her daughter's care.

By decision dated May 20, 2009, the hearing representative affirmed the October 22, 2008 decision. She found that as appellant's mother received SSI she was not wholly dependent on appellant for support and thus was not a dependent as defined under the Act.

### **LEGAL PRECEDENT**

Section 8110(b) of the Act provides that a disabled employee with one or more dependents is entitled to compensation at the augmented rate of 75 percent of his or her pay.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Id.* at § 8110(b).

Section 8110(a)(4) of the Act states: “For the purpose of this subsection, ‘dependent’ means parent, while wholly dependent on and supported by the employee.”<sup>3</sup> In *Williams L. Rogers*,<sup>4</sup> the Board defined “wholly dependent” as follows: “The generally accepted understanding of ‘wholly dependent,’ ... is that the person claiming such dependency status must have no consequential source or means of maintenance other than the earnings of the employee.”<sup>5</sup>

The Board has held that a person may be wholly dependent on the employee though the person claiming may have some slight earnings or savings of her own or some other slight property. Such disregard of slight earnings, savings or property is consistent with the generally accepted view that disregards inconsequential sources or means of maintenance.<sup>6</sup>

### ANALYSIS

The Office accepted appellant’s claim for bilateral carpal tunnel syndrome. By decision July 3, 2008, it granted her a schedule award for a five percent permanent impairment of each upper extremity. On September 17, 2008 appellant’s attorney requested that the Office pay her the schedule award at the augmented rate as her mother qualified as her dependent. Appellant related that her mother received \$470.00 per month from social security and also qualified for Medicare and Medicaid benefits. She paid for her mother’s meals, cared for her and transported her to medical appointments. Appellant also claimed her as a dependent on her federal income taxes.

In order for a parent to qualify as a “dependent” under the Act she must be “wholly dependent on and supported by the employee.”<sup>7</sup> The Board has defined “wholly dependent” to mean that the person claiming dependent status must have no other consequential sources of maintenance.<sup>8</sup> The question in this case, consequently, is whether the receipt by appellant’s mother of \$470.00 per month in social security benefits is inconsequential.

In *Joan L. Harris*,<sup>9</sup> the Board found that the claimant was not entitled to augmented compensation because her mother did not qualify as a dependent under section 8110(a)(4) of the Act. The Board determined that the mother’s receipt of \$284.30 per month in social security benefits was not an inconsequential or slight source of maintenance and affirmed the Office’s decision finding that the claimant’s mother was not wholly dependent on the employee for her support. In *Jim C. Thaxton*,<sup>10</sup> the Board held that \$223.00 a month in social security benefits

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<sup>3</sup> *Id.* at § 8110(a)(4).

<sup>4</sup> 1 ECAB 191 (1948).

<sup>5</sup> *Id.* at 194.

<sup>6</sup> See *Howard A. Fredricks*, 55 ECAB (2003); *Josephine Bellardita*, 48 ECAB 362 (1997).

<sup>7</sup> 5 U.S.C. § 8110(a)(4).

<sup>8</sup> *William L. Rogers*, 1 ECAB 191 (1948).

<sup>9</sup> 33 ECAB 1620 (1982).

<sup>10</sup> 36 ECAB 346 (1984).

was not an inconsequential or slight source of maintenance for the claimant's mother, and that she therefore could not be considered "wholly dependent" on the claimant so as to entitle her to augmented compensation. In *John P. Gass*,<sup>11</sup> the Board found that the \$450.00 per month in social security benefits was not an inconsequential or *de minimus* source of maintenance by the claimant's mother and that she was thus not "wholly dependent" on the claimant within the meaning of section 8110(a)(4). In *Josephine Bellardita*,<sup>12</sup> the Board found that the claimant's mother did not qualify as a dependent based on her receipt of \$480.00 per month in social security benefits and \$117.00 per month in pension benefits.

The Board finds that appellant's mother is not "wholly dependent" on her for purposes of the Act. Appellant's receipt of \$470.00 in social security benefits cannot be characterized as an inconsequential or slight source of maintenance to qualify her as being wholly dependent within the generally accepted meaning of section 8110(a)(4). Even though her mother may qualify as her dependent for income tax purposes, the terms of the Act are specific as to the method and amount of payment of compensation; neither the Office nor the Board has the authority to enlarge the terms of the Act nor make an award of benefits under any terms other than those specified in the statute.<sup>13</sup> Even though appellant may provide substantial financial assistance, her mother is not be considered "wholly dependent" on her, within the meaning of section 8110(a)(4) of the Act, because she received more than an inconsequential amount from another source during the relevant period. Accordingly, she is not entitled to augmented compensation.

#### CONCLUSION

The Board finds that appellant is not entitled to augmented compensation because her mother is a dependent under section 8110(a)(4).

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<sup>11</sup> 40 ECAB 394 (1988).

<sup>12</sup> 48 ECAB 362 (1997).

<sup>13</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated May 20, 2009 and October 22, 2008 are affirmed.

Issued: March 12, 2010  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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