

**United States Department of Labor
Employees' Compensation Appeals Board**

L.H., Appellant

and

DEPARTMENT OF VETERANS AFFAIRS,
VETERANS HEALTH ADMINISTRATION,
Houston, TX, Employer

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**Docket No. 11-1888
Issued: March 19, 2012**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 15, 2011 appellant filed a timely appeal from the June 2, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim, for compensation at the augmented rate. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP properly denied appellant's claim for compensation at the augmented rate for a claimant with one or more dependents within the meaning of FECA.

¹ 20 C.F.R. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on October 17, 2008 appellant, then a 47-year-old nurse, sustained a lumbar sprain due to a fall at work. It paid her compensation for periods of compensation.

In an October 15, 2009 letter, appellant asserted that her daughter, Torria S. Harrington, qualified as a dependent under FECA and therefore she was entitled to receive compensation at the augmented three-fourths pay rate. She claimed that her daughter was a full-time student for the fall 2009 semester (August to December 2009), indicating that she was taking 11 credit hours of courses at Houston Community College and 3 credit hours of courses at the University of Houston.² Appellant indicated that school administrators refused to complete the school attendance certification forms provided by OWCP. However, she submitted an October 13, 2009 document showing that, for the fall 2009 semester, her daughter was registered to take 11 credit hours of courses at Houston Community College and an October 12, 2009 document showing that she was registered to take 3 credit hours of courses at the University of Houston.

In two undated letters received by OWCP in mid 2010, appellant asserted that her daughter had been a full-time college student since August 2008 and therefore she was entitled to receive compensation at the augmented rate since that time. In one of the letters, she stated, "I received the supplemental payment of \$137.91 ... last week. This amount does not reflect the total amount owed to me to compensate me at the pay rate of 3/4 instead of 2/3."

Appellant submitted an October 13, 2009 document showing that, for the fall 2009 semester, her daughter was registered for 11 credits worth of classes at Houston Community College. A May 18, 2010 academic record shows that her daughter completed 11 credits worth of classes at Houston Community College during the fall 2009 semester (August 22 to December 16, 2009). An October 12, 2009 document shows that, for the fall 2009 semester, appellant's daughter was registered for three credits worth of classes at the University of Houston.

Appellant submitted a May 18, 2010 document which indicates that, between January 19 and May 20, 2010, her daughter was characterized as "FullTime" at the Houston Community College. A May 18, 2010 academic record shows that her daughter completed 14 credits worth of classes at Houston Community College during the spring 2010 semester (January 19 and May 19, 2010). Another May 18, 2010 document shows that, between January 19 and May 14, 2010, appellant's daughter completed three credits worth of classes at the University of Houston.

In a February 2, 2011 letter, appellant asserted that she still had not been paid the proper amount of compensation at the augmented rate. She stated:

"I was off work for knee surgery from 8/18/09-10/18/09. While off work, a Dept. of Labor employee informed me that I would receive back pay once they received documentation validating that my daughter, Torria Harrington, was a full-time college student. From 8/18/09-10/18/09, I was only paid at the 2/3 pay rate instead of the 3/4 pay rate. I am requesting to be paid the difference between 2/3

² The record reflects that appellant's daughter was born on August 27, 1990.

and 3/4. Additionally, I am requesting to be paid at a 3/4 pay rate for the dates of 2/9/09, 6/19/09, 11/2/09 & 7/10/10 as specified on the CA-7.”

In a February 11, 2011 decision, OWCP determined that appellant was not entitled “to the difference between with dependent and without dependent for compensation claims filed in 2008.” It noted, “You[r] daughter was not a full time student at one educational facility for that year.” (Emphasis in original.) OWCP stated that appellant received a \$137.71 payment on June 11, 2010 for the difference due to her for the period December 2, 2009 to February 18, 2010 and that, in about two weeks, she would receive a \$10.91 payment for the difference due to her for the period March 16 to June 15, 2010.

In an April 13, 2011 letter, appellant claimed entitlement to augmented compensation for the same periods mentioned in her February 2, 2011 letter. She further stated:

“I have provided a copy of the documentation that proves that my daughter, Torria, was a full time student during the above stated dates. During the Fall 2009, she completed 11 credit hours at Houston Community College and three credit hours at the University of Houston, which totaled 14 credit hours. A full time student must take a minimum of 12 credit hours in one semester. In a letter from the Dept. of Labor dated 2/11/11, it states I can’t be paid at 75 percent because she didn’t receive all of the credit hours at one university. I do not believe the intent of the FECA regulation is for an employee to be discriminated against because a dependent took classes at two accredited colleges. I propose that the intent was to ensure that a child is a dependent and attending college full-time.”³

In a June 2, 2011 decision, OWCP determined that appellant was not entitled “to the difference between with and without dependent for compensation claims filed in 2008.” It noted, “You[r] daughter was not a full[-]time student at one educational facility for that year.” (Emphasis in original.) OWCP stated that appellant received a \$137.71 payment on June 11, 2010 for the difference due to her for the period December 2, 2009 to February 18, 2010 and a \$10.91 payment on February 18, 2011 for the difference due to her for the period March 16 to June 15, 2010.

LEGAL PRECEDENT

FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.⁴ If the disability is total, the United States shall pay the employee during the disability monthly compensation equal to 66 2/3 percent of her monthly pay, which is known as her basic compensation for total disability.⁵ Where the employee has one or more dependents as defined

³ Appellant resubmitted the documents she had previously submitted to support her assertion that her daughter was a full-time student.

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8105(a)

in FECA, she is entitled to have her basic compensation augmented at the rate of 8 1/3 percent, for a total of 75 percent of monthly pay.⁶ A student may be a dependent, which under 5 U.S.C. § 8101(17) means an individual under 23 years of age who has not completed 4 years of education beyond high school and is regularly pursuing a full-time course of study or training at an accredited institution.⁷ If a claimant receives augmented compensation during a period where she has no eligible dependents, the difference between the compensation she was entitled to receive at the two-thirds compensation rate and the augmented compensation received at the three-quarters rate constitutes an overpayment of compensation.⁸

In determining whether a claimant has discharged her burden of proof and is entitled to compensation benefits, OWCP is required by statute and regulation to make findings of fact.⁹ OWCP's procedure further specifies that a final decision of OWCP must include findings of fact and provide clear reasoning which allows the claimant to "understand the precise defect of the claim and the kind of evidence which would tend to overcome it."¹⁰ These requirements are supported by Board precedent.¹¹

ANALYSIS

Appellant claimed that her daughter had been a full-time student since August 2008 and asserted that therefore she was entitled to be paid compensation at the augmented three fourths rate for a claimant with one or more dependents within the meaning of FECA. OWCP made adjustment payments to her which it asserted were designed to ensure that she would be paid at the augmented three-fourths rate for the periods December 2, 2009 to February 18, 2010 and March 16 to June 15, 2010.

OWCP denied appellant's claim for augmented compensation for certain periods. The Board finds that it did not provide adequate facts or findings such that she would adequately understand the precise defect of her claim and the kind of evidence which would tend to overcome it. In its February 2 and June 2, 2011 decisions, OWCP generally indicated that appellant was not entitled "to the difference between with dependent and without dependent for compensation claims filed in 2008." It noted, "You[r] daughter was not a full[-]time student at one educational facility for that year." (Emphasis in original.) Appellant submitted evidence to

⁶ *Id.* at § 8110(b).

⁷ 5 U.S.C. §§ 8101(17), 8110(a). A dependent may also be a husband or wife (under certain circumstances); an unmarried child, including an adopted child or stepchild, who lives with a claimant and is under 18 years of age; an unmarried child who younger 18 or over 18, but who cannot support himself or herself because of mental or physical disability or a parent who totally depends on a claimant for support. 5 U.S.C. §§ 8101(9), 8110(a).

⁸ *Diana L. Booth*, 52 ECAB 370 (2001).

⁹ 5 U.S.C. § 8124(a) provides that OWCP "shall determine and make a finding of facts and make an award for or against payment of compensation." 20 C.F.R. § 10.126 provides in pertinent part that the final decision of OWCP "shall contain findings of fact and a statement of reasons."

¹⁰ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4 (July 1997).

¹¹ See *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

establish that, for the fall 2009 semester, her daughter was taking 11 credit hours of courses at Houston Community College and 3 credit hours of courses at the University of Houston. OWCP's decisions suggests that a rule exists which provides that an individual who takes a full load of classes would not be considered a full-time student within the meaning of FECA if those classes were taken at more than one institution. OWCP did not provide adequate explanation for this determination nor did it cite to any authority for the decision reached any such rule. Moreover, with respect to the augmented payments made for part of the spring 2010 semester, it did not adequately explain why they were made for the designated periods and how they were calculated. OWCP did not make any specific findings on appellant's claim that she was entitled to augmented compensation for the fall 2008 and spring 2009 semesters.

For these reasons, OWCP's June 2, 2011 decision regarding appellant's claim for augmented compensation will be set aside. The case is remanded to OWCP for such further development as it deems necessary, to be followed by an appropriate decision on this matter.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether OWCP properly denied appellant's claim for compensation at the augmented rate for a claimant with one or more dependents within the meaning of FECA. The case is remanded to OWCP for further development.

ORDER

IT IS HEREBY ORDERED THAT the June 2, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for proceedings consistent with this decision of the Board.

Issued: March 19, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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