

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

J.T., Appellant)
and) Docket No. 13-1580
U.S. POSTAL SERVICE, POST OFFICE,) Issued: November 8, 2013
Portland, ME, Employer)

)

Appearances:
Ron Watson, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

**ORDER GRANTING MOTION TO
REVERSE AND REMAND**

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

On June 24, 2013 appellant, through his representative, file a timely appeal from a December 27, 2012 decision of the Office of Workers' Compensation Programs (OWCP). By this decision, citing to Board precedent,¹ OWCP denied appellant's claim for augmented compensation on the grounds that "the Defense of Marriage Act (DoMA) prohibits [OWCP] from recognizing a marriage between two individuals of the same sex." Appellant's representative requested oral argument before the Board.

The Director of OWCP filed a motion dated August 19, 2013, requesting the Board to set aside OWCP's December 27, 2012 decision and remand the case for payment of the augmented compensation benefits.² The Director acknowledged that on June 26, 2013 the United States Supreme Court (the Court) ruled that section 3 of DoMA, which "limited the definition of spouse to a person of the opposite sex who is a husband or wife," is unconstitutional. The Court struck

¹ OWCP cited to the Board's holding in *C.M.*, 58 ECAB 436 (2007).

² The Director also requested that the Board overrule its holding in *C.M.*, in which the Board affirmed OWCP's denial of augmented compensation due to same sex marriage under DoMA. The Board concludes that it is unnecessary to rule on this aspect on the current appeal.

down the provisions of DoMA which denied federal benefits to legally married, same sex couples.³ Turning to the current appeal, the Director concluded that, in light of the Court's ruling in *Windsor* and, in light of the fact that appellant has established a valid marriage to his spouse in the State of Vermont appellant is entitled to augmented compensation.

The Clerk of the Board served appellant and his representative with a copy of the Director's motion to reverse and remand. In a response dated August 6, 2013 and received by the Board on August 13, 2013 and in a September 17, 2013 response, appellant's representative concurred in the Director's motion.

The Board has duly considered the matter and concludes that, as the Director has acknowledged the Court's ruling in *Windsor* relative to the unconstitutionality of section 3 of DoMA denying federal benefits to legally married same sex couples, as the Director has requested the Board to reverse its December 27, 2012 decision denying appellant augmented benefits under this unconstitutional section and as, on remand, OWCP will pay augmented compensation to appellant, the Director's motion should be granted. Accordingly,

IT IS HEREBY ORDERED THAT the motion to reverse and remand filed by the Director of the Office of Workers' Compensation Programs is granted. The decision of OWCP dated December 27, 2012 is reversed; the case is remanded for further proceedings consistent with this order of the Board.

Issued: November 8, 2013

Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

³ See *United States v. Windsor*, 133 S. Ct. 2675 (2013).