

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

F.K., Appellant

and

**DEPARTMENT OF COMMERCE, U.S.
CENSUS BUREAU, Jeffersonville, IN, Employer**

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**Docket No. 22-0175
Issued: July 12, 2022**

Appearances:

*Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On November 15, 2021 appellant, through counsel, filed a timely appeal from a November 4, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether OWCP properly determined that appellant was not entitled to augmented schedule award compensation based on claiming her adult son as a dependent pursuant to 5 U.S.C. § 8110.

FACTUAL HISTORY

On January 24, 2019 appellant, then an 86-year-old statistical clerk, filed an occupational disease claim (Form CA-2) alleging that she developed carpal tunnel syndrome due to factors of her federal employment, specifically performing repetitive work on computers.³ She noted that she first became aware of her condition and realized its relationship to her federal employment on February 25, 2018. On the reverse side of the claim form, an employing establishment human resource specialist indicated that appellant was last exposed to the employment conditions alleged to have caused her disease or illness on April 19, 2018. On April 8, 2020 OWCP accepted her claim for right carpal tunnel syndrome.

Appellant submitted a July 31, 2020 report by Dr. Martin Fritzhand, a Board-certified urologist, who reviewed her history of injury and medical record. Dr. Fritzhand noted that electromyography and nerve conduction velocity study showed severe right carpal tunnel syndrome. On physical examination of appellant's right hand, he noted that appellant would have difficulty grasping heavy or large objects. Tinel's sign was positive on the right. Referencing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),⁴ Table 15-23 (Entrapment/Compression Neuropathy Impairment), page 449, Dr. Fritzhand assigned a grade modifier for functional history (GMFH) of 3, a grade modifier for physical examination (GMPE) of 3, and a grade modifier for clinical studies (GMCS) of 1. He also noted a Quick *DASH* score of 63. Dr. Fritzhand calculated that appellant had six percent permanent impairment of the right upper extremity. He noted that she reached maximum medical improvement (MMI) by February 2019.

In a September 18, 2020 report, Dr. James W. Butler, a Board-certified orthopedic surgeon serving as a district medical adviser, concurred with Dr. Fritzhand's impairment rating. Utilizing Table 15-23 of the A.M.A., *Guides*, he calculated that appellant had six percent permanent impairment of the right upper extremity. Dr. Butler opined that she had reached MMI on July 31, 2020 the date of Dr. Fritzhand's report.

On November 17, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award. Under section 5, she listed J.K. as a dependent and noted that he was her son.

³ OWCP assigned the present claim OWCP File No. xxxxxx776. Appellant has a previously accepted traumatic injury claim (Form CA-1) under OWCP File No. xxxxxx089 for a left elbow abrasion and a right radial styloid fracture causally related to a November 14, 2017 employment injury. OWCP has administratively combined OWCP File Nos. xxxxxx776 and xxxxxx089, with the latter claim designed as the master file.

⁴ A.M.A., *Guides* (6th ed. 2009).

In letters dated February 18 and 23, 2021, OWCP advised appellant that an unmarried child, age 18 or older, may be considered a dependent under FECA if he or she is either a full-time student or incapable of self-support. It requested that she submit a questionnaire and a medical report describing his or her mental or physical disability to determine whether her son had continuing eligibility for compensation beyond his 18th birthday and provided a questionnaire for completion.

By decision dated May 5, 2021, OWCP granted appellant a schedule award for six percent permanent impairment of the right upper extremity. The award ran for 18.72 weeks from July 31 through December 9, 2020.

In a letter dated May 11, 2021, appellant, through counsel, requested additional information regarding how appellant's weekly pay rate was calculated and alleged that the pay rate, which was used to calculate her schedule award, was inconsistent with her W-2s from 2016, 2017, and 2018. Counsel also alleged that appellant may be entitled to receive compensation at the augmented rate because appellant provides housing, care, and support for her disabled son.

On May 20, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on September 13, 2021. During the hearing, counsel clarified that she was not questioning the amount of the schedule award. She argued that appellant was entitled to compensation at the augmented rate as appellant had an adult son who was medically incapable of caring for himself. Appellant testified that her son was diabetic and required medical assistance. She alleged that her son had lived with her all his life and was incapable of performing daily activities without assistance.

In a letter dated September 13, 2021, OWCP advised appellant's attorney of the type of evidence required to establish that appellant was entitled to compensation at the augmented rate of 75 percent. It requested medical evidence that demonstrated that appellant's adult son was incapable of self-support.

By decision dated November 4, 2021, OWCP's hearing representative affirmed the May 5, 2021 decision, finding that appellant had not submitted evidence to establish that she was entitled to schedule award compensation at an augmented rate.

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 his duty.⁵ If the disability is total, the United States shall pay the employee during the disability monthly monetary compensation equal to 66 2/3 percent of his or her monthly pay, which is known as basic compensation for total disability.⁶ Under section 8110 of FECA, an employee is entitled to compensation at the augmented rate of eight and one-third of his or her weekly pay for a total of

⁵ 5 U.S.C. § 8102(a); *see also* A.W., Docket No. 19-0832 (issued September 24, 2019).

⁶ *Id.* at § 8105(a).

75 percent of monthly pay, if he or she has one or more dependents.⁷ OWCP's procedures provide that the maximum compensation rate for disability compensation also apply to schedule award compensation.⁸

A dependent includes an unmarried child who, while living with the employee or receiving regular contributions from the employee toward his or her support, is either under 18 years of age or over 18 years of age and incapable of self-support due to physical or mental disability.⁹ A child is also considered a dependent if he or she is an unmarried student under 23 years of age who has not completed four years of education beyond the high school level and is currently pursuing a full-time course of study at a qualifying college, university, or training program.¹⁰

ANALYSIS

The Board finds that OWCP properly determined that appellant was not entitled to augmented schedule award compensation based on claiming her adult son as a dependent pursuant to 5 U.S.C. § 8110.

By decision dated November 4, 2021, OWCP found that appellant was not entitled to augmented schedule award compensation as no medical evidence was received to establish that her adult son was incapable of self-support.

As noted above, a dependent includes an unmarried child who, while living with the employee or receiving regular contributions from the employee toward his or her support, is either under 18 years of age or over 18 years of age and incapable of self-support due to physical or mental disability.¹¹ In letters dated February 18 and 23, 2021, OWCP requested that appellant submit a questionnaire and advised her of the necessary medical evidence to establish that her son was eligible for dependent status under FECA. Appellant, however, did not provide the necessary evidence. Although she listed her adult son, J.K., as a dependent on the Form CA-7, she failed to submit any medical evidence to establish that her son was incapable of self-support due to a physical or mental disability.¹² As the evidence of record is insufficient to establish appellant's

⁷ *Id.* at § 8110.

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.7(g) (February 2013); *R.M.*, Docket No. 19-0463 (issued March 1, 2021); *G.J.*, Docket No. 18-1292 (issued March 13, 2019).

⁹ 5 U.S.C. § 8110(a).

¹⁰ *E.B.*, Docket No. 19-1571 (issued December 31, 2020); *R.G.*, Docket No. 18-1251 (issued November 26, 2019); *E.G.*, 59 ECAB 599, 603 n.10 (2008).

¹¹ *Supra* page 9.

¹² *See C.F.*, Docket No. 18-1344 (issued August 22, 2019); *see also Ralph P. Beachum, Sr.*, 55 ECAB 442, 445 (2004).

adult son as an eligible dependent under FECA, the Board finds that OWCP properly determined that appellant is not eligible for augmented schedule award compensation.¹³

CONCLUSION

The Board finds that OWCP properly determined that appellant was not entitled to augmented schedule award compensation based on claiming her adult son as a dependent pursuant to 5 U.S.C. § 8110.

ORDER

IT IS HEREBY ORDERED THAT the November 4, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 12, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

¹³ See *M.H.*, Docket No. 21-0115 (issued September 9, 2021).