

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

G.E., Appellant)	
)	
and)	Docket No. 21-0650
)	Issued: July 14, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
Banning, CA, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On February 17, 2021 appellant filed a timely appeal from a December 9, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish that her wage-loss compensation should have been paid at an augmented rate.

¹ The Board notes that following the December 9, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 16, 2020 appellant, then a 55-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained a left knee injury due to factors of her federal employment, including getting in and out of her vehicle, walking across lawns, bending down to pick up parcels, walking up and down stairs, and standing while casing mail. She did not stop work. On April 24, 2020 OWCP accepted appellant's claim for other tear of the medial meniscus, left knee, and a sprain of the medial collateral ligament of the left knee.

On April 29, 2020 appellant filed a claim for compensation (Form CA-7) for leave without pay (LWOP) for intermittent disability during the period November 27, 2019 through April 29, 2020. She also submitted time analysis forms (Form CA-7a) dated April 30 and May 6, 2020, claiming 21.09 hours of LWOP for the period November 27, 2019 through April 29, 2020 and 20 hours of LWOP for the period April 15 through 29, 2020.

In a development letter dated May 11, 2020, OWCP advised appellant that it required additional information to determine eligibility for compensation for her claimed dependent child. It asked her to provide a statement, indicating the names, Social Security numbers and dates of birth for any claimed dependents, and certification of school enrollment using attached forms to verify their student status. OWCP afforded appellant 30 days to submit the additional evidence.

Appellant thereafter contacted OWCP on May 15, 2020, indicating that the requested information for her nephew, E.S., could be obtained from her other active claims.³ OWCP advised her that a court order under OWCP File No. xxxxxx124 documented that she was the legal guardian for her nephew. It noted, however, that further development was necessary because guardianship was not a legal adoption.

On May 15, 2020 OWCP authorized payment of LWOP compensation for the period December 10, 2019 through April 27, 2020 for a total of 35.99 hours. The attached calculation sheet noted that she was compensated at the 66 2/3 percent compensation rate for employees without an eligible dependent.

On May 18, 2020 appellant filed a Form CA-7 for LWOP for the period May 6 through 13, 2020. She also submitted a Form CA-7a of even date claiming 16 hours of LWOP, listing therapy as the reason for her use of leave.

On June 1, 2020 appellant submitted a letter of guardianship from the Superior Court of California, County of Riverside, executed on June 8, 2016 and filed on July 14, 2016, appointing her as the legal guardian of her nephew, E.S. The letters of guardianship indicated that her nephew was born on December 28, 2002.

³ Appellant has previously accepted claims for a complete right rotator cuff rupture and right carpal tunnel syndrome under OWCP File No. xxxxxx042, and impingement syndrome of the right and left shoulders, bursitis of the right and left shoulders and primary osteoarthritis of the right and left shoulders under OWCP File No. xxxxxx124. OWCP has not administratively combined these claims with the instant claim.

In a statement received by OWCP on June 2, 2020, appellant requested that her compensation rate be adjusted to 75 percent and claimed E.S. as her dependent.

By decision dated July 15, 2020, OWCP denied appellant's request for compensation at the augmented compensation rate, finding that her nephew could not be considered a "child" under section 8101(9) of FECA (5 U.S.C. § 8101(9)), and was thus not a dependent for purposes of augmented compensation under section 8110 of FECA (5 U.S.C. § 8110).

On August 16, 2020 appellant filed a Form CA-7 for LWOP for the period November 27, 2019 through August 15, 2020. She also submitted an August 21, 2020 Form CA-7a in which she claimed 5.1 hours of LWOP for therapy appointments she attended on November 27, December 2, 6, and 16, 2019.

On October 27, 2020 appellant requested reconsideration of OWCP's July 15, 2020 decision. In an attached statement, she reasoned that she should be compensated at the augmented compensation rate because she had full custody of her nephew. Appellant asserted that he was placed in her foster care, and advised that he was disabled.

Appellant submitted a July 24, 2020 letter from the County of Riverside, California explaining that she was the legal guardian of E.S. and that he had been under her court-ordered legal authority since October 24, 2016. The letter indicated that E.S. lived at the certified foster home of appellant.

In an August 18, 2020 letter, the Inland Regional Center confirmed that appellant's nephew was an active member at its facilities where he received treatment for developmental disabilities.

By decision dated December 9, 2020, OWCP denied modification of its July 15, 2020 decision.

LEGAL PRECEDENT

FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from a personal injury sustained while in the performance of duty.⁴ If the disability is total, the United States shall pay the employee during the period of total disability the basic compensation rate of 66 2/3 percent of his or her monthly pay. A disabled employee is entitled to an augmented compensation rate of 75 percent if he or she has one or more dependents.⁵

Section 8110(a) of FECA provides that a dependent includes an unmarried child who, while living with the employee or receiving regular contributions from the employee towards his or her support, is either under 18 years old or over 18 years old and incapable of self-support due to physical or mental disability.⁶ A child is also considered a dependent if he or she is an unmarried

⁴ 5 U.S.C. § 8102(a).

⁵ *R.G.*, Docket No. 18-1251 (issued November 26, 2019); *O.R.*, 59 ECAB 432, 436 (2008); *id.* at §§ 8105(a) and 8110(b).

⁶ 5 U.S.C. § 8110(a).

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.⁷

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her wage-loss compensation should have been paid at an augmented rate.

Appellant received compensation payments at the statutory rate of 66 2/3 percent. She thereafter requested that her compensation be adjusted to the augmented rate of 75 percent. Appellant submitted a June 8, 2016 letter of guardianship from the Superior Court of California, County of Riverside, that listed her as the legal guardian of her nephew, E.S., and other documentation regarding E.S. OWCP denied her claim, finding that legal guardianship of a nephew did not establish entitlement to the augmented compensation rate of 75 percent pursuant to 5 U.S.C. § 8101(9).

The Board notes that a nephew is not recognized as an eligible dependent for purposes of augmented compensation. 20 C.F.R. § 8101(9) of FECA provided for three specific relationships in addition to the biological relationship to establish a child: stepchildren, adopted children, and posthumous children.⁸ The Board has specifically held that when a claimant has legal guardianship over a nephew, this does not qualify the child as a dependent if the recipient of compensation has not adopted the child.⁹ Although appellant's nephew may be living with her and she may be his legal guardian, appellant has not legally adopted her nephew. Therefore, he does not qualify as an eligible dependent. Thus, the Board finds that OWCP properly denied appellant's claim for augmented compensation.¹⁰

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her wage-loss compensation should have been paid at an augmented rate.

⁷ *G.E.*, Docket No. 21-0515 (issued August 24, 2021); *R.G.*, *supra* note 5; *see also E.G.*, 59 ECAB 599, 603 n.10 (2008).

⁸ *See* 20 C.F.R. § 8101(9).

⁹ *See C.V.*, Docket No. 13-2108 (issued June 17, 2014) finding that appellant was erroneously paid compensation based on the augmented rate of 75 percent for a person with a dependent as legal guardianship of a nephew did not qualify the child as a dependent; *see also Aretha Hudson*, 28 ECAB 423 (1988).

¹⁰ *G.E.*, *supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the December 9, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 14, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

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