

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NANCY J. MASTERSON and ARCHITECT OF THE CAPITOL,
U.S. BOTANIC GARDENS, Washington, DC

*Docket No. 00-1434; Submitted on the Record;
Issued September 11, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant is entitled to augmented compensation.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained a right fifth metatarsal fracture in the performance of duty on May 4, 1998. Appellant was paid compensation at the 66 2/3 percent for no dependents.

By decision dated June 18, 1999, the Office determined that appellant's husband did not constitute a dependent and therefore appellant was not entitled to augmented compensation. In a decision dated December 16, 1999, an Office hearing representative affirmed the prior decision.

The Board finds that the case is not in posture for decision.

The basic rate of compensation under the Federal Employees' Compensation Act is 66 2/3 percent of the injured employee's monthly pay. Where the employee has one or more dependents as defined in the Act, 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.¹

Under the Act, a husband may be a dependent if: "(A) he is a member of the same household as the employee; or (B) he is receiving regular contributions from the employee for his support; or (C) the employee has been ordered by a court to contribute to his support."² Appellant has indicated that her husband was not a member of the same household, nor is there any evidence that appellant was ordered by a court to contribute to his support. The issue is whether appellant was providing regular contributions to her husband's support.

¹ 5 U.S.C. § 8110(b); *see also William G. Dimick*, 38 ECAB 751 (1987).

² 5 U.S.C. § 8110(a)(2).

In this respect, the record indicates that appellant pays health insurance premiums, for a plan that covers both her and her husband, through payroll deductions. According to appellant's husband, this amounts to approximately \$75.00 per month.³ Appellant has also indicated that, she makes a monthly payment for storage rental units that includes property of her husband, and she has contributed to her husband's health costs on an as needed basis.

The Board has held that, the test for determining dependency under the Act is whether the person claimed as a dependent, "looked to and relied, in whole or in part, upon the contributions of the employee as a means of maintaining or helping to maintain a customary standard of living."⁴ In the case of *Sam R. Ekovich*,⁵ the Board considered the situation where a spouse makes regular contributions for health insurance by paying for a health plan that covers both the employee and the spouse. In *Ekovich* the Board found that the spouse was not a dependent, but the decision is based on the factual finding in that case that the employee had never told his spouse that he had maintained health insurance coverage, and in addition the spouse had purchased her own coverage. Therefore the Board reasoned that the spouse could not have looked to and relied upon the contribution.

In this case, the record requires further factual development before a determination can be made as to whether regular contributions for health insurance are sufficient to establish the husband as a dependent. There is little evidence in the record as to the financial situation of appellant's husband. Appellant indicated that her husband had surgery in 1996 and was unable to get health insurance on his own, without further explanation. Additional relevant factual information would include the husband's current employment (if any), the amount of his income and monthly expenses (including medical expenses), and opportunities to purchase health insurance on his own. Such information is necessary in order to make an appropriate determination as to whether the husband relied on the health insurance contributions to a degree sufficient to establish him as a dependent in this case.

Accordingly, the case will be remanded to the Office to secure additional relevant information. After such further development as the Office deems necessary, it should issue an appropriate decision.

³ This represents the difference between family coverage and individual coverage.

⁴ *Helyn E. Girmann*, 11 ECAB 557 (1960); *see also Santos Bonilla Orsini*, 35 ECAB 1121 (1984) (whether appellant provided "means of maintaining or helping to maintain a customary standard of living").

⁵ 37 ECAB 113 (1985).

The decision of the Office of Workers' Compensation Programs dated December 16, 1999 is set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
September 11, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member