

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

_____)	
T.B., widow of A.B., Appellant)	
)	
and)	Docket No. 24-0794
)	Issued: November 4, 2024
DEPARTMENT OF THE AIR FORCE, ROBINS)	
AIR FORCE BASE, Warner Robins, GA,)	
Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On July 23, 2024 appellant filed a timely appeal from a February 7, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 appellant has met her burden of proof to establish that she is entitled to greater than 50 percent of the monthly pay of the deceased employee.

FACTUAL HISTORY

On March 29, 2022 appellant, the employee's widow, filed a claim for compensation by surviving spouse and/or children (Form CA-5), alleging that on September 9, 2021 the employee,

¹ 5 U.S.C. § 8101 *et seq.*

then a 66-year-old tools and parts attendant, contracted COVID-19 while in the performance of duty, and on October 8, 2021 passed away as a consequence of that injury.

Dr. Muhammed Khan, a Board-certified internist, completed the accompanying attending physician's report, and diagnosed hypoxic respiratory failure caused by COVID-19 pneumonia. He related that the employee had sought treatment on September 18, 2022 due to shortness of breath and hypoxia resulting from a positive COVID-19 diagnosis. Dr. Khan reported that, following respiratory decline, the employee passed away on October 8, 2021.

In support of her claim, appellant submitted the employee's death certificate, issued October 18, 2021, which indicated that he passed away on October 8, 2021 due to hypoxic respiratory failure and COVID-19. She also provided her marriage license.²

In a development letter dated March 24, 2022, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and afforded her 30 days to respond.

A March 29, 2022 Official Superior's Report of Employee's Death (Form CA-6) indicated that the employee was exposed to COVID-19 on September 11, 2021, entered the hospital on September 18, 2021, and died on October 8, 2021. It further indicated that he had held his position for 11 months prior to his injury and earned \$24.90 per hour.

In development letters dated June 7 and August 9, 2022, and May 22, 2023, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and afforded her 30 days to respond.

OWCP continued to receive evidence. On October 8, 2021, Margaret Leon, a nurse practitioner, described the employee's hospitalization and medical treatment beginning on that date.

On May 22, 2023, OWCP accepted appellant's survivor benefits claim, but requested additional information in order to initiate payments. On May 23, 2023 it provided appellant with payment of administrative fees.

In a May 23, 2023 memorandum of telephone call (Form CA-110), appellant reported that the employee had no minor or otherwise eligible children. She related that she currently received survivor annuity benefits from the Office of Personnel Management (OPM), but not from the DVA.

In a development letter dated May 24, 2023, OWCP requested that the employing establishment provide full details of the employee's work schedule, including the hours worked per day, and days worked per week. It also requested his payrate from September 9 through

² In a March 15, 2022 letter, the employing establishment related that appellant had also submitted a claim for benefits from the Department of Veterans Affairs (DVA).

October 8, 2021. OWCP afforded the employing establishment 15 days to provide the requested evidence.

On May 24, 2023, the employing establishment advised that the employee had worked a fixed full-time schedule of 40 hours a week. It further indicated that commencing September 9, 2021 his payrate was \$24.90 per hour. The employing establishment reported that the employee stopped work on September 13, 2023.

OPM submitted evidence establishing that appellant had filed an application for OPM survivor annuity benefits, that benefits were payable, and that she received a monthly payment of \$1,951.00 effective December 1, 2022.

In a July 26, 2023 letter, OWCP informed appellant that she was entitled to survivor benefits under FECA commencing October 9, 2021 and that the current gross weekly compensation was \$531.23, her current gross compensation every four weeks was \$2,124.92, and the current gross monthly compensation was \$2,302.00. It related that she was required to elect to receive either FECA or OPM benefits and provided her with an election form.

On August 22, 2023, appellant elected to receive FECA survivor benefits, effective October 9, 2021.

By decision dated February 7, 2024, OWCP found that the employee's death was covered under section 8133 of FECA, and approved the payment of compensation benefits to appellant as the employee's widow at 50 percent of his 28-day pay amount of \$2,124.92 resulting in a net 28-day benefit of \$1,840.12.

LEGAL PRECEDENT

With respect to compensation in the case of death, section 8133 of FECA provides the following:

“If death results from an injury sustained in the performance of duty, the United States shall pay a monthly compensation equal to a percentage of the monthly pay of the deceased employee in accordance with the following schedule:

- (1) To the widow or widower, if there is no child, 50 percent.
- (2) To the widow or widower, if there is a child, 45 percent and in addition 15 percent for each child not to exceed a total of 75 percent for the widow or widower and children.
- (3) To the children, if there is no widow or widower, 40 percent for one child and 15 percent additional for each additional child not to exceed a total of 75 percent, divided among the children share and share alike.”³

³ 5 U.S.C. § 8133.

The statute further provides, “If there is a widow, widower, or child, so much of the percentages are payable as, when added to the total percentages payable to the widow, widower, and children, will not exceed a total of 75 percent.”⁴

The term widow is defined in section 8101(6) of FECA to mean the wife living with, or dependent for support on, the decedent at the time of his death or living apart for reasonable cause or because of desertion.⁵

The monthly pay of an employee is determined by 5 U.S.C. § 8114, which provides a methodology for determining average annual earnings.

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that she is entitled to greater than 50 percent of the monthly pay of the deceased employee.

In the present case, OWCP found appellant was entitled to survivor benefits under 5 U.S.C. § 8133. Since appellant reported that the employee has no eligible children, she is entitled to 50 percent of the employee’s monthly pay in accordance with FECA.⁶

On appeal, appellant contends that she was entitled to 100 percent of the employee’s monthly pay as the COVID-19 vaccine was mandatory, and the vaccine was the cause of his death. Neither the Board nor OWCP has the authority to expand the terms of FECA, or to make award under any terms other than those specified by the statute or regulations.⁷ FECA specifies that as the surviving spouse, appellant is entitled to 50 percent of the employee’s monthly pay. She has not disputed the calculation of the employee’s monthly pay, and is, therefore, not entitled to greater than 50 percent of that amount.

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 she is entitled to greater than 50 percent of the monthly pay of the deceased employee.

⁴ *P.C. (L.C)*, Docket No. 14-0164 (issued April 22, 2014); *S.B.(D.B.)*, Docket No. 09-0706 (issued November 13, 2009); *Janet K. George (Angelos George)*, Docket No. 03-1951 (issued November 3, 2003); *Wayne B. Kovacs (Cynthia A. Kovacs)*, 55 ECAB (2003).

⁵ 5 U.S.C § 8101(6).

⁶ *Supra* note 3; *see generally D.G. (G.G.)*, 08-0409 (issued September 5, 2008) (an overpayment occurred, in part, as OWCP failed to reduce appellant’s survivor benefits to 50 percent of the employee’s monthly pay when she had no dependents).

⁷ *W.C.*, 59 ECAB 373 (2008); *Wayne B. Kovacs (Cynthia A. Kovacs)*, *supra* note 4.

ORDER

IT IS HEREBY ORDERED THAT the February 7, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 4, 2024
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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