

brief period of aggravation of depression, stating that she was entitled to wage-loss compensation and medical benefits from January 19, 2000 to December 19, 2002. Appellant filed a CA-7 form, indicating that she had taken sick leave, annual leave and leave-without-pay for the period January 19, 2000 through July 16, 2001, and time analysis records were submitted. A Form CA-7a, time analysis form, signed by appellant on April 15, 2001 and by a supervisor, Marie Law, on December 28, 2002 provides that between January 19, 2000 and July 16, 2001 appellant took 556 hours of sick leave, 164 hours of annual leave, and 368 hours of leave-without-pay, with a note appended that the latter was changed to include 320 hours of advanced sick leave. On January 21, 2003 appellant submitted a Form CA-7b electing leave buyback for February 23 through May 4, 2001. A Form CA-7a for this period, signed by appellant and Ms. Law, indicates that appellant took 164 hours annual leave from February 23 through May 4, 2001.

On January 31, 2003 appellant received wage-loss compensation totaling \$6,920.70 for the period January 19, 2000 through July 16, 2001. By letter dated February 7, 2003, the Office advised appellant that if she wished to proceed with her leave buyback request, \$4,617.38 was required to recredit her leave, and her wage-loss compensation reimbursement would total only \$2,952.98, leaving a balance she would owe the employing establishment of \$1,664.40. On February 10, 2003 she advised the Office that she wished to proceed with leave buyback. By letter dated March 11, 2003, the Office informed appellant that her leave buyback request had been approved, and \$3,084.23 would be forwarded to the employing establishment.¹

In a July 28, 2005 letter, appellant requested 164 hours of leave buyback. By decision dated November 18, 2005, the Office denied appellant's claim for leave buyback for the period January 19, 2000 through July 16, 2001 on the grounds that she had received wage-loss compensation in the amount of \$6,920.70 for this period. Appellant timely requested a hearing that was held on August 31, 2006. At the hearing she acknowledged that she had been paid for 368 hours of leave-without-pay and that 320 hours were later changed to advanced sick leave. She stated that she was requesting that an overpayment be declared regarding this matter and requested leave buyback. On September 22, 2006 she submitted an incomplete Form CA-7b for the period January 19, 2000 to July 16, 2001.

In a December 12, 2006 decision, an Office hearing representative remanded the case to the Office. The hearing representative found that the record indicated that appellant's claimed leave-without-pay was changed to include 320 hours of advanced sick leave and instructed the Office to obtain a CA-7b for the claimed period. The Office was to further develop the leave buyback issued, and after performing necessary development, the Office was to issue a *de novo* decision regarding appellant's entitlement to leave buyback and the overpayment issue.

¹ An Office worksheet noted that the initial computation of wage-loss compensation was incorrect. The record, however, does not indicate that a check was forwarded to the employing establishment. Appellant indicated that she had forwarded checks to the employing establishment on August 4 and September 23, 2004. This is supported by an employing establishment invoice. On September 14, 2004 appellant filed a recurrence claim, noting that she had stopped work on April 9, 2003 and returned on February 2, 2004. In a February 16, 2005 decision, the Office denied the claimed recurrence of disability. On July 22, 2005 appellant filed a recurrence claim for the period July 22 to August 8, 2005. On December 23, 2005 the Office denied modification of the February 16, 2005 decision. The record does not contain a final decision on the claimed recurrence from July 22 to August 8, 2005.

Following remand, the Office obtained appellant's payroll records for the relevant period, and in a letter dated April 18, 2007, addressed to the employing establishment with a copy to appellant, the Office stated:

"After an extensive review of the claimant's file, including all the CA-7's, CA-7a's and 7b's [forms], and the pay history file from the U.S. Postal Service Pay Center, it was determined the following information is needed in order to adjudicate the claimant's leave buyback and possible overpayment.

1. New CA-7 [form] reflecting the dates of the leave buyback being claimed.
2. New CA-7a [form], one date on each line, do not list by week or inclusive dates, reflecting the hours the claimant worked that day, the type of leave she took, or if [leave without pay] was claimed and the hours for each.
3. New CA-7b for the leave buyback time the claimant is claiming."

The employing establishment was instructed to submit the information within 30 days. By decision dated June 13, 2007, the Office denied appellant's claim for leave buyback, stating that without new CA-7, 7a and 7b forms, leave buyback could not be adjudicated. The Office also informed appellant that a review of the record indicated that the March 11, 2003 leave buyback approval letter had been issued in error because the leave buyback was calculated with a dependent when there was no evidence or record to support her dependency claim.²

LEGAL PRECEDENT

In a typical leave buyback case, an injured employee uses sick or annual leave to prevent wage loss after an employment injury. If a claim is accepted, and the work absences would otherwise be compensable under the Federal Employees' Compensation Act,³ the employee may wish to buyback this leave from the employing establishment. If the employing establishment agrees to allow the leave buyback, the absences previously covered by sick or annual leave are recorded as leave without pay, creating a wage loss for which the employee may claim compensation.⁴ In situations where compensation is claimed for periods when leave was used, the Office has the authority and responsibility to determine whether the employee was disabled during the period for which compensation is claimed.⁵ Office regulations at 20 C.F.R. § 10.425 regarding whether compensation may be claimed for periods of restorable leave, state that the

² On June 13, 2007 the Office also issued a preliminary determination that an overpayment in compensation in the amount of \$4,666.20 had been created because appellant was paid for 368 hours for the period January 19, 2000 through July 16, 2001 when she was only entitled to 120 hours.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Lloyd E. Griffin, Jr.*, 46 ECAB 979 (1995).

⁵ *Glen M. Lusco*, 55 ECAB 148 (2003).

employee may claim compensation for periods of annual and sick leave which are restorable in accordance with the rules of the employing establishment. CA-7 and CA-7b forms are used for this purpose.⁶

ANALYSIS

The Board finds that this case is not in posture for decision as the record is deficient since the Office did not comply with the hearing representative's instructions found in the December 12, 2006 decision. On remand the Office was to further develop the claim in regard to appellant's request for leave buyback for the period January 19, 2000 to July 16, 2001. In its April 18, 2007 letter, addressed to the employing establishment, the Office failed to comply with the hearing representative's instructions by not advising appellant directly regarding her specific requirements in submitting the requested CA-7, CA-7a and CA-7b forms. Although these forms were requested by the Office neither appellant nor the employing establishment submitted them. The case must therefore be remanded for the Office to develop whether appellant is entitled to the requested leave buyback for the period January 19, 2000 to July 16, 2001. On remand that Office should inform appellant directly that she should submit the appropriate forms to the employing establishment for approval. The employing establishment should then follow established procedures to approve or disapprove the request and forward the completed forms to the Office.⁷ Following this and such other development as deemed necessary, the Office shall issue an appropriate merit decision.

CONCLUSION

The Board finds this case is not in posture for decision.

⁶ 20 C.F.R. § 10.425; see *Laurie S. Swanson*, 53 ECAB 517 (2002).

⁷ The Board notes that time analysis records found in the record contain contradictory information regarding the type of leave taken. Regarding the 164 hours of leave buyback requested for the period February 23 through May 4, 2001, while the record supports that appellant repaid the employing establishment for her share, and by its June 13, 2007 decision, the Office acknowledged that it had miscalculated the amount of wage-loss compensation appellant would be entitled to for this period, the wage-loss compensation appellant received on January 31, 2003 included payment for 164 hours of sick leave taken.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 13, 2007 be vacated and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: April 14, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board