

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LESTER J. PETTY and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Denver, CO

*Docket No. 00-2395; Submitted on the Record;
Issued July 20, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish periods of intermittent disability from March 20 to August 1, 1999 for which the Office of Workers' Compensation Programs did not authorize leave buy back.

The Board has duly reviewed this case and finds that appellant has not met his burden of proof to establish periods of intermittent disability from March 20 to August 1, 1999 for which the Office did not authorize leave buy back.

On April 29, 1998 appellant, then a 49-year-old mailhandler, filed an occupational disease claim alleging that he developed foot pain as a result of working on a concrete surface. The Office accepted appellant's claim for bilateral plantar fasciitis on September 4, 1998. On August 2, 1999 appellant filed a claim for compensation requesting compensation from March 20 to August 1, 1999 for 217 hours of sick and annual leave. By letter dated October 5, 1999, the Office acknowledged the receipt of appellant's claim and informed appellant that medical evidence substantiating that the hours claimed were related to and necessitated by, his accepted condition, was required before his claim could be approved. In a decision dated June 16, 2000, the Office denied appellant's claim for 217 intermittent hours of sick and annual leave buy back for the period March 20 to August 1, 1999 finding that it was not supported by the medical evidence.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act and that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as

¹ 5 U.S.C. §§ 8101-8193.

alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.²

In this case, the Office accepted appellant's claim for a bilateral plantar fasciitis on September 4, 1998. Appellant requested leave buy back for intermittent periods of disability from March 20 to August 1, 1999 for a total of 217 hours. He initially asserted that the periods of disability claimed represented time that he spent undergoing physical therapy or medical treatment approved by the Office. While time missed from work due to medical treatment for an employment-related injury would be compensable,³ appellant has not presented evidence that he missed time from work to attend the physical therapy or medical appointments. Instead, the record indicates that appellant's normal work shift was from 10:30 p.m. until 7:00 am, a time period during which he was unlikely to be able to schedule medical treatment. When the Office asked appellant whether he had actually undergone medical treatment during his normal night shift hours, he explained that because his physical therapy sessions caused him a lot of pain, he customarily took leave for the shift following his therapy session. This correlates with the fact that, with the exception of a physical therapy session on April 8, 1999, which took place during a week of prearranged annual leave, none of the dates of the leave slips appellant submitted correspond with any of the dates of the medical bills or treatment notes in the record. As appellant admitted that he did not attend medical treatment of physical therapy during his shift, as initially claimed and there is no medical evidence supporting that appellant actually lost time from work from March 20 to August 1, 1999 in order to receive medical treatment or physical therapy, he has suffered no wage loss and would not be entitled to compensation due solely to his receipt of medically prescribed treatment.⁴ The Board also notes that appellant has not submitted any medical evidence indicating that he was disabled on the days following his physical therapy due to painful effects of the treatment itself. Consequently, as appellant has not submitted sufficient evidence to establish that he received treatment as approved by the Office on the dates claimed or otherwise sustained any periods employment-related disability from March 20 to August 1, 1999, he failed to meet his burden of proof and the Office properly denied leave buy back for the dates in question.

² *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

³ *Charles E. Robinson*, 47 ECAB 536 (1996); *Vincent E. Washington*, 40 ECAB 1242, 1248 (1989).

⁴ *Compare Vincent E. Washington*, *supra* note 3; *Myrtle B. Carlson*, 17 ECAB 644 (1996) (where the Board found time missed from work due to medical treatment for an employment-related injury compensable). In this case, there is no evidence that appellant missed work to attend the treatment in question.

The June 16, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
July 20, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member