

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

G.F., Appellant

and

**U.S. POSTAL SERVICE, OLIVETTE POST
OFFICE, St. Louis, MO, Employer**

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**Docket No. 06-1638
Issued: October 17, 2006**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 12, 2006 appellant filed a timely appeal of a June 29, 2006 decision of the Office of Workers' Compensation Programs, denying his claim for leave buy back. Pursuant to 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 was entitled to leave buy back for intermittent days between April 5 and June 14, 2005.

FACTUAL HISTORY

On May 20, 2005 appellant, then a 54-year-old part-time¹ distribution window and markup clerk, filed a traumatic injury claim alleging that on March 4, 2005 he sustained a left foot injury while closing the gate of an all-purpose container. The gate swung back and struck

¹ The record shows that appellant worked five hours, five days a week for a total of 25 hours a week.

his foot.² He saw his attending primary care physician, Dr. Stephen Haudrich, on April 5, 2005, who referred him to Dr. Christopher Sloan, a podiatrist.³ The Office accepted appellant's claim for a fracture of the talus bone of the left foot.

In a disability certificate dated April 5, 2005, Dr. Haudrich indicated that appellant was disabled from work from April 5 to 10, 2005. He did not provide the reason for the disability.

In a June 28, 2005 report, Dr. Sloan diagnosed a talar stress fracture of the left foot. He first examined appellant on April 5, 2005 with subsequent examinations on April 21, May 5 and 19, 2005. Dr. Sloan indicated that appellant was totally disabled beginning May 17, 2005.

On January 2, 2006 appellant filed a claim for compensation (leave buy back) in the amount of \$489.60 for 30 hours for the period April 5 to June 14, 2005 due to disability causally related to his March 4, 2005 left foot injury. An employing establishment time analysis form indicated that appellant used five hours of sick leave on April 5 and June 14, 2005 for medical appointments and on April 6, 8, 9 and 10, 2005 for total disability.

On April 6, 2006 the Office approved eight hours of leave buy back for April 5 and June 14, 2005, rather than the ten hours claimed by appellant. It noted that an injured employee was entitled to no more than four hours of lost wages for a medical appointment. The Office advised appellant to provide medical evidence establishing that he was totally disabled from April 5 to 10 and June 14, 2005 due to his accepted left foot injury.

By letter dated June 22, 2006, appellant indicated that he was unable to provide medical documentation for his claimed dates of disability.

By decision dated June 29, 2006, the Office denied appellant's claim for leave buy back on the grounds that the medical evidence did not establish that he was totally disabled between April 5 and June 14, 2005 due to his March 4, 2005 accepted foot fracture.

LEGAL PRECEDENT

Appellant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he was disabled for work as the result of an employment injury.⁴ Monetary compensation benefits are payable to an employee who has sustained wage loss due to disability for employment resulting from the employment injury.⁵ Whether a particular employment injury causes disability for employment and the duration of that disability are

² At the time of the March 4, 2005 incident, appellant was on limited duty due to an accepted right shoulder injury sustained on October 18, 2003. The Office combined his left foot and right shoulder claims.

³ Appellant indicated that Dr. Sloan's initial diagnosis was tendinitis. Subsequently, a May 12, 2005 magnetic resonance imaging scan revealed a stress fracture of the left foot talus bone.

⁴ *David H. Goss*, 32 ECAB 24 (1980).

⁵ *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

medical issues which must be proved by a preponderance of reliable, probative and substantial medical evidence.⁶

In situations where compensation is claimed for periods where leave was used, the Office has the authority and the responsibility to determine whether the employee was disabled during the period for which compensation is claimed.⁷ The Office determines whether the medical evidence establishes that an employee is disabled by an employment-related condition during the period claimed for leave buy back, after which the employing establishment will determine whether it will allow the employee to buy back the leave used.⁸

The Office's procedure manual provides that no more than four hours of compensation should be allowed for routine medical appointments. Longer periods of time may be allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care.⁹

ANALYSIS

Appellant filed a claim for leave buy back in the amount of \$489.60 for 30 hours of lost wages for the period April 5 to June 14, 2005 for disability causally related to his March 4, 2005 injury. An employing establishment time analysis form indicated that he used five hours of sick leave on April 5 and June 14, 2005 for doctor visits and five hours of sick leave on April 6, 8, 9 and 10, 2005. The Office approved eight hours of leave buy back for April 5 and June 14, 2005, noting that an injured employee is entitled to no more than four hours of lost wages for a medical appointment, not the five hours claimed by appellant.

The issue on appeal is whether appellant was disabled for work for one hour on April 5 and June 14, 2005 (the one hour remaining after four hours of leave buy back were approved for medical appointments on those two days) and for five hours each day for April 6, 8, 9 and 10, 2005.

In a disability certificate dated April 5, 2005, Dr. Haudrich indicated that appellant was disabled from work April 5 to 10, 2005. However, he did not provide the reason for appellant's disability. Lacking an opinion on causal relationship, this evidence is not sufficient to establish that appellant's disability on April 5, 2005 (one hour) and April 6, 8, 9 and 10 (five hours each day)¹⁰ was causally related to his accepted left foot fracture. Dr. Sloan indicated that appellant was totally disabled beginning May 17, 2005. The Office approved four hours of leave buy back for a medical appointment on June 14, 2005 rather than the five hours claimed by appellant.

⁶ *Edward H. Horten*, 41 ECAB 301 (1989).

⁷ *Laurie S. Swanson*, 53 ECAB 517 (2002); *see also* 20 C.F.R. § 10.425, which provides: "The employee may claim compensation for periods of annual and sick leave which are restorable in accordance with the rules of the employing [establishment]. Forms CA-7 and CA-7b are used for this purpose."

⁸ *Laurie S. Swanson*, *supra* note 7.

⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (June 1999).

¹⁰ Appellant's normal part-time work schedule was five hours a day.

Dr. Sloan did not provide sufficient explanation as to why appellant's examination would require five hours. He did not address how the disability was due to the accepted condition. The Board finds that the Office properly denied appellant's request for leave buy back for periods for one hour each day on April 5 and June 14, 2005 and five hours each day for April 6, 8, 9 and 10, 2005.

CONCLUSION

The Board finds that appellant failed to establish that he was entitled to leave buy back for one hour of lost wages on April 5 and June 14, 2005 and five hours a day for April 6, 8, 9 and 10, 2005 due to his March 4, 2005 accepted foot injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 29, 2006 is affirmed.

Issued: October 17, 2006
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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