

(approximately 20 days) of annual leave taken intermittently from August 5 through October 4, 2005. The forms cited “sinus” and “sinus headaches” as the reasons annual leave was used.

On March 24, 2006 the Office asked appellant to provide medical evidence establishing that she was disabled during the claimed period. Specifically, it requested copies of clinical notes from her physician and noted that the “work release” receipts in the record were insufficient because they did not state the reason appellant was not able to work on the dates in question. The pertinent slips in the record address the dates of August 6, 2005 (for doctor appointment, written October 20, 2005), September 7 to 8 and 20 to 21, 2005 (reason unspecified, written October 20, 2005) and September 21 to 22, 2005 (reason unspecified, written September 26, 2005). The slips for September dates indicated that appellant was able to return to work on September 22, 2005. She provided no additional information within the time allotted.

On April 27, 2006 the Office issued a decision denying appellant’s claim for compensation. The Office found that she had not established that she was disabled on each of the claimed dates for which leave buyback was sought.

On May 4, 2006 appellant filed a request for reconsideration. She argued that the medical evidence used by the Office to accept her claim for occupational disease was sufficient to establish her claim for leave buyback. As part of her request for reconsideration, appellant submitted a September 12, 2005 report from Dr. Gregg S. Govett, a Board-certified otolaryngologist, who stated that he was treating her for ear, nose and throat complaints. Dr. Govett opined: “[Appellant] was removed from her work environment and got slightly better. When reintroduced into the environment again, her symptoms worsened.” Dr. Govett concluded that appellant was permanently disabled from working as a welder and recommended she “be completely removed from her work environment in order to feel healthier and minimize her symptoms.”

Appellant also submitted a September 20, 2005 report in which Dr. Govett gave his opinion that her condition was “work related and has caused many missed days from work.” She also submitted additional administrative records certifying the dates of annual leave taken.

On August 2, 2006 the Office issued a decision denying modification of its previous decision. It found that even though appellant had proved that she had sustained an employment injury, she still had the burden of establishing that her accepted condition resulted in disability for work for each of the claimed periods. The Office also found that the duration of a disability was a medical issue that must be resolved by medical evidence.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of proving the essential elements of her claim by the weight of the evidence presented.² Compensation for wage loss is available only for periods during which an employee's accepted condition prevents her from earning her wages.³ Even if the Office has accepted that appellant sustained an injury in the performance of duty, appellant still has the burden of establishing that her accepted condition resulted in disability during the specific periods for which she is claiming compensation.⁴ The duration of a disability is a medical issue that must be proved by a preponderance of the reliable, probative and substantial evidence.⁵

When an employee claims compensation for leave used because of an alleged injury or disability, the Office has the responsibility of determining whether the employee was disabled during those periods.⁶ The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the particular periods of disability for which compensation is claimed. To do so would have the effect of allowing employees to self-certify their disability and entitlement to compensation.⁷ There is no requirement that an employee show an independent medical evaluation for each day of claimed disability, but the employee must provide some medical evidence that she was disabled on those days.⁸ When dealing with an accepted condition, a narrative medical opinion directly addressing the dates of claimed disability is generally sufficient to demonstrate disability for those periods.⁹

Time spent on the treatment and diagnosis of an employment-related condition, as well as travel to and from these appointments, is compensable under the Act.¹⁰ For a routine medical appointment, a maximum of four hours of compensation is usually allowed.¹¹

¹ 5 U.S.C. §§ 8101-8193.

² *William A. Archer*, 55 ECAB 674 (2004); *Nathaniel Milton*, 37 ECAB 712 (1986).

³ *Judith A Cariddo*, 55 ECAB 348 (2004); *see also* 20 C.F.R. § 10.500(a).

⁴ *Dorothy J. Bell*, 47 ECAB 624 (1996).

⁵ *Edward H. Horton*, 41 ECAB 301 (1989).

⁶ *Glen M. Lusco*, 55 ECAB 148 (2003); *Laurie S. Swanson*, 53 ECAB 517 (2002).

⁷ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁸ *Id.* (Finding that "less than definitive medical evidence" may be adequate proof of disability when an employee has an accepted employment-related condition and a doctor has provided a medical opinion that the effects of the condition are likely to reoccur.)

⁹ *See William Archer*, 55 ECAB 674 (2004).

¹⁰ *Dorothy J. Bell*, *supra* note 4.

¹¹ Injury Compensation for Federal Employees, Publication CA-810, *Initiating Claims*, Chapter 2.3.C(2) (revised January 1999).

ANALYSIS

Appellant, having established that she has a work-related occupational disease, now must demonstrate that this condition was the reason she used annual leave on the days for which she is claiming compensation. The Board finds that she has not met this burden.

As part of her request for reconsideration, appellant submitted timekeeping records and two reports from her treating physician, Dr. Govett, a Board-certified otolaryngologist. This evidence is not sufficient to prove that she is entitled to compensation for the claimed dates in August, September and October. The timekeeping records, which were maintained by the employing establishment, are important to proving that leave was taken on a given day, but they are not medical records that provide evidence as to the existence of disability on that day.¹² These records do not demonstrate that appellant was disabled on the days in question, only that she took annual leave and gave as her reason sinus problems.

The September 12 and 20, 2005 reports from Dr. Govett are also deficient. He reported on September 12, 2005 that “I feel [appellant] must be completely removed from her work environment.... This will require her being disabled permanently due to her occupation as a welder.” However, the report did not provide information about the specific days on which this disability had kept her from working prior to her diagnosis and contradicts the return slips indicating that appellant was able to return to work on September 22, 2005. It also failed to provide an explanation as to what about the employment that sensitized appellant to the point of being debilitating. In the September 20, 2005 report, Dr. Govett stated that appellant’s condition had “caused many missed days from work,” but did not specify which days had been missed or that she was completely disabled on those days due to the accepted employment injuries. Without these details, she cannot meet her burden of proof.

The other medical evidence in the record also fails to establish appellant’s right to compensation for annual leave she used because of her accepted condition. Nothing else in the record provides an indication of appellant’s disability status for the dates in question. The return to work slips addressing September 7 to 8 and 20 to 22, 2005 are insufficient because they did not state whether appellant was disabled on the dates in question, were not prepared by a physician and, accordingly, offered no opinion on causal relationship. They stated only that appellant was under Dr. Govett’s care on those dates.

Further, there is no evidence of any relevant medical treatment or diagnostic appointments during the claimed period. An appointment slip indicated that appellant had a doctor’s appointment on August 6, 2005 for a sinus infection. However, August 6, 2005 was Saturday, a nonworkday for appellant, and so cannot be the basis for annual leave buyback. The reports from Dr. Govett do not indicate if and when appellant had appointments with him, and so do not provide any evidence on which the Office could grant appellant’s compensation request.

For the foregoing reasons, appellant has failed to meet her burden of proof that she was disabled on any of the dates in question.

¹² See *William Archer*, 55 ECAB 674 (2004) (finding that “time analysis forms breaking down the number of hours worked, the type of leave used and the compensation claimed” did not prove disability on the claimed days).

CONCLUSION

The Board finds that appellant has not established that she was disabled for work causally related to the accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 2 and April 26, 2006 are affirmed.

Issued: January 19, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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