

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES T. DEES and U.S. POSTAL SERVICE,
POST OFFICE, Tampa, Fla.

*Docket No. 97-343; Submitted on the Record;
Issued December 28, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant established he was entitled to buy back his sick leave for the dates June 4 and 5, July 26 and 31, 1996.

The Office of Workers' Compensation Programs accepted appellant's claim for a herniated nucleus pulposus.

Appellant subsequently submitted a report dated August 17, 1995 from Dr. Roberto B. Bellegarrique, a Board-certified neurological surgeon, stating that he saw appellant on that date and appellant could return to his previous job with modifications.

On August 5, 1996 appellant submitted a claim for continuing compensation and disability, Form CA-8, with records of his leave status showing he took sick leave on June 4 and 5, July 17, 25, 26 and 31, 1996. By letter dated August 16, 1996, the Office stated that it required medical evidence establishing disability for work on those dates before appellant's claim could be processed.

Appellant also submitted a report dated July 25, 1996 from Dr. Naomi A. Abel, a Board-certified physiatrist, indicating that she treated appellant on that date, in which she described her findings and the results of diagnostic tests.

By decision dated September 18, 1996, the Office denied appellant compensation for the dates June 4 and 5, July 26 and 31, 1996 stating that appellant did not submit medical evidence to support his claim for those dates. The Office noted that it had sent appellant the August 16, 1996 letter requesting additional evidence and that it received medical evidence to support the dates July 17 and 25, 1996 but it did not receive any medical evidence to support the other dates for which appellant sought compensation.

By letter dated September 19, 1996, the Office informed appellant that he was entitled to compensation for the 16 hours of leave for the dates July 17 and 25, 1995 and explained the procedure for buying back leave.

The Board finds that appellant did not establish that he was entitled to buy back leave for the dates June 4 and 5, July 26 and 31, 1996.

The Board has held that the requirement for buying back leave is that appellant must present evidence establishing that he was disabled to his employment-related injury on the relevant dates.¹ In the instance case, appellant did not present any medical evidence showing he was disabled on the dates June 4 and 5, July 26 and 31, 1996. The Office therefore properly determined that appellant was not entitled to buy back leave on those dates.²

The decision of the Office of Workers' Compensation Programs dated September 18, 1996 is hereby affirmed.

Dated, Washington, D.C.
December 28, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

¹ See *Kathy P. Roberts*, 45 ECAB 553-54 (1994).

² On appeal, appellant contended that he did not receive the Office's August 5, 1996 letter and the September 18, 1996 decision which were incorrectly addressed to him until after he received the September 19, 1996 letter. If, however, upon receiving the incorrectly addressed correspondence appellant had additional evidence to submit, he could have submitted it to the Office with a motion for reconsideration pursuant to 5 U.S.C. § 8128(a).