

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH P. McMAHON and U.S. POSTAL SERVICE,
POST OFFICE, Kimberly, WI

*Docket No. 97-1806; Submitted on the Record;
Issued November 3, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing intermittent periods of disability from June 14 to August 9, 1995.

On June 15, 1995 appellant, then a 43-year-old letter carrier, filed a claim alleging he sustained a right arm condition due to repetitive use of his arm while sorting and delivering mail. On August 16, 1995 his claim was accepted by the Office of Workers' Compensation Programs for tendinitis of the right shoulder. Appellant submitted four CA-8 claim forms for wage-loss compensation, seeking to repurchase 105.76 hours of leave used from June 14 to July 14, 1995 and 44.76 hours of leave used after July 14 to August 10, 1995 when he was released to return to regular duty. By decision dated February 13, 1997, the Office denied appellant's claim on the grounds that the evidence of record failed to establish any compensable time lost due to his accepted condition. The Office's decision also cited section 8102(c)(2) of the Federal Employees' Compensation Act.

The Board finds that the case is not in posture for a decision.

With regard to buy back of annual or sick leave, the Office's federal regulations provide in pertinent part:

“(a) An employee who sustains a job-related disability may use sick or annual leave or both to avoid interruption of income. If the employee uses leave during a period of disability caused by an occupational disease or illness and a claim for compensation is approved, the employee may, with the approval of the employing [establishment], ‘buy back’ the used leave and have it recredited to the employee's account....

“(b) If the employing [establishment] does not approve a repurchase of leave, then no compensation may be paid for the period leave was used....”¹

The procedure to be followed when the Office received a request for reinstatement of leave is set forth in the Federal Procedure Manual, which states:

“When an employee elects to use sick or annual leave during the period of disability, he or she may later, with the concurrence of the employing [establishment], claim compensation for the period of disability and ‘buy back’ the leave used. This process is also called ‘leave repurchase.’

“(a) *Request to ‘Buy Back’ Leave.* Either the claimant or the [employing establishment] may initiate such a request, which should be made on Form CA-7 or CA-8. However, the employing [establishment] must be willing and able to change the leave records from leave-with-pay to leave-without-pay.”²

The Procedure Manual provides that, upon receipt of information that a claimant desires to “buy back” leave, the claims examiner should first determine the period of disability and compute the gross amount of compensation payable and have this amount certified, following receipt of information from the claimant and the employing establishment.³

In the present case, the Office accepted appellant’s claim for tendinitis based on the report of his attending physician, Dr. Charles McKee, a Board-certified family practitioner. The record establishes that appellant continued to work intermittently at the employing establishment and utilized sick leave between June 14 to August 10, 1995 when he was released to return to regular-duty work. The Office in this case was presented with a typical leave buy back situation. The record contains a routing slip prepared by the Office indicating that the period June 14 to July 14, 1995 was “ok to pay” as a written “l.d. [limited duty] offer was n[o]t given until July 15, 1995.” However, it was noted that the CA-8 forms did not reflect the hours appellant worked during the period for which repurchase of leave was sought and that further inquiry with the employing establishment would be necessary. An August 23, 1995 memorandum of a telephone call from the Office to the employing establishment noted only that the individual to whom a claims examiner spoke was “unfamiliar with claimant, will research and call me tomorrow morning.” The Office’s February 13, 1997 decision further complicated matters by citing to the suitable work provisions of 5 U.S.C. § 8106(c)(2) of the Act without any explanation as to why the section was applicable to the facts of this case or being cited.

For this reason, the Board will remand the case to the Office for further consideration of appellant’s request to repurchase leave for the period June 14 to August 8, 1995. The evidence

¹ 20 C.F.R. § 10.310.

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.13 (December 1995).

³ *Id.*

does not establish that the Office's denial was based upon a proper review of the evidence or submitted to the employing establishment for comment.

The decision of the Office of Workers' Compensation Programs dated February 13, 1997 is hereby set aside and the case remanded for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.
November 3, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member