

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BERNIS HICKMAN and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, Houston, TX

*Docket No. 00-1984; Submitted on the Record;
Issued May 14, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant had not established that he was disabled for work beginning February 12, 2000 due to his October 2, 1999 employment injury.

On October 2, 1999 appellant, then a 48-year-old mailhandler, filed a claim for a lumbar strain sustained on that date when an elevator gate came down on his head. He stopped work on October 2, 1999 and, after two nonscheduled days, began using sick leave on October 5, 1999. Appellant used sick leave until February 3, 2000 and used annual leave from that date through February 11, 2000. He entered a leave-without-pay status on February 12, 2000. On February 1, 2000 appellant filed a claim for compensation on Office Form CA-7, claiming compensation for leave buy back from October 1999 and for leave without pay from February 8, 1999.

Appellant submitted medical evidence in support of his claim. Included in this evidence was a report dated January 19, 2000 from attending neurologist, Dr. Qaiser Yusuf, diagnosing "cervical/ lumbar/ lumbosacral sprain/ strain; post-concussion syndrome; lumbosacral radiculopathy." In this report Dr. Yusuf, who first examined appellant on October 6, 1999, indicated that appellant was totally disabled from October 3, 1999 to February 10, 2000 and partially disabled from February 10 to April 10, 2000.

By letter dated March 27, 2000, the Office advised appellant:

"We have received your recently submitted [F]orm CA-7 claim for compensation. Before your claim can be processed, we need the evidence requested below. The claim was for the period February 12, 2000 to the present.

"Medical evidence establishing disability for work during the entire period claimed. You must submit a detailed medical narrative by your PHYSICIAN with medical explanation/rationale as to why you were totally temporarily disabled. You cannot submit slips for entire days off."

Appellant submitted additional reports from Dr. Yusuf, including a February 22, 2000 report stating that he was unable to work since February 7, 2000 and a March 28, 2000 report stating that he was released to return to limited-duty work on April 4, 2000.

By decision dated April 21, 2000, the Office found that appellant's case was accepted for lumbar strain, that he had been off work since October 2, 1999 on continuation of pay, annual leave, sick leave and leave without pay and that he returned to work on April 4, 2000 in a limited-duty position. The Office then found that appellant was not entitled to compensation from February 12 through April 3, 2000 on the basis that the medical evidence did not provide medical rationale of why he was disabled for work during this period.

The Board finds that the Office improperly adjudicated appellant's claim.

In addition to claiming compensation beginning February 12, 2000, when he entered a leave-without-pay status, appellant also claimed compensation to buy back the leave he used from October 5, 1999 through February 11, 2000. Despite this claim, the Office did not decide whether appellant was entitled to compensation or continuation of pay¹ from October 5, 1999 through February 11, 2000.² The effect of this failure to adjudicate all of appellant's claim is that the Office placed the burden of proof on appellant for the period beginning February 12, 2000, when acceptance of an earlier period of disability would have placed the burden of proof on the Office to terminate compensation on February 12, 2000. The burden of proof is on the Office rather than the employee with respect to the period subsequent to the date when compensation is terminated, including when this termination follows a period of continuation of pay and leave buy back.³

¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Continuation of Pay and Initial Payments*, Chapter 2.807.15c (July 2000) provides that an employee may receive continuation of pay in lieu of previously requested annual or sick leave under circumstances provided in that section.

² Because the Office did not decide this issue, the Board cannot do so on appeal, since the Board's review is limited by 20 C.F.R. § 501.2(c) to deciding appeals from final decisions of the Office.

³ *Alfonso G. Montoya*, 44 ECAB 193 (1992).

The decision of the Office of Workers' Compensation Programs dated April 21, 2000 is set aside and the case remanded to the Office for a proper decision on the period of compensation claimed by appellant.

Dated, Washington, DC
May 14, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member