

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES D. WELDY and U.S. POSTAL SERVICE,
POST OFFICE, Mobile, AL

*Docket No. 01-953; Submitted on the Record;
Issued January 11, 2002*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish periods of intermittent disability from December 20, 1999 through March 10, 2000 for which the Office of Workers' Compensation Programs did not authorize leave buy back.

The Board has duly reviewed the case on appeal and finds that appellant has not met his burden of proof to establish periods of intermittent disability from December 20, 1999 through March 10, 2000 for which the Office did not authorize leave buy back.

On October 29, 1999 appellant, then a 48-year-old postal clerk, filed a traumatic injury claim alleging that he injured his back while throwing a bundle of mail in the course of his federal employment. The Office accepted appellant's claim for a lumbar strain and subsequently expanded its acceptance to include aggravation of degenerative disc disease.

Appellant filed a claim requesting compensation from December 20, 1999 through March 10, 2000 for 219.92 hours of sick and annual leave. By decision dated September 7, 2000, the Office denied appellant's claim for 219.92 intermittent hours of leave buy back for the period December 20, 1999 through March 10, 2000 finding that it was not supported by the medical evidence. Appellant requested reconsideration, and in a decision dated November 6, 2000, the Office found the additional evidence submitted by appellant to be insufficient to warrant modification of the prior decision.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act and that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of

¹ 5 U.S.C. §§ 8101-8193.

duty as alleged and that any disability or specific condition for which compensation is claimed are causally related to the employment injury.²

In this case, the Office accepted appellant's claim for a lumbar strain on March 9, 2000, and on September 7, 2000 expanded its acceptance to include aggravation of degenerative disc disease. Appellant requested leave buy back for intermittent periods of disability from December 20, 1999 through March 10, 2000 for a total of 219.92 hours.

The medical evidence of record establishes that appellant was released to full-time light duty on December 6, 1999, and that appellant accepted the employing establishment's offer of light-duty work on December 15, 1999. By letter dated May 3, 2000, the Office informed appellant that as he had been released to full-time work, in order to be eligible for leave buy back, he would have to submit medical evidence establishing disability for work on the days claimed. There is no medical evidence in the record, however, to support any absences from work between December 20, 1999 and March 10, 2000, either for medical treatment, medical appointments or for recuperation. The record indicates that the last medical appointment in 1999 was with Dr. Troy H. Middleton on December 6, 1999, and the first appointment in 2000 was also with Dr. Middleton, on March 22, 2000. As all of the medical evidence of record dates from either before December 20, 1999 or after March 10, 2000, and as none of the physicians of record indicate the need for any periods of disability between these dates, the Board finds that appellant has not submitted the necessary evidence to meet his burden of proof and the Office properly denied leave buy back for the dates in question.

The decisions of the Office of Workers' Compensation Programs dated November 6 and September 7, 2000 are hereby affirmed.

Dated, Washington, DC
January 11, 2002

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

² *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).