

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GARY W. MITCHELL and U.S. POSTAL SERVICE,
POST OFFICE, Kent, OH

*Docket No. 03-1437; Submitted on the Record;
Issued August 18, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for compensation for two hours of lost wages on February 19, 2003.

On March 23, 1999 appellant, then a 45-year-old letter carrier, filed a traumatic injury claim alleging that on March 22, 1999 he injured his left knee when he pulled a parcel mail hamper. The Office of Workers' Compensation Programs accepted appellant's claim for a left knee strain.¹ On January 3, 2000 appellant underwent left knee surgery for a torn meniscus.

On February 29, 2000 the Office accepted a left medial meniscus tear as causally related to appellant's March 22, 1999 employment injury.

In a note dated February 19, 2003, Dr. Michael L. Pryce, appellant's attending orthopedic surgeon, stated that his physical examination was unchanged, that there was still a crack and pop in his knee and his ankle was also a problem for him. He noted, "[Appellant] is being sent in for routine paperwork so we are able to do that for him." The record also contains an attending physician's report (Form CA-20) indicating that he treated appellant on February 19, 2003, that his physical examination was unchanged and he should continue light duty.

On March 3, 2003 appellant submitted a claim for compensation for lost wages for two hours on February 19, 2003.

By decision dated March 17, 2003, the Office denied appellant's claim for two hours of wage loss on February 19, 2003 on the grounds that his visit to Dr. Pryce on February 19, 2003

¹ On February 4, 2000 the Office combined into one case appellant's March 22, 1999 left knee strain and a September 24, 1998 work-related left Achilles tendon/calf strain.

was for the purpose of obtaining updated paperwork, not for medical treatment relating to his March 22, 1999 employment injury.²

The Board finds that the Office improperly denied appellant's claim for compensation for two hours of lost wages on February 19, 2003.

Section 8103 of the Federal Employees' Compensation Act³ provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree of the periods of any disability or aid in lessening the amount of any monthly compensation. These services, appliances and supplies shall be furnished by or on the order of the United States medical officers and hospital or at the employee's option by or on the order of physicians and hospitals designated or approved by the Secretary. The employee may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances and supplies.⁴ The Board has interpreted this provision of the Act, which requires payment of expenses incidental to the securing of medical services, as authorizing payment for loss of wages incurred while obtaining medical services. Case law makes clear that an employee is entitled to disability compensation for any loss of wages incurred during the time he or she receives authorized treatment and for loss of wages for time spent incidental to such treatment.⁵ The rationale for this entitlement is that, during such required examinations and treatment and during the time incidental to undergoing such treatment, an employee did not receive his or her regular pay.⁶

Regarding appellant's appointment with Dr. Pryce on February 19, 2003, time lost from work while obtaining medical services for an employment-related injury would be compensable. Although the Office found that appellant's visit to Dr. Pryce on February 19, 2003 was for the purpose of obtaining paperwork, not for medical services, the February 19, 2003 note from Dr. Pryce indicated that he performed a physical examination of appellant during that visit, in addition to providing paperwork. He noted that appellant's physical condition was unchanged as there was still a crack and pop in his knee. Because appellant received medical services from Dr. Pryce on February 19, 2003, in the form of a physical examination, he is entitled to wage-loss compensation for time lost from work due to the February 19, 2003 appointment.

² The record contains additional evidence submitted subsequent to the Office's March 17, 2003 decision. However, the jurisdiction of the Board is limited to the evidence that was before the Office at the time it issued its final decision; *see* 20 C.F.R. § 501.2(c).

³ 5 U.S.C. §§ 8101-8193.

⁴ *Linda Holbrook*, 38 ECAB 229 (1986).

⁵ *Lawrence A. Wilson*, 51 ECAB 684 (2000); *Antonio Mestres*, 48 ECAB 139 (1996).

⁶ *Id.*

The March 17, 2003 decision of the Office of Workers' Compensation Programs is reversed.

Dated, Washington, DC
August 18, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member