

On October 8, 2002 appellant submitted a Form CA-7 (claim for compensation) for the period August 28, 2001 to October 4, 2002.¹ Appellant indicated on the form that the compensation was claimed for leave without pay (LWOP). A leave analysis provided by the employing establishment indicated that during this period appellant generally worked six hours per day, five days per week; she used intermittent LWOP for selected dates.

By letter dated December 16, 2002, the Office requested that appellant submit medical evidence with respect to her disability for the claimed period. In a letter dated January 8, 2003, with accompanying medical evidence, appellant indicated that at the time of injury she was working six days per week, at six hours per day. Appellant stated that currently she was working only five days per week, at six hours per day therefore she was losing six hours of pay per week.

In a letter dated April 1, 2003, the Office stated that appellant's claim for compensation was not payable at that time because more information was needed to determine whether she qualified for LWOP. The Office requested that appellant provide information regarding her private employment as a waitress and requested a medical report explaining how working 20 hours per week as a waitress in addition to her federal employment promoted the recovery of her lumbosacral strain.

Appellant submitted a statement noting that she was hired as a waitress in January 2002. Appellant indicated that she worked between 6 to 20 hours per week during 2002. She submitted evidence regarding her tax returns for 2001 and 2002 and information regarding her salary in December 2002 and January 2003.

By decision dated September 5, 2003, the Office denied appellant's claim for intermittent wage-loss compensation commencing August 28, 2001 on the grounds that she "failed to provide the necessary earnings information to determine whether you qualify for [LWOP]."

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³

ANALYSIS

In the present case, the Office did not properly adjudicate the issue presented. The Office accepted the claim for a lumbosacral sprain and appellant claimed compensation for intermittent

¹ On March 3, 2003 appellant submitted a Form CA-7 for the period November 15, 2002 to April 4, 2003.

² 5 U.S.C. § 8101-8193.

³ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

dates on which she had used LWOP. This issue is properly adjudicated by review of the medical evidence to determine if an employment-related disability has been established for the claimed dates. In addition, appellant appears to be claiming that, as a result of her employment injury, she could only work five days per week and therefore was unable to earn the wages she was earning at the time of injury. This issue must be resolved by reviewing the medical evidence and relevant evidence regarding the hours worked by appellant at the employing establishment.

The only finding that the Office made in its decision was that appellant had failed to provide sufficient evidence as to earnings in private employment to determine whether she qualified for LWOP. The issue before the Office is not whether appellant qualified for LWOP -- the employment status of LWOP is an issue determined by the employing establishment. The Office's finding was not responsive to the issues presented and failed to properly adjudicate the claim for wage loss in this case. The Office must consider the relevant medical and factual evidence to determine if appellant is entitled to wage-loss compensation for any period claimed. Once an appropriate determination is made as to entitlement to compensation, then the Office may request specific relevant evidence with respect to private earnings, as such evidence may be considered, for example, in an offset of compensation payable.⁴ The case will be remanded to the Office for an appropriate decision on the issues raised in this case.

CONCLUSION

The Board finds that the Office did not make proper findings with respect to appellant's claim for intermittent wage-loss compensation commencing August 28, 2001. The case will be remanded for an appropriate decision.

⁴ See Federal (FECA) Procedure Manual, Part 2 – Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.7(d) (June 1996).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 5, 2003 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: August 5, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member