



## **FACTUAL HISTORY**

On October 12, 1998 appellant, a 57-year-old letter carrier, filed an occupational disease claim alleging that his bilateral plantar fasciitis was employment related. The Office accepted the claim for bilateral plantar fasciitis and right Achilles tendinitis.<sup>1</sup>

On December 2, 2005 the Office authorized physical therapy for the period December 1, 2005 through January 1, 2006. The Office received physical therapy treatment records for December 19, 2005 and January 3, 4 and 6, 2006.

On April 14, 2006 appellant filed a claim for compensation (Form CA-7) for the period June 3, 2005 to April 3, 2006 due to intermittent disability causally related to his March 2, 1998 left foot injury.<sup>2</sup> An employing establishment time analysis form stated that appellant used a total of 13.66 hours<sup>3</sup> of LWOP on June 3, October 17 and December 19, 21, 23, 27, 28 and 30, 2005 and January 3, 4 and 6 and February 13 and 17, March 6 and April 3, 2006 for medical appointments and physical therapy.<sup>4</sup> The time analysis form reported zero hours of LWOP for June 3, 2005 and April 3, 2006 as appellant worked eight hours.<sup>5</sup> Appellant used 1.25 hours of LWOP on October 17 and December 23, 27, 28, 2005 and January 3 and 6 and February 13 and 17 and March 6, 2006. He used 1.26 hours of LWOP on December 30, 2005 and 1.15 hours of LWOP on January 4, 2005. Annual leave was used on December 19, 21 and 30, 2005.<sup>6</sup>

In a letter dated May 2, 2006, the Office noted that appellant filed a request for 13.66 hours of LWOP. Appellant was informed that medical evidence was lacking for the period December 23, 27, 28 and 30, 2005 and February 17, 2006, for a total of 6.26 hours. The Office advised appellant that he was paid for 7.40 hours of LWOP for the dates October 27, 2005 and January 3, 4 and 6 and February 13 and March 6, 2006.

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<sup>1</sup> On June 1, 2000 the Office issued a loss of wage-earning capacity decision which found that appellant had no loss of wages in his modified city carrier position which was effective March 11, 2000.

<sup>2</sup> Appellant checked the box for a schedule award with the notation "reconsideration." On August 31, 2004 the Office awarded appellant a schedule award for a 5 percent impairment of the right lower extremity and a 10 percent impairment of the left lower extremity. The record does not contain a final decision by the Office regarding appellant's request regarding his schedule award. As there is no final Office decision on this issue, the Board may not address this issue on appeal. *See* 20 C.F.R. § 501.2(c).

<sup>3</sup> Appellant claimed that he used a total of 18.75 hours of leave without pay (LWOP) on the forms. The employing establishment adjusted the total to 13.66 hours of LWOP.

<sup>4</sup> Appellant noted that he had doctor's appointments on June 3 and October 17, 2005 and February 13 and 17, March 6 and April 3, 2006 and physical therapy appointments on December 19, 21, 23, 27, 28 and 30, 2005 and January 3, 4 and 6, 2006.

<sup>5</sup> Appellant indicated that he used 1.25 hours of LWOP. The employing establishment crossed this out as he had worked eight hours.

<sup>6</sup> The employing establishment changed appellant's LWOP to annual leave for December 19, 21 and 30, 2005. Annual leave used was 1.24 hours for December 19, 2005, 1.23 hours for December 21 2005 and 4 hours for December 30, 2005.

Appellant submitted medical evidence for January 3 to 6, 2006 and factual information. He noted that he attended physical therapy on December 19, 21, 23, 27, 28 and 30, 2005 and had a doctor's appointment on April 3, 2006. The leave requests forms included requests for 1.25 hours of LWOP for physical therapy on December 19, 21, 23, 27, 28 and 30, 2005 and 2 hours of LWOP for a medical appointment on April 3, 2006.

By letter dated May 22, 2006, the Office informed appellant that he was not entitled to compensation for December 19 and 21, 2005 and April 3, 2006 as LWOP was not used. Appellant was informed that the evidence established that he either worked eight hours or worked part of the day and used annual leave for the remainder of the day for the dates in question. The Office acknowledged receipt of a December 19, 2005 physical therapy report, but noted that the record contained no supporting medical documentation regarding the remaining dates in question.

By decision dated July 6, 2006, the Office denied appellant's claim for wage-loss benefits for a total of 6.26 hours. The Office found that there was no medical evidence establishing lost wages on December 23, 27, 28 and 30, 2005 and February 17, 2006 for a total of 5.01 hours. The Office also denied appellant's claim for 1.25 hours of wage loss for a physical therapy appointment on December 19, 2005. In support of this finding, the Office found that there was no wage loss as he used annual leave.<sup>7</sup>

### **LEGAL PRECEDENT**

Under the Act, the term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of injury.<sup>8</sup> Whether a particular injury causes an employee to be disabled for work and the duration of that disability are medical issues which must be proved by the weight of substantial and reliable medical evidence.<sup>9</sup>

The claimant has the burden of proving that he is disabled for the period claimed as a result of the employment injury. Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his claimed disability for 6.26 hours of LWOP during the period June 3, 2005 to April 3, 2006 and his accepted bilateral plantar fasciitis and right Achilles tendinitis.<sup>10</sup> The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the

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<sup>7</sup> The Board notes that, following the July 6, 2006 decision, the Office received additional evidence. However, the Board may not consider new evidence on appeal. See 20 C.F.R. §§ 501.2(c); *Donald R. Gervasi*, 57 ECAB \_\_\_\_ (Docket No. 05-1622, issued December 21, 2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

<sup>8</sup> See *Robert A. Flint*, 57 ECAB \_\_\_\_ (Docket No. 05-1106, issued February 7, 2006); *Prince E. Wallace*, 52 ECAB 357 (2001).

<sup>9</sup> See *Carol A. Lyles*, 57 ECAB \_\_\_\_ (Docket No. 05-1492, issued December 13, 2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>10</sup> *Sandra D. Pruitt*, 57 ECAB \_\_\_\_ (Docket No. 05-739, issued October 12, 2005); *Alfredo Rodriguez*, 47 ECAB 437 (1996).

particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>11</sup>

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. 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.<sup>12</sup>

### ANALYSIS

Appellant requested wage-loss compensation for a total of 18.75 hours from June 3, 2005 to April 3, 2006. The employing establishment amended the forms to show the use of 13.66 hours of LWOP. The record reflects that, since March 11, 2001, appellant worked eight hours a day as a modified city carrier position. The Office approved wage-loss compensation for 7.40 hours of LWOP for the intermittent dates between October 27, 2005 and March 6, 2006. It denied his claim for wage-loss compensation for 6.26 hours of LWOP for the dates December 19, 23, 27, 28 and 30, 2005 and February 17, 2006.

The issue on appeal is whether appellant has established entitlement to 6.26 hours of wage-loss compensation due to medical appointments and physical therapy for the dates in question. The Board finds that the Office properly calculated appellant's wage-loss compensation. The Office denied wage-loss compensation for 6.26 hours for December 23, 27, 28 and 30, 2005 and February 17, 2006. The evidence submitted by appellant consists of various leave request forms and a December 19, 2005 physical therapy report. The leave request forms are insufficient to establish his claim as they are not medical evidence. To support wage loss, appellant must submit documentation from a doctor or physical therapist showing treatment or an appointment on the dates in question for the accepted condition. As noted above, the Board does not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the period of disability for which disability is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>13</sup> The record contains no medical evidence supporting appellant's contention that he was at physical therapy or a medical appointment, the Office properly denied his request for 6.26 hours of wage-loss compensation.

The Board notes that appellant also claimed compensation for December 19, 2005, for a 1.25 hour physical therapy appointment. The record contains evidence that appellant had a physical therapy appointment on that date and that the Office had authorized physical therapy on that date for the accepted injury. As appellant attended physical therapy on December 19, 2005, the Board finds that appellant has established that he was disabled on that date, for the claimed 1.25 hours for the medical appointment. A review of the record indicates that the time analysis

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<sup>11</sup> *Fereidoon Kharabi, supra* note 9.

<sup>12</sup> *Henry Hunt Searles, III*, 46 ECAB 192 (1994).

<sup>13</sup> *Amelia S. Jefferson, supra* note 10; *Fereidoon Kharabi, supra* note 9.

form notes that appellant had initially requested LWOP for 1.25 hours on December 19, 2005, but that the employing establishment paid annual leave for this leave on December 19, 2005.

The record establishes that appellant attended physical therapy on December 19, 2005, which was authorized by the Office for treatment of the employment-related injury. The Board finds that appellant was disabled for 1.25 hours on December 19, 2005.

**CONCLUSION**

The Board finds that appellant has not established entitlement to 5.01 hours of wage-loss compensation. However, the Board finds that appellant has established disability for 1.25 hours on December 19, 2005.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 6, 2006 is affirmed, as modified.

Issued: February 20, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board