

**United States Department of Labor
Employees' Compensation Appeals Board**

_____)
P.D., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
MANCHESTER VETERANS HOSPITAL,)
Manchester, NH, Employer)

_____)

Docket No. 07-152
Issued: July 5, 2007

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 23, 2006 appellant filed a timely appeal of an October 11, 2006 merit decision of the Office of Workers' Compensation Programs, which modified in part a May 10, 2006 decision denying wage-loss compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established entitlement for wage-loss compensation on intermittent dates during the period March 31, 2005 to January 3, 2006.

FACTUAL HISTORY

On March 24, 1998 appellant, then a 51-year-old maintenance supervisor, filed a traumatic injury claim alleging that he injured his right knee on March 23, 1998 when he slipped on snow and fell. The Office accepted his claim for right knee sprain/strain. He returned to limited-duty work April 6, 1998.

By decision dated August 18, 2005, the Office awarded appellant a schedule award for a 25 percent impairment of his right leg. As appellant was previously paid a schedule award for 17 percent right leg impairment, he received an additional 8 percent impairment covering the period August 6, 2005 to January 14, 2006.

In a March 3, 2005 letter, Medical Consultants Network (MCN)¹ advised appellant that it had scheduled an appointment for him with Dr. Arnold Miller, a Board-certified orthopedic surgeon, at 11:30 a.m. on April 13, 2005. It noted that Dr. Miller's office was in Laconia, New Hampshire and asked appellant to bring photograph identification to the examination. A number for MCN's Client Services Department was provided should appellant have any questions regarding the appointment. In an earlier letter of October 28, 2004, the Office notified appellant that an evaluation by a Board-certified medical specialist was warranted in his case and an appointment had been made for him through the MCN. Appellant was instructed on the procedures for confirming and canceling appointments. When confirming a scheduled appointment, he was to "contact the physician's office and confirm [his] appointment as soon as possible before the day of [the] examination ... and to take all available diagnostic films, *e.g.*, x-ray, magnetic resonance imaging scans, computed tomography scans, myelograms, *etc.*, that have been taken in reference to this injury with [him] or arrange to have them sent to the physician's office." Appellant attended the scheduled appointment on April 13, 2005 with Dr. Miller.

On April 21, 2006 appellant filed a claim for compensation (leave buy back) in the amount of \$978.72 for 64 hours for the period March 31, 2005 to January 3, 2006. In the accompanying time analysis form, a human resource specialist for the employing establishment verified that appellant took 4 hours of annual leave on March 31, 2005 to deliver medical records to Dr. Miller for his second opinion examination; 8 hours of annual leave on April 13, 2005 for the scheduled second opinion examination with Dr. Miller; a combination of sick and annual leave in 4-hour increments for a total of 12 hours on April 28, August 25 and September 29, 2005 for doctor visits to Dr. H. James Forbes, a Board-certified orthopedic surgeon, related to his accepted condition; and a total of 40 hours of annual leave from December 27, 2005 to January 3, 2006 due to total disability per his physician.

In an undated statement, appellant stated that he delivered his medical records to Dr. Miller's office in Laconia, New Hampshire, on March 31, 2005 as the physician wanted to review the medical records prior to his appointment. He further stated that his appointment on March 31, 2005 with Dr. Miller was scheduled for 11:30 a.m., but commenced 12:15 p.m. The record reflects that appellant lived in Pembroke, New Hampshire, and worked in Manchester, New Hampshire.

On May 10, 2006 the Office approved appellant's claim for 4 hours of leave buy back on April 28, 2005 but denied leave buy back on intermittent dates over the period March 31, 2005 to January 3, 2006. The Office noted that, to have his leave buy back claim for April 13, 2005 processed, appellant had to file a claim for lost wages (Form CA-7). It noted that "[n]ormally, the Office authorizes four hours for scheduled medical appointments. Current procedures

¹ A company that schedules medical appointment for the Office.

specifically limit reimbursement of lost wages to the time needed for examination or treatment and incidental travel.” It found that, without a detailed explanation of extenuating circumstances, when appellant resubmits the claim he would be compensated for an additional hour or a total of five hours of leave without pay as the appointment scheduled for 11:30 a.m. did not commence until 12:15 p.m.

On May 12, 2006 appellant filed a Form CA-7 for lost wages of April 13, 2005 due to his attendance at the second opinion examination. On May 19, 2006 the Office paid appellant five hours of leave without pay for his April 13, 2005 attendance at the second opinion examination. On May 18, 2006 appellant disagreed with the Office’s May 10, 2006 decision and requested an oral hearing. On July 12, 2006 he requested reconsideration. In an August 19, 2006 letter, appellant indicated that he wished to drop his hearing request and pursue his reconsideration request.

In an undated letter, appellant advised that he disagreed with the Office’s denial of his leave buy back for the dates March 31 and April 13, 2005. He asserted that he delivered his medical records to Dr. Miller on March 31, 2005 as the doctor’s office called him and advised that it wanted the records prior to his examination. Appellant stated that he did not want to take a chance on the mail so he hand delivered the records to Dr. Miller’s office, which he indicated was 40 miles from his home and 55 miles from his work. He also asserted that he should be entitled to a full eight hours of leave for his April 13, 2005 examination. Appellant reiterated that the appointment, which was scheduled for 11:30 a.m., did not start until 12:15 p.m. He further stated that the appointment ended at 1:00 p.m. and, after he had lunch and drove back home, it was 2:45 p.m. Appellant stated that it did not make sense to drive to work, which was 15 miles south, as he got out of work at 4:30 p.m. In an August 19, 2006 letter, he asserted that the distance to Dr. Miller’s office was 35 miles from his house and 45 miles from his work.

By decision dated October 11, 2006, the Office modified the May 10, 2006 decision to reflect appellant’s entitlement to five hours of lost wages on April 13, 2005, for which he was compensated, but denied any additional entitlement to lost wages for April 13, 2005.

LEGAL PRECEDENT

With respect to claimed disability for medical treatment, section 8103 of the Federal Employees’ Compensation Act provides for medical expenses, along with transportation and other expenses incidental to securing medical care for injuries.² Appellant would be entitled to compensation for any time missed from work due to medical treatment for an employment-related condition.³ However, the Office’s obligation to pay for medical expenses and expenses incidental to obtaining medical care, such as loss of wages, extends only to expenses incurred for treatment of effects of any employment-related condition.⁴ The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the

² 5 U.S.C. § 8103(a).

³ *Vincent E. Washington*, 40 ECAB 1242 (1989).

⁴ *Dorothy J. Bell*, 47 ECAB 624 (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.⁵

In situations where compensation is claimed for periods where leave was used, the Office has the authority and the responsibility to determine whether the employee was disabled during the period for which compensation is claimed.⁶ The Office determines whether the medical evidence establishes that an employee is disabled by an employment-related condition during the period claimed for leave buy back, after which the employing establishment will determine whether it will allow the employee to buy back the leave used.⁷

The Office's procedure manual provides that no more than four hours of compensation or continuation of pay should be allowed for routine medical appointments. Longer periods of time may be allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care.⁸

ANALYSIS

Appellant filed a claim for leave buy back in the amount of \$978.72 for 64 hours of lost wages for the period March 31, 2005 to January 3, 2006 for disability and/or medical treatment causally related to his March 23, 1998 work injury. An employing establishment time analysis form indicated that he used 4 hours of annual leave to deliver medical records to Dr. Miller on March 31, 2005; 8 hours of annual leave April 13, 2005 to attend Dr. Miller's second opinion examination; a combination of sick and annual leave in 4-hour increments for a total of 12 hours on April 28, August 25, and September 29, 2005 for doctors visits relating to his accepted condition; and a total of 40 hours of annual leave from December 27, 2005 to January 3, 2006 due to disability related to his accepted condition. The Office approved the requested leave buy back for April 28, 2005 and only five out of eight hours leave buy back claimed April 13, 2005. The remainder of appellant's claim was denied. This included intermittent dates from August 25, 2005 to January 3, 2006 and four hours of leave buy back March 31, 2005.

The issue on appeal is whether appellant was disabled for work for 4 hours of March 31, 2005 to deliver medical records to Dr. Miller, for 3 hours on April 13, 2005 (the 3 hours remaining after 5 hours of leave buy back were approved for his medical appointment) and 4 hours each day for a total of 8 hours August 25 and September 29, 2005 and a total of 40 hours for December 27 to 30, 2005 and January 3, 2006.

The Office properly denied appellant's leave buy back claims for intermittent dates from August 25, 2005 to January 3, 2006 as appellant was in receipt of schedule award compensation

⁵ See *Fereidoon Kharabi*, 52 ECAB 29 (2001).

⁶ *Laurie S. Swanson*, 53 ECAB 517 (2002); see also 20 C.F.R. § 10.425, which provides: "The employee may claim compensation for periods of annual and sick leave which are restorable in accordance with the rules of the employing [establishment]. Forms CA-7a and CA-7b are used for this purpose."

⁷ *Laurie S. Swanson*, *supra* note 6.

⁸ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (June 1999).

during the claimed period. The record reflects that appellant's schedule award ran from August 6, 2005 to January 14, 2006, which was during the period claimed. It is a well-established principle that a claimant is not entitled to dual workers' compensation benefits for the same injury.⁹ With respect to benefits under the Act, the Board has held that an employee cannot concurrently receive compensation under a schedule award and compensation for disability for work.¹⁰ As appellant's leave buy back claims were during the period for which he was in receipt of schedule award compensation, he is not entitled to leave buy back during the claimed period. The Office properly denied appellant's leave buy back claims for intermittent dates from August 28, 2005 to January 3, 2006.

The Office denied appellant's claimed four hours of leave buy back on March 31, 2005 due to his delivery of his medical records to Dr. Miller. Appellant argued that the physician's office wanted his medical records prior to the examination and that he did not want to take a chance on the mail. However, the October 28, 2004 instruction letter from the Office specifically advised that all diagnostic files associated with appellant's injury either be taken to the examination or sent to the physician's office. MCN's March 3, 2005 referral letter also made no mention of any need for appellant to personally transport medical records to the doctor's office prior to the date of the scheduled examination. There is no requirement that appellant hand deliver copies of his diagnostic files to an Office physician prior to the scheduled examination date. Appellant's delivery of his medical records to Dr. Miller on March 31, 2005 was of his own personal choice and is not compensable.

With respect to the remaining three hours of leave buy back claimed on April 13, 2005, the Office previously advised appellant that, without a detailed explanation of extenuating circumstances, he would be compensated for an additional hour or a total of five hours of leave without pay as the scheduled appointment started late. Appellant subsequently indicated the distance he needed to travel to Dr. Miller's office. He also related that the appointment ended at 1:00 p.m. and, by the time he had lunch and drove back home, it was 2:45 p.m. Appellant stated that it made no sense to drive to work, which was 15 miles south, as he got out of work at 4:30 p.m. As the record supports that appellant attended the appointment with Dr. Miller on April 13, 2005, he is entitled to compensation for time missed from work due to medical treatment for an employment-related condition on April 13, 2005. However, the Board finds that this case is not in posture for a decision as to whether appellant is entitled to the remaining three hours of compensation claimed. While the Office addressed and compensated appellant for the time delayed in the start of Dr. Miller's examination, the record does not reflect that the Office considered the length of time appellant spent with Dr. Miller on the date in question or the time required for traveling to and from the appointment.¹¹ The case must be remanded to the Office for further development of the evidence, in order to determine the proper amount of time to be allowed for appellant's April 13, 2005 appointment with Dr. Miller.

⁹ *James A. Earle*, 51 ECAB 567, 568 (2000); *Benjamin Swain*, 39 ECAB 448, 454 (1988).

¹⁰ *Id.*; see also *Andrew B. Poe*, 27 ECAB 510, 512 (1976).

¹¹ See *E.T.*, Docket No. 07-477 (issued May 7, 2007).

CONCLUSION

The Board finds that the Office properly denied appellant compensation for leave buy back for intermittent dates from August 28, 2005 to January 3, 2006 and for March 31, 2005. The Board further finds that this case is not in posture for a decision as to a determination of the appropriate amount of time that should be allowed for appellant's April 13, 2005 medical appointment with Dr. Miller and shall be remanded to the Office for further development.

ORDER

IT IS HEREBY ORDERED THAT the October 11, 2006 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part and remanded for action consistent with this decision.

Issued: July 5, 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