

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

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G.K., Appellant

and

**ARCHITECT OF THE CAPITOL,  
Washington, DC, Employer**

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**Docket No. 08-973  
Issued: September 2, 2008**

*Appearances:*

*Appellant, pro se*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On February 19, 2008 appellant filed a timely appeal from a January 22, 2008 decision of the Office of Workers' Compensation Programs, denying his claim for leave buyback. 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 is entitled to leave buyback for the period February 10 to March 11, 2005 due to his accepted right wrist tendinitis.

**FACTUAL HISTORY**

On January 21, 2004 appellant, then a 42-year-old custodial worker, filed a traumatic injury claim alleging that he injured his right hand, wrist and arm while cleaning restrooms.

He was released to regular duty as of April 15, 2004. On May 25, 2004 the Office accepted appellant's claim for right wrist tendinitis, resolved.<sup>1</sup>

In a February 10, 2005 report, Dr. Dennis Faludi, an orthopedic surgeon specializing in surgery of the hand and upper extremity, stated that appellant sustained right wrist tendinitis again on February 4, 2005 while cleaning sinks. In a Form CA-7 (claim for compensation) dated July 5, 2007, appellant filed a claim for leave buyback for disability between February 10 and March 11, 2005 caused by his January 21, 2004 injury.<sup>2</sup> The February 10, 2005 hourly pay rate provided in the Form CA-7 was \$15.84.

In a Form CA-7a (time analysis form) dated March 17, 2005, appellant claimed 79 hours of leave buyback for February 10 to March 11, 2005 in section five of the form. However, in section six he indicated 76 hours of leave after crossing out the number 79.<sup>3</sup>

On December 13, 2007 the Office advised appellant and the employing establishment that he needed to submit a Form CA-7b (leave buyback worksheet). On December 18, 2007 the employing establishment provided copies of appellant's Form CA-7b dated July 5, 2007. Appellant claimed 75 hours of leave between February 10 and March 11, 2005. However, the form contains an incorrect date of injury, November 17, 2005 rather than January 21, 2004. The hourly pay rate provided is \$16.39 (his pay rate as of November 17, 2005).

On January 4, 2008 the Office advised appellant that the hours of leave claimed in the March 17, 2005 Form CA-7a differed from the hours claimed in the July 5, 2007 Form CA-7b for February 10 to March 11, 2005. It requested that he submit a Form CA-7b consistent with the hours claimed in his Form CA-7a.

By decision dated January 22, 2008, the Office denied appellant's claim for leave buyback on the grounds that he failed to provide the documentation necessary to process his claim.<sup>4</sup>

### **LEGAL PRECEDENT**

Under the Federal Employees' Compensation Act, appellant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he was disabled for work as the result of an employment injury.<sup>5</sup> Monetary compensation benefits are payable to an

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<sup>1</sup> Appellant has a separate claim accepted for tendinitis of the left wrist sustained on November 17, 2005 under OWCP File No. 252061015.

<sup>2</sup> The Form CA-7 was originally dated August 11, 2005. Appellant crossed out this date and wrote July 5, 2007.

<sup>3</sup> For the March 10, 2005 leave entry, appellant entered both a numeral eight and a numeral seven. The numeral seven was circled. However, the total hours of leave used between February 10 and March 11, 2005 total 76 hours only if 8 hours is used for March 10, 2005.

<sup>4</sup> Appellant submitted additional evidence subsequent to the Office decision of January 22, 2008. The Board's jurisdiction 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). The Board may not consider this evidence for the first time on appeal.

<sup>5</sup> *David H. Goss*, 32 ECAB 24 (1980).

employee who has sustained wage loss due to disability for employment resulting from the employment injury.<sup>6</sup> Whether a particular employment injury causes disability for employment and the duration of that disability are medical issues which must be proved by a preponderance of reliable, probative and substantial medical evidence.<sup>7</sup>

In situations where compensation is claimed for periods where leave was used, the Office has the authority to determine whether the employee was disabled during the period for which compensation is claimed.<sup>8</sup> The Office determines whether the medical evidence establishes that an employee is disabled by an employment-related condition during the period claimed for leave buyback, after which the employing establishment will determine whether it will allow the employee to buy back the leave used.<sup>9</sup>

### **ANALYSIS**

Appellant filed a claim for leave buyback, Form CA-7, for February 10 to March 11, 2005 for disability due to his accepted right wrist tendinitis.

In a Form CA-7b dated July 5, 2007, appellant claimed 75 hours of leave between February 10 and March 11, 2005. However, the form contains an incorrect date of injury, November 17, 2005 rather than January 21, 2004. Also, the hourly pay rate provided is \$16.39 which differs from the hourly pay rate provided in appellant's Form CA-7, \$15.84. Additionally, the hours claimed in Form CA-7b differ from the hours provided in Form CA-7a, 76 hours rather than 75 hours.<sup>10</sup> Due to these inconsistencies, the Board finds that appellant failed to provide documentation sufficient to process his claim for leave buyback between February 10 and March 11, 2005, due to the January 21, 2004 accepted injury. Accordingly, the Office properly denied his claim for leave buyback.

### **CONCLUSION**

The Board finds that appellant failed to establish that he was entitled to leave buyback for February 10 to March 11, 2005 due to his accepted right wrist tendinitis of January 21, 2004.

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<sup>6</sup> *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

<sup>7</sup> *Edward H. Horten*, 41 ECAB 301 (1989).

<sup>8</sup> *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.”

<sup>9</sup> *Laurie S. Swanson*, *supra* note 8.

<sup>10</sup> As noted, appellant's Form CA-7a lists 76 hours in section 6 and 79 hours in section five.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 22, 2008 is affirmed.

Issued: September 2, 2008  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board