

related that the area smelled for a week. Appellant did not stop work. The Office accepted her claim for dysphagia, allergic rhinitis and chronic sinusitis.

On August 13, 2008 Dr. Charles H. Dennis, a Board-certified otolaryngologist, advised that appellant was under his care on that date and could return to work on August 14, 2008. The record indicates that she underwent allergy skin testing on August 13, 2008. On September 23, 2008 appellant received an allergy shot.

On October 15, 2008 appellant filed a claim requesting leave buy back for intermittent time lost from work from May 7 to September 30, 2008. The employing establishment attached a leave analysis. Appellant provided as her reason for missing work on August 13, 2008 that she was undergoing day-long testing. She also lost time from work from September 8 to 30, 2008 due to allergy injections.

On January 12, 2009 the Office approved 54 hours of leave buy back from May 15 to September 30, 2008. It noted that she had not established entitlement to compensation on May 7, 13, 16 or 19, July 30 or September 23, 2008 and had only established entitlement to four hours on August 13, 2008.

On March 18, 2009 the employing establishment requested clarification regarding which dates were approved by the Office for leave buy back. On November 6, 2009 the Office advised appellant that she needed to submit medical evidence supporting her request for leave buy back for May 7, 13, 16 or 19, July 30, August 13 and September 23, 2008.¹

On May 11, 2010 appellant filed a claim for leave buy back for intermittent dates from February 18 to June 26, 2009.

By decision dated May 12, 2010, the Office denied appellant's request for leave buy back for May 7, 13, 16 and 19, July 30, August 13 and September 23, 2008. It noted that she had not submitted medical evidence addressing disability during the time claimed.

On May 13, 2010 the Office requested that appellant submit medical evidence supporting disability for June 12 and 26, 2009 and four hours on April 10, 1009. It noted that it paid at most four hours for physician's appointments.

By decision dated June 14, 2010, the Office denied appellant's claim for compensation for June 12 and 26, 2009 and her claim for four hours of compensation on April 10, 2009. It noted that there was no medical evidence supporting disability for these dates.

LEGAL PRECEDENT

In situations where compensation is claimed for periods when leave was used, the Office has the authority and the responsibility to determine whether the employee was disabled during

¹ On December 30, 2009 the Office approved 34.5 hours of leave buy back from October 10, 2008 to January 12, 2009.

the period for which compensation is claimed.² It 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.³

The term disability as used in the Federal Employees' Compensation Act⁴ means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.⁵ Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.⁶ When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.⁷ The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employee's to self-certify their disability and entitlement to compensation.⁸

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 or the medical procedure and/or the need to travel a substantial distance to obtain the medical care.⁹

ANALYSIS

The Office accepted that appellant sustained dysphagia, allergic rhinitis and chronic sinusitis due to factors of her federal employment. Appellant filed claims requesting leave buy back for intermittent time lost from work from May 7 to September 30, 2008 and February 18 to June 26, 2009. The Office found that she was not entitled to compensation on May 7, 13, 16 or 19, July 30, August 13 or September 23, 2008. It also found that appellant was not entitled to compensation on June 12 and 26, 2009 and four hours on April 10, 2009.

For the claimed dates of May 7, 13, 16 and 19, July 30, 2008 and June 12 and 26, 2009 and four hours on April 10, 2009, appellant has submitted insufficient medical evidence to establish that she was incapable of work on those dates due to her accepted work injury or that

² See *Glen M. Lusco*, 55 ECAB 148 (2003); see also 20 C.F.R. § 10.425.

³ *Glen M. Lusco*, *supra* note 2.

⁴ 5 U.S.C. §§ 8101-8193; 20 C.F.R. § 10.5(f).

⁵ *Paul E. Thams*, 56 ECAB 503 (2005).

⁶ *Id.*

⁷ *Id.*

⁸ *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (June 1999).

she missed work due to medical treatment for an employment-related condition. As noted the Board will not require the Office to pay compensation for disability in the absence of medical evidence addressing the period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify disability and entitlement to compensation.¹⁰ Appellant has failed to meet her burden of proof to establish that she was disabled for those dates or that she missed work due to medical treatment resulting from her employment injury.

The Board finds, however, that the case is not in posture for decision regarding whether appellant is entitled to compensation in the form of leave buy back for August 13 and September 23, 2008. On August 13, 2008 Dr. Dennis related that he was treating her on that date and that she could resume work on August 14, 2008. The record indicates that appellant underwent skin testing for allergies on August 13, 2008. In a letter dated January 12, 2009, the Office found that she had established entitlement to four hours of compensation on August 13, 2008; however, in its May 12, 2010 decision, it denied compensation for August 13, 2008. On remand it should clarify whether appellant was entitled to compensation on August 13, 2008. Appellant also received immunotherapy treatment on September 23, 2008. It appears that the Office may have approved leave buy back for other dates that she obtained allergy shots. On remand it should determine whether appellant is entitled to leave buy back because she missed work on September 23, 2009 for medical treatment related to her accepted work injury.

CONCLUSION

The Board finds that appellant has not established entitlement to leave buy back on May 7, 13, 16 and 19, July 30 and June 12 and 26, 2009. The case is not in posture for decision for the dates of August 13 and 23, 2009.

¹⁰ See *Fereidoon Kharabi*, *supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the June 14, 2010 decision of the Office of Workers' Compensation Programs is affirmed and the May 12, 2010 decision is affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: March 18, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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