

ISSUE

The issue is whether appellant has met his burden of proof to establish disability from work for the period March 28, 2016 through January 31, 2018 causally related to his accepted employment injury.

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On April 2, 2016 appellant, then a 56-year-old postmaster, filed an occupational disease claim (Form CA-2) alleging that he sustained hypertension and stress causally related to factors of his federal employment. He stopped work on March 28, 2016.

By decisions dated July 11, 2016 and June 5, 2017, OWCP denied appellant's emotional condition claim, finding that he had not established any compensable factors of employment. By decision dated July 28, 2017, it denied his request for reconsideration of the merits of his claim under 5 U.S.C. § 8128(a).

Appellant appealed to the Board. By decision dated February 8, 2019, the Board set aside OWCP's June 5 and July 28, 2017 decisions.⁵ The Board found that appellant had established compensable work factors and remanded the case for OWCP to determine whether the medical evidence established a diagnosed emotional condition causally related to the accepted employment factors.

Following further development, on November 4, 2019 OWCP accepted appellant's claim for severe major depressive disorder in partial remission and post-traumatic stress disorder (PTSD) in partial remission. It subsequently expanded its acceptance of the claim to include a temporary aggravation of essential hypertension which had resolved by November 12, 2019.

On February 7, 2020 appellant filed a claim for compensation (Form CA-7) for other wage loss from March 28, 2016 through January 31, 2018. On the reverse side of the form, the employing establishment indicated that he had used sick leave from March 28, 2016 to September 10, 2017 and annual leave from September 11, 2017 through January 30, 2018. It provided appellant's salary and specified that he was not entitled to any additional pay.

In a letter dated February 13, 2020, the employing establishment challenged appellant's claim for compensation. It advised that he had no wage loss during the claimed period as he had used sick and annual leave. The employing establishment maintained that as postmaster appellant was not entitled to overtime pay. It indicated that he had voluntarily retired on January 31, 2018.⁶

⁴ Docket No. 17-1803 (issued February 8, 2019).

⁵ *Id.*

⁶ A notification of personnel action (PS Form-50) indicates that appellant voluntarily retired from employment effective January 31, 2018.

In a development letter dated February 21, 2020, OWCP noted that the employing establishment had paid appellant either sick or annual leave during the claimed period. It requested that he submit evidence that he was entitled to premium pay from March 28, 2016 through January 31, 2018. OWCP afforded appellant 30 days to submit the requested information.

In a March 9, 2020 response, counsel asserted that he had used sick and annual leave as a result of his employment-related PTSD, noting that it was prior to the acceptance of his claim. He advised that appellant had accumulated “sick and annual leave to maximize his retirement annuity, which would be additional income for the rest of his life.” Counsel related that appellant had used all of his sick and annual leave before his retirement as a result of his employment-related disability, resulting in a significant loss of retirement annuity.

By decision dated June 25, 2020, OWCP denied appellant’s claim for disability from work for the period March 28, 2016 through January 31, 2018. It found that he had not shown that he had any disability as he used sick and annual leave during the claimed period or that he was entitled to any premium pay. OWCP noted that appellant could file a claim for leave buy back through the employing establishment.

On July 3, 2020 appellant requested a review of the written record by a representative of OWCP’s Branch of Hearings and Review.

By decision dated November 12, 2020, OWCP’s hearing representative affirmed the June 25, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁷ has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁸ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.⁹ Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.¹⁰

Under FECA the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.¹¹ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn

⁷ *Supra* note 2.

⁸ *See D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *M.C.*, Docket No. 18-0919 (issued October 18, 2018).

¹⁰ *See K.C.*, Docket No. 17-1612 (issued October 16, 2018).

¹¹ 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018).

wages.¹² An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages that he or she was receiving at the time of injury, has no disability as that term is used in FECA.¹³

OWCP's regulations provide, "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."¹⁴

Regarding leave buy back (LBB), OWCP's procedures provide:

"b. *LBB Forms*. The CE [claims examiner] should review the submitted forms carefully to be sure they are complete. If one or more of the necessary forms are not received or are incomplete, the CE should send a written request to the [employing establishment] for the completed form(s). The claimant should receive a copy of this letter as well. Forms used in a LBB claim include --

'(1) *Form CA-7*, Claim for Compensation, showing a claimant has elected LBB is required.

'(2) *Form CA-7b*, Leave Buy Back (LBB) Worksheet/Certification and Election, is required.

'(3) *Form CA-7a*, Time Analysis Form, is optional. If the *Form CA-7a* is not submitted though, a clear breakdown of leave used is required."¹⁵

In situations where compensation is claimed for periods when leave was used, OWCP has the authority and the responsibility to determine whether the employee was disabled during the period for which compensation is claimed.¹⁶ It determines whether the medical evidence establishes that an employee is disabled by an employment-related condition during the period claimed for LBB, after which the employing establishment will determine whether it will allow the employee to buy back the leave used.¹⁷

ANALYSIS

The Board finds that this case is not in posture for decision.

OWCP failed to sufficiently develop appellant's claim for compensation for disability from work during the period March 28, 2016 through January 31, 2018. Appellant advised that he had used sick and annual leave to cover disability from employment during this period which had

¹² See *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

¹³ See *M.W.*, Docket No. 20-0722 (issued April 26, 2021); *D.G.*, Docket No. 18-0597 (issued October 3, 2018).

¹⁴ 20 C.F.R. § 10.425.

¹⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.18(b) (February 2013).

¹⁶ *A.B.*, Docket No. 19-0185, n. 12; (issued July 24, 2020); *Glen M. Lusco*, 55 ECAB 148 (2003).

¹⁷ *Id.*

affected his retirement annuity. OWCP denied his claim for disability from work for the period March 28, 2016 through January 31, 2018 as the employing establishment had paid him sick or annual leave for that period and he had not established entitlement to any premium pay. However, even if appellant used paid leave, he can still claim compensation for periods of sick and annual leave which are restorable in accordance with the rules of the employing establishment.¹⁸ While the employing establishment advised that he had used leave during the claimed period, was not entitled to premium pay, and had now retired, it did not specifically address the question of whether he could buy back the leave used.

OWCP's procedures provide that, when an employee uses annual or sick leave during a period of claimed disability, and the necessary forms are not received, it should issue a written request to the employing establishment for a Form CA-7 showing that appellant has elected LBB, a Form CA-7b LBB worksheet/certification and election, and a Form CA-7a or other evidence showing a clear breakdown of leave used.¹⁹ OWCP failed to request these forms from the employing establishment in accordance with its procedures. On remand, it should inform the employing establishment and appellant of the appropriate forms required for LBB. The employing establishment should then follow established procedures to approve or disapprove the request and forward the completed forms to OWCP.²⁰

CONCLUSION

The Board finds that this case is not in posture for decision.

¹⁸ 20 C.F.R. § 10.425. See *Laurie S. Swanson*, 53 ECAB 517 (2002).

¹⁹ *Supra* note 15. See also *S.S.*, Docket No. 07-2336 (issued April 14, 2008).

²⁰ Whether to allow LBB is within the discretion of the employing establishment. *K.J.*, Docket No. 11-0571 (issued January 25, 2012).

ORDER

IT IS HEREBY ORDERED THAT the June 25 and November 12, 2020 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 7, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board