

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

MARLENE J. McDONALD, Appellant

and

**DEPARTMENT OF THE NAVY,
San Diego, CA, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 05-470
Issued: June 17, 2005**

Appearances:
Marlene J. McDonald, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On December 16, 2004 appellant filed a timely appeal from a December 2, 2004 merit decision of the Office of Workers' Compensation Programs, which denied compensation for wage loss from March 21 to 30, 2001. The Board has jurisdiction over the wage-loss issue pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether appellant is entitled to compensation for wage loss from March 21 to 30, 2001.

FACTUAL HISTORY

On January 16, 2001 appellant, then a 65-year-old transportation assistant, filed a claim for injuries she received to her cervical spine and low back which occurred on November 21, 2000 as a result of being distracted by hostile remarks and tripping while exiting the office

hurriedly. On April 10, 2001 the Office accepted her claim for the conditions of cervical and lumbar strains.¹ Appellant retired from the employing establishment on March 30, 2001.

On October 19, 2004 appellant filed a claim for wage loss from March 21 to 30, 2001. The Office received her claim form along with time analysis sheets for the claimed period in October 2004.

In a letter dated November 1, 2004, the Office advised appellant of the deficiencies in the medical evidence of record and advised that further medical information was required. She was allotted 30 days in which to provide the requested information.²

By decision dated December 2, 2004, the Office denied appellant's claim for wage-loss compensation for the period March 21 to 30, 2001. The Office found that it had received no evidence in response to its November 1, 2004 letter.

On the date of its decision, December 2, 2004, the Office received a medical report dated November 24, 2004 from Dr. Paul Lukasiewicz, a Board-certified family practitioner.

LEGAL PRECEDENT

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.³ Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.⁴ 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 employees to self-certify their disability and entitlement to compensation.⁵ The issue of whether a particular injury causes disability for work must be resolved by competent medical evidence.⁶

ANALYSIS

The Office accepted that appellant developed cervical and lumbar strains as a result of a November 21, 2000 incident. She filed a claim for compensation alleging that her wage loss

¹ The record reflects that appellant filed another claim on March 20, 2001 alleging that she sustained work-related stress and lumbar/cervical conditions which she claimed were caused or aggravated by her employment on August 21, 2000. The record before the Board does not contain any additional information on this claim or whether a decision had been rendered. Accordingly, this claim is not before the Board.

² This letter was sent to an incorrect address but did eventually reach appellant.

³ See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁴ *Id.*

⁵ *Id.*

⁶ See *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

from March 21 to 30, 2001 was causally related to this employment injury. Appellant, therefore, bears the burden of proof to establish that she was disabled for work as the result of this employment injury.

When the Office denied appellant's claim on December 2, 2004 it noted that it had received no evidence from her in response to the November 1, 2004 development letter. However, the Office received a medical report dated November 24, 2004 from Dr. Lukasiewicz that same day. The Federal Employees' Compensation Act provides that the Office shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as the Office considers necessary with respect to the claim. Since the Board's jurisdiction of a case is limited to reviewing that evidence which was before the Office at the time of its final decision, it is necessary that the Office review all evidence submitted by a claimant and received by the Office prior to the issuance of its final decision. As the Board's decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to that subject matter which was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office.⁷ Board precedent requires the Office to review all evidence submitted by a claimant and received by the Office prior to the issuance of its final decision, including evidence received on the date of the decision.⁸ For this reason, the Board will set aside the December 2, 2004 decision and remand the case for further development.

CONCLUSION

The Board finds that this case is not in posture for a decision on whether appellant is entitled to compensation for wage loss from March 21 to 30, 2001. The Office denied her claim for compensation without reviewing evidence received on the date of its final decision. The Board will set aside the Office's December 2, 2004 decision and remand the case for a review of all the evidence received and an appropriate final decision on appellant's entitlement to compensation for wage loss for the claimed period.

⁷ *William A. Couch*, 41 ECAB 548 (1990) (the Office did not consider new evidence received four days prior to the date of its decision); *see Linda Johnson*, 45 ECAB 439 (1994) (applying *Couch* where the Office did not consider a medical report received on the date of its decision).

⁸ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the December 2, 2004 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: June 17, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member