

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHEILA WILLIAMS-MOORE and DEPARTMENT OF VETERANS
AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Durham, NC

*Docket No. 00-274; Submitted on the Record;
Issued December 12, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant is entitled to continuation of pay for the period April 9 through 11, 1999.

The Board has duly reviewed the case on appeal and finds that appellant is entitled to 45 days of continuation of pay.

Appellant, a staff nurse, filed a claim on March 9, 1999 alleging that she sustained a back injury on that date preventing a patient from falling. By decision dated June 24, 1999, the Office of Workers' Compensation Programs denied appellant's claim for continuation of pay from April 1 to 11, 1999 and beginning on May 1, 1999. Appellant requested reconsideration on July 6, 1999. By decision dated July 16, 1999, the Office vacated the June 24, 1999 decision finding that appellant had submitted medical evidence establishing total disability from April 1 to 8, 1999. However, the Office found that the medical evidence was not sufficient to establish the additional periods of disability not previously accepted from April 9 to 11, 1999.¹ The Office noted that appellant had received continuation of pay from March 11 to 31, 1999 for 21 days and from April 12 to 30, 1999 for 19 days totaling 40 days of continuation of pay. The Office authorized continuation of pay from April 1 to 8, 1999 noting that this eight-day period resulted in more than 45 days of continuation of pay. The Office found that appellant was entitled to continuation of pay through April 27, 1999 and that April 28, 29 and 30, 1999 should be converted from continuation of pay to leave without pay.

The Federal Employees' Compensation Act provides that continuation of pay should be furnished for a period not to exceed 45 days.² The Office's regulations provide that continuation

¹ Following this decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not consider it for the first time on appeal. 20 C.F.R. § 501.2(c).

² 5 U.S.C. §§ 8101-8193, 8118.

of pay is payable for a maximum of 45-calendar days and that every day used is counted toward this maximum.³

In this case, appellant stopped work on March 9, 1999. Appellant submitted medical evidence from her attending physician, Dr. Sarah Ringel, a Board-certified family practitioner, that she was totally disabled from March 11 through April 8, 1999. She also submitted evidence that she could not work from April 12 through 30, 1999 and that she could return to limited duty on May 1, 1999.

Following the Office's June 24, 1999 decision, appellant submitted a note indicating that she was totally disabled from April 1 through 22, 1999.

The Board finds that appellant has submitted sufficient evidence to establish that she is entitled to continuation of pay from April 9 to 11, 1999 the period denied by the Office. The evidence submitted is clear on its face that Dr. Ringel supports disability from April 1 through 22, 1999. However, the Board notes that appellant is entitled to only 45 days of continuation of pay. As the three days from April 9 through 11, 1999 should be converted to continuation of pay, this necessitates that April 25, 26 and 27, 1999 should be converted to leave without pay in order to comply with the Act and regulations limiting continuation of pay to 45 days.

The July 16, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed as modified.

Dated, Washington, DC
December 12, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

³ 20 C.F.R. § 10.215.