

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT H. TAYLOR and DEPARTMENT OF VETERANS AFFAIRS,
ALVIN C. YORK MEDICAL CENTER, Murfreesboro, TN

*Docket No. 01-1966; Submitted on the Record;
Issued March 26, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
DAVID S. GERSON

The issue is whether appellant is entitled to continuation of pay from March 3, 2000.

On March 6, 2000 appellant, then a 52-year-old housekeeping aid, filed a claim for a traumatic injury to the lower left part of his back sustained on February 29, 2000 by throwing a bag of trash.

By letter dated October 12, 2000, the Office of Workers' Compensation Programs notified appellant that it had accepted his claim for a lumbar strain, but that it did not appear that he was entitled to continuation of pay since the employing establishment advised that light duty was available but he chose to take leave rather than work.

In a letter dated December 21, 2000, appellant stated that he "was in sick leave status for the dates of March 1 through March 3[, 2000] due to the extreme discomfort of the injury," that he was seen by an employing establishment physician on March 3, that his days off were March 3 and 4, and that he returned to limited duty on March 6, 2000.

By decision dated January 10, 2001, the Office found that appellant was "not entitled to continuation of pay (COP) during any absences from work," for the reasons that there was no medical documentation supporting total disability and his employing establishment had advised that he chose to use leave instead of working light duty that was available.

By decision dated January 11, 2001, the Office found that appellant was "not entitled to continuation of pay (COP) during your absence from work for the period: March 1, 2000 and March 2, 2000," for the reason that he did not seek medical treatment for his February 29, 2000 injury until March 3, 2000 and that he had not presented medical documentation to support disability on March 1 and 2, 2000.

By letter dated May 8, 2001, the Office advised appellant that it could not approve his claim for leave buy-back for March 1 through 3, 2000 for the same reason stated in its January 11, 2001 decision.

The Board finds that appellant is not entitled to continuation of pay for March 1 and 2, 2000.

Appellant has the burden of proving by the preponderance of the reliable, probative, and substantial evidence that he or she is disabled for work as a result of an employment injury or condition. This burden includes the necessity of submitting medical opinion evidence, based on a proper factual and medical background, establishing such disability and its relationship to employment.¹ The same burden of proof applies for establishing entitlement to continuation of pay as for establishing entitlement to compensation.

Appellant has not submitted any medical evidence showing that he was disabled for work on March 1 and 2, 2000. A March 3, 2000 medical report diagnosed lumbar strain and limited appellant from lifting over 25 pounds, and from pushing and pulling, but this report did not indicate that appellant was disabled for work on March 1 or 2, 2000. Appellant has not met his burden of proof.

The Board finds that the case is not in posture for a decision on whether appellant was entitled to continuation of pay on March 3, 2000. The Office's January 10, 2001 decision found that appellant was not entitled to continuation of pay "during any absence from work." The Office's January 11, 2001 decision found that appellant was not entitled to continuation of pay on March 1 and 2, 2000. These decisions are contradictory on appellant's entitlement to continuation of pay for March 3, 2000 and the Board cannot determine whether the Office intended to approve or deny continuation of pay for that day.

The Board will therefore affirm the January 11, 2001 decision, as it correctly found that appellant was not entitled to continuation of pay on March 1 and 2, 2000. The Board will set aside the Office's January 10, 2001 decision and remand the case to the Office for a decision on whether appellant is entitled to continuation of pay on March 3, 2000.

¹ *David H. Goss*, 32 ECAB 24 (1980).

The January 11, 2001 decision of the Office of Workers' Compensation Programs is affirmed. The Office's January 10, 2001 decision is set aside and the case remanded to the Office for action consistent with this decision of the Board.²

Dated, Washington, DC
March 26, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

² The May 8, 2001 letter from the Office about leave buy back was not a decision, and referred appellant to the appeal rights provided with the Office's January 11, 2001 decision.