

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

TAMMY L. MEDLEY, Appellant)

and)

U.S. SECURITIES & EXCHANGE)
COMMISSION, Alexandria, VA, Employer)

**Docket No. 03-1861
Issued: December 19, 2003**

Appearances:
Tammy L. Medley, 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 July 16, 2003 appellant filed a timely appeal of the May 22, 2003 decision of an Office of Workers' Compensation Programs hearing representative, which partially denied appellant's claim for wage-loss compensation. Pursuant to 20 C.F.R. § 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of appellant's claim.

ISSUE

The issue is whether appellant established that she was disabled during the periods September 24 through 26, 28 through 30, 1999 and October 14 through November 3, 1999, as a result of her June 1, 1996 employment-related lumbar strain.

FACTUAL HISTORY

Appellant, a 38-year-old accounting technician, has an accepted occupational disease claim for lumbar strain (25-0561255) arising on or about June 1, 1996. On October 8, 1999 appellant was involved in a motor vehicle accident in the employing establishment's parking

facility. In June 2001, appellant claimed a recurrence of disability beginning October 8, 1999 causally related to her June 1, 1996 employment injury. The Office, however, denied the claimed recurrence of disability as it was evident that appellant's back condition on October 8, 1999 was a result of the traumatic injury she sustained that day and not due to her June 1, 1996 employment-related lumbar strain. Although the Office denied appellant's claimed October 8, 1999 recurrence of disability, the Office accepted that she sustained a traumatic lumbar sprain as a result of the October 8, 1999 employment-related motor vehicle accident (25-2011946).

On June 4, 2001 appellant filed a claim for compensation (Form CA-7) for lost wages for the periods September 2 through 30, 1999 and October 14 through November 3, 1999. This claim was submitted relevant to appellant's June 1, 1996 occupational injury (25-0561255). In a decision dated December 4, 2002, the Office denied appellant's claim for compensation. She requested a review of the written record. By decision dated May 22, 2003, an Office hearing representative modified the December 4, 2002 decision with respect to appellant's entitlement to wage-loss compensation for September 2 through 23 and September 27, 1999. The Office hearing representative affirmed the prior determination that appellant was not entitled to compensation for the remaining periods claimed. The hearing representative noted the absence of documentation to support total disability for September 24, 26, 28 and 30, 1999.¹ With respect to appellant's claimed disability beginning October 8, 1999, the hearing representative explained that she had an accepted traumatic injury claim for lumbar sprain arising on October 8, 1999. The hearing representative further explained that the medical evidence of record did not relate appellant's post-October 8, 1999 disability to her prior injury of June 1, 1996.²

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of her claim, including that any specific condition or disability for which she claims wage-loss compensation is causally related to the employment injury.⁴ Whether a particular injury causes an employee to be disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁵

ANALYSIS

¹ The hearing representative awarded wage-loss compensation for September 27, 1999 based on documentation of a medical consultation on that date.

² As appellant's October 8, 1999 traumatic injury claim (25-2011946) was not before the hearing representative, she did not consider whether appellant was entitled to additional wage-loss compensation as a result of the October 8, 1999 traumatic injury.

³ 5 U.S.C. § 8101 *et seq.*

⁴ *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁵ *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

The Office hearing representative denied appellant's claim for wage-loss compensation because the evidence submitted did not specifically attribute her disability to her June 1, 1996 accepted injury; particularly with respect to her claimed disability after October 8, 1999. The periods of disability currently at issue include September 24, 26, 28 and 30, 1999 and October 14 through November 3, 1999.

With respect to September 24, 1999, appellant claimed eight hours of wage-loss compensation. However, there is no medical documentation to support her absence that day. Dr. Mercy Obamogie, a family practitioner, excused appellant from work during the period of September 9 through 23, 1999. When she reevaluated appellant on September 23, 1999, Dr. Obamogie advised appellant to follow up with an orthopedic surgeon and physical therapist. However, she did not excuse appellant from work after September 23, 1999. Accordingly, there is insufficient medical evidence to justify her absence on September 24, 1999. Appellant was not scheduled to work September 25 and 26, 1999, therefore, she is not entitled to wage-loss compensation for those dates.

The hearing representative awarded wage-loss compensation for September 27, 1999, because of appellant's scheduled medical appointment with Dr. Uchenna R. Nwaneri, a Board-certified orthopedic surgeon. Appellant claimed eight hours of wage-loss compensation for September 28, 1999; however, she did not submit any medical evidence to justify her absence that day. It is noted that, when Dr. Nwaneri examined appellant on September 27, 1999 he did not state that she was disabled from performing her employment duties.

The record indicates that appellant returned to work on September 29, 1999; therefore, she is not entitled to wage-loss compensation for that day. She claimed a half hour of wage-loss compensation for September 30, 1999 for a medical appointment with Dr. Charles C. Young, Board-certified in physical medicine and rehabilitation. The record confirms that appellant was examined by Dr. Young on September 30, 1999 for complaints of severe low back pain. He advised appellant to avoid stress on her spine during work, with no bending over and no lifting in excess of 15 pounds. Accordingly, she is entitled to wage-loss compensation for September 30, 1999.

With respect to appellant's claimed disability during the period October 14 through November 3, 1999, the Office denied wage-loss compensation because the evidence did not establish that her disability was due to her June 1, 1996 employment injury.⁶ As previously noted, she was involved in a motor vehicle accident on October 8, 1999, while on the employing establishment's premises. The Office accepted appellant's October 8, 1999 traumatic injury claim for lumbar sprain. Dr. Obamogie examined appellant on October 12, 1999 and excused her from work through October 17, 1999. On a prescription pad note, she reported that appellant was under her care for "accident-related injuries." Dr. Obamogie's October 12, 1999 treatment notes indicate the date of injury as October 8, 1999 and note that appellant was involved in a motor vehicle accident.

⁶ The record indicates that appellant worked October 19 and 22, 1999; therefore, she would not be entitled to wage-loss compensation for those days.

Dr. Young saw appellant on October 14, 1999, however, his treatment notes do not mention either appellant's prior injury or her October 8, 1999 motor vehicle accident. When Dr. Nwaneri saw appellant on September 27, 1999 he recommended that she return for a follow-up visit on October 18, 1999. The record indicates that appellant saw Dr. Nwaneri on October 18, 25 and 28, 1999. His reports relevant to those examination dates reveal that appellant received treatment for the injury she sustained on October 8, 1999.

When Dr. Obamogie saw appellant again on November 2, 1999 she reported that appellant was there for a follow up for back pain secondary to a motor vehicle accident. In an April 3, 2001 attending physician's report (Form CA-20), Dr. Obamogie indicated that the treatment appellant received on October 12 and November 2, 1999 and her disability from October 11 to 17, 1999, were the result of an October 8, 1999 motor vehicle accident.

Appellant claimed wage-loss compensation for physical therapy she received on November 1 and 3, 1999. The record indicates that this treatment was received in response to her October 8, 1999 motor vehicle accident.

Although appellant alleged that her disability and the medical treatment she received during the period October 14 through November 3, 1999 was due to both her June 1, 1996 injury and her October 8, 1999 motor vehicle accident, the medical evidence of record does not establish that her claimed disability during this timeframe was related to her June 1, 1996 employment injury. Accordingly, the Office properly denied wage-loss compensation for the period October 14 through November 3, 1999 under the present claim.

CONCLUSION

The Board finds that appellant failed to establish that she was disabled due to her June 1, 1996 injury during the periods September 24, 26, 28 and 29, 1999 and October 14 through November 3, 1999. She has established entitlement to wage-loss compensation for September 30, 1999, as a result of her June 1, 1996 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the May 22, 2003 decision of the Office of Workers' Compensation Programs is modified to reflect appellant's entitlement to wage-loss compensation for September 30, 1999. In all other respects, the Office hearing representative's May 22, 2003 decision is affirmed as modified.

Issued: December 19, 2003
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member