

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CATHERINE D. KERNEY and U.S. POSTAL SERVICE,
POST OFFICE, Baltimore, MD

*Docket No. 03-139; Submitted on the Record;
Issued February 7, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant established that she was disabled from March 2 to 12, 2002 due to her accepted condition of lumbar sprain.

The Office of Workers' Compensation Programs accepted that appellant, a 45-year-old mail processor, sustained a sprain/strain of the lumbar region of the back while in the performance of duty on January 25, 2002. Appellant ceased working on January 25, 2002 and returned to work March 12, 2002.

By decision dated October 8, 2002, the Office denied wage-loss compensation for the period March 2 to 12, 2002 on the basis that the medical evidence failed to support a finding of disability for the claimed period.

The Board finds that appellant has not met her burden of proof to establish that she was disabled from March 2 to 12, 2002 by her accepted condition of lumbar sprain.

Whether a particular injury causes disability for employment is a medical question that must be resolved by competent medical evidence.¹ The employee has the burden of proving that he or she is disabled for work as a result of an employment injury or condition.² This burden includes the necessity of submitting medical opinion evidence, based upon a proper factual and medical background, establishing such disability and its relationship to the employment.³

Even though the Office accepted appellant's claim that she sustained an injury in the performance of her duties on January 25, 2002, appellant still has the burden of proof to establish

¹ *Donald E. Ewals*, 51 ECAB 428, 434 (2000).

² *Yvonne R. McGinnis*, 50 ECAB 272 (1999).

³ *Id.*

that her accepted lumbar sprain resulted in her disability from March 2 to 12, 2002.⁴ Appellant has not met this burden.

The relevant medical evidence for the period of disability consisted of an April 10, 2002 attending physician's report (Form CA-20) from Dr. Michele Martin-Jones, a family practitioner, and the doctor's treatment notes for February 11 and 26, 2002. When Dr. Martin-Jones initially examined appellant on February 11, 2002 she noted findings of back pain and left shoulder pain. She prescribed medications and advised appellant to remain off work until seen by "rehab[ilitation] med[icine]." Dr. Martin-Jones next saw appellant on February 26, 2002 and noted that appellant still complained of back pain and was off work. Appellant also reportedly had attended two physical therapy sessions, the results of which were positive for pain relief, but nonetheless appellant's symptoms recurred. Dr. Martin-Jones recommended continued physical therapy and medications and advised appellant to return for a follow-up examination in two weeks.

In an April 10, 2002 attending physician's form report, Dr. Martin-Jones reported findings of left deltoid tenderness with palpitation and she diagnosed upper and low back pain/strain and left shoulder pain, bursitis. She identified January 25, 2002 as the date of injury and stated that appellant reported back pain after pushing and pulling heavy objects at work. Additionally, she noted a history of left shoulder pain. Dr. Martin-Jones attributed appellant's condition to her employment, but did not otherwise explain the basis for her conclusion. She further noted that she treated appellant on February 11 and 26 and March 13, 2002, and the treatment consisted of anti-inflammatory medication, a muscle relaxant and referral to rehabilitation medicine. Dr. Martin-Jones identified appellant's period of total disability as beginning February 11, 2002, and she listed the end date as "unknown." She also remarked that she had last seen appellant on March 13, 2002 and advised her to schedule a follow-up appointment in two weeks. Additionally, Dr. Martin-Jones stated that she referred appellant for physical therapy, but was unaware of appellant's progress because she had not received any correspondence.

The relevant medical evidence, and particularly Dr. Martin-Jones' April 10, 2002 report, is insufficient to establish that appellant was disabled during the period March 2 to 12, 2002. Dr. Martin-Jones' February 26, 2002 treatment notes indicated that appellant had been off work, but do not otherwise address any ongoing disability. While she recommended continued physical therapy and medications and advised appellant to return for a follow-up visit in two weeks, Dr. Martin-Jones did not specifically advise appellant to remain off duty. Even though Dr. Martin-Jones' April 10, 2002 report indicated that appellant had been totally disabled since February 12, 2002, the doctor admittedly was unaware of appellant's progress since her last examination on March 13, 2002. Moreover, Dr. Martin-Jones' April 10, 2002 report makes no mention of the fact that appellant had already returned to work. Consequently, the record is devoid of any rationalized medical opinion evidence establishing an employment-related disability during the period March 2 to 12, 2002.

⁴ *Id.* at 273.

As appellant failed to submit competent medical evidence supporting her claimed disability from March 2 to 12, 2002, the Office properly denied wage-loss compensation for the period in question.⁵

The October 8, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.⁶

Dated, Washington, DC
February 7, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁵ *Donald E. Ewals, supra* note 1.

⁶ The record on appeal includes evidence that was received by the Office subsequent to the issuance of its October 8, 2002 decision. Inasmuch as the Board's review is limited to the evidence of record that was before the Office at the time of its final decision, the Board cannot consider appellant's newly submitted evidence. 20 C.F.R. § 501.2(c).