

**THE MONTH IN PENNSYLVANIA WORKERS' COMPENSATION:  
MARCH 2011 AT A GLANCE  
BY MITCHELL I GOLDING, ESQ.  
KENNEDY, CAMPBELL, LIPSKI & DOCHNEY  
(W) 215-430-6362**

**CLAIM PETITION/NOTICE OF COMPENSATION DENIAL**

- An employer's untimely issuance of a Notice of Denial with the Box 4 checked off that was issued on June 6, 2007 following the claimant's work injury of April 4, 2006, which acknowledged the claimant suffered a work injury in the form of a lumbar strain and sprain, did not preclude the WCJ from denying the claimant's Claim Petition based upon the WCJ's finding that the claimant did not credibly or persuasively establish that he sustained a disabling work injury.

This is because a claimant who files a Claim Petition bears the burden of proving all of the elements necessary to support an award of benefits. Thus, a claimant must establish that he sustained an injury during the course of his employment and that he is disabled as a result of that injury. For purposes of workers' compensation benefits, the term disability is synonymous with loss of earning power. The claimant's burden to prove disability never shifts to the employer.

Therefore, when an employer issues a Notice of Compensation Denial which acknowledges an injury but disputes disability, the claimant remains with the burden to prove he is entitled to indemnity.

*Morrison v. WCAB (Rothman Institute), No. 403 C.D. 2010 (Decision by Judge McCullough, November 23, 2010). 4/11*