

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CAROLE R. AMABELLO and DEPARTMENT OF COMMERCE,  
BUREAU OF THE CENSUS, Washington, DC

*Docket No. 98-1044; Submitted on the Record;  
Issued January 28, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant has met her burden to establish that she is entitled to continuation of pay and compensation benefits from August 6 through November 9, 1996.

On June 19, 1996 appellant filed a claim for a traumatic injury, Form CA-1, alleging that on June 9, 1996 a female deliberately hit her with the front door causing her to sustain bruises and cuts on her hands and shoulders and large bruises on her elbows, the back of her arms and chest. Appellant also stated that the computer struck her chest after the door hit and she sustained bruises and abrasions on her head, neck, back and the front of her legs. Appellant stopped work on June 9, 1996.

The Office of Workers' Compensation Programs accepted appellant's claim for a cervical sprain and multiple contusions and appellant received intermittent continuation of pay for 43 days from June 10 through August 3, 1996.

Appellant submitted an x-ray dated May 21, 1996 from Dr. David C. Gleason, a Board-certified radiologist, who noted mild curvature and relative narrowing at L5-S1 with surrounding bony sclerosis suggestive of degenerative disc change. Appellant also submitted progress notes dated from May 24 through September 30, 1996 and medical reports dated June 10, September 24 and October 9, 1996, from her chiropractor, Dr. Michael A. Gleason. In the progress notes dated from May 24 through September 30, 1996, Dr. Gleason, appellant's chiropractor, repeatedly found numerous subluxations but did not address on what he based these findings. For instance, in the June 18, 1996 progress note, Dr. Gleason stated that he gave adjustments to "all subluxations found upon palpation" of the thoracic, lumbar, sacral and cervical spine and referred to adjusting the segmental levels at C1, C2, T1, T3, T4, T8, T9, T11, L2, L3, L5 and the right and left sacroiliac joints. On subsequent dates he made adjustments at some of those same levels but sometimes different ones.

In his two reports dated September 24, 1996, appellant's chiropractor, Dr. Gleason, considered appellant's history of injury, diagnosed acute lumbosacral and cervical sprain/strain with radiculopathy and stated that appellant was unable to work for several days. In his June 10, 1996 report, Dr. Gleason considered appellant's history of injury, performed a physical examination and additionally diagnosed myofascitis. In his October 9, 1996 report, Dr. Gleason considered appellant's history of injury, performed a physical examination and stated that he treated appellant for "multiple spinal subluxations found to palpation and backed up by x-rays."

On October 2, 1996 appellant sought compensation for continuing disability, Form CA-8, from August 6 through October 26, 1996.

By letter dated December 31, 1996, the Office requested additional information from appellant including a copy of the x-ray report showing a subluxation.

Appellant subsequently submitted more progress notes from her chiropractor, Dr. Gleason, dated May 20 and 22 and June 7 and 12, 1996 in which he described the subluxated levels of appellant's spine he treated. Appellant also submitted a magnetic resonance imaging (MRI) scan of the lumbar spine dated October 26, 1996, which showed mild degenerative disc disease and some bony spondylosis.

By letter dated January 21, 1997, the Office reiterated its request to appellant for objective medical evidence. Appellant submitted a disability note, received by the Office on January 24, 1997, from Dr. Hugh P. Bower, a Board-certified family practitioner with a specialty in obstetrics and gynecology, in which he stated that on June 9, 1996 appellant sustained a personal assault, which resulted in multiple complaints and a back injury and she had been unable to work since that date.

By decision dated February 13, 1997, the Office denied appellant's claim, stating that the evidence of record failed to establish that appellant was disabled from work from August 6 to November 9, 1996.

Appellant requested a hearing before an Office hearing representative, which was held on August 5, 1997. At the hearing, she summarized her work-related injuries occurring on June 9, 1996 and described an emotional condition she felt she had developed at work, which she claimed resulted in her hospitalization. She also described a car accident she was in on October 26, 1996. Appellant testified that at present the employing establishment and her doctor agreed that she could return to work. She testified that she had muscle spasms and became uncomfortable if she sat for long periods of time. Appellant submitted hospital records showing that she was hospitalized on June 30, 1996 for heart palpitations and on September 21 and October 3, 1996 for atrial fibrillation. Further, she submitted a progress note dated November 23, 1996 from her chiropractor, Dr. Gleason, stating that appellant had multiple subluxation fixations throughout her spine based upon examination and described the levels of the spine that were treated.

By decision dated November 6, 1997, the Office hearing representative affirmed the Office's February 13, 1997 decision.

The Board finds that appellant has failed to meet her burden to establish that she is entitled to continuation of pay and compensation benefits from August 6 through November 9, 1996.

An employee is not entitled to continuation of pay unless he or she sustains a traumatic injury and the disability begins within 90 days of the date of injury.<sup>1</sup> Every injury does not necessarily cause disability for employment. Whether a particular injury causes an employee disability for employment is a medical issue, which must be resolved by competent medical evidence.<sup>2</sup> Appellant must present rationalized medical evidence to establish a causal relation between her disabling condition and her employment.<sup>3</sup>

The progress notes dated May 20 through November 20, 1996 establish that appellant's chiropractor, Dr. Michael Gleason, treated appellant for subluxations of her spine. In his report dated October 9, 1996, Dr. Gleason stated that the multiple spinal subluxations found to palpation were supported by x-rays. Under section 8101(2) of the Federal Employees' Compensation Act, chiropractors are considered physicians and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.<sup>4</sup> In the present case, Dr. Michael Gleason did not submit the x-rays on which he based his findings that appellant had numerous subluxations. By letters dated December 31, 1996 and January 21, 1997, the Office informed appellant that it required objective evidence, including the x-rays showing subluxation to establish that Dr. Gleason, the chiropractor, was a physician within the meaning of the Act. Appellant did not submit any x-rays. The x-ray submitted by the radiologist, Dr. David Gleason, dated May 21, 1996 showed mild curvature and relative narrowing at L5-S1 with surrounding bony sclerosis suggestive of degenerative disc disease is not probative for establishing Dr. Michael Gleason's qualifications as a physician under the Act as it was generated apart from him, does not show any subluxations and is not the x-ray on which he based his findings of subluxation. Similarly, the October 26, 1996 MRI scan showing mild degenerative disc disease and some bony spondylosis is not probative on Dr. Michael Gleason's qualifications as a physician. Because appellant has failed to present any x-rays on which Dr. Gleason, the chiropractor, based his findings on subluxations, he is not a "physician" within the meaning of the Act. His reports, therefore, are not probative. Inasmuch as there is no other medical evidence in the record establishing that appellant was disabled from August 6 through November 9, 1996, appellant has failed to meet her burden that she is entitled to continuation of pay and compensation benefits for the time period claimed.

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<sup>1</sup> 20 C.F.R. § 10.201(a)(2) and (4).

<sup>2</sup> *Donald Johnson*, 44 ECAB 540, 551 (1993).

<sup>3</sup> *Kimper Lee*, 45 ECAB 565, 573 (1994).

<sup>4</sup> 5 U.S.C. § 8107(a); *Carolyn M. Leek*, 47 ECAB 374, 380 n. 10 (1996).

The decisions of the Office of Workers' Compensation Programs dated November 6 and February 13, 1997 are affirmed.

Dated, Washington, D.C.  
January 28, 2000

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Michael E. Groom  
Alternate Member