

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JILL M. MANOA and U.S. POSTAL SERVICE,  
POST OFFICE, Cleveland, OH

*Docket No. 98-2566; Submitted on the Record;  
Issued March 21, 2000*

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DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she was totally disabled from December 31, 1996 through January 11, 1997; from January 18 through January 27, 1997 and from February 11, 1997 due to her accepted employment injury.

The Board finds that appellant has not met her burden of proof in establishing intermittent periods of total disability causally related to her December 19, 1996 employment injury.

Appellant, a mail carrier, filed a claim on December 19, 1996 alleging that she slipped and fell in the performance of duty injuring her back. Appellant noted that she was pregnant. She stopped work on December 19, 1996. The Office of Workers' Compensation Programs accepted appellant's claim for left hip contusion, left sacroiliac strain and lumbosacral strain on April 16, 1997. By decision dated September 11, 1997, the Office found that appellant was not totally disabled from December 31, 1996 to January 11, 1997; from January 18 to January 27, 1997 and from February 11, 1997 to the present. Appellant requested an oral hearing. By decision dated July 15, 1998, the hearing representative affirmed the Office's September 11, 1997 decision.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>2</sup>

Appellant claimed total disability from December 31, 1996 to January 11, 1997. The contemporaneous medical evidence consists of reports from Dr. Dean W. Erickson, a physician Board-certified in preventive medicine. He examined appellant on December 19, 1996 and diagnosed left hip contusion, left sacroiliac strain and lumbosacral strain. He indicated that appellant could resume light duty on that date. Dr. Erickson noted that appellant was on vacation from December 20 through December 26, 1996. On December 30, 1996 Dr. Erickson again indicated that appellant could perform light duty. Dr. Erickson examined appellant on January 16, 1997 and found that she was totally disabled on that date, but that she could return to work on January 17, 1997. These reports do not support appellant's claim for total disability from December 31, 1996 to January 11, 1997 or from January 18 to January 27, 1997.

In a report dated January 28, 1997, Dr. Daniel Dorfman, a physician Board-certified in preventive medicine, examined appellant and noted her history of injury. He stated that she was currently five months pregnant and that she had a work-related injury of December 19, 1996 in which she sustained a lumbar strain and L5-S1 radiculopathy. Dr. Dorfman stated that appellant was to refrain from occupational duties for an additional week. On February 4, 1997 Dr. Dorfman again stated that appellant should refrain from occupational duties. On February 11, 1997 Dr. Dorfman released appellant to return to light duty. These reports do not support appellant's total disability for work after February 11, 1997.

In a report dated March 4, 1997, Dr. Dorfman reviewed a February 25, 1997 magnetic resonance imaging (MRI) scan and diagnosed persistent low back discomfort secondary to L5-S1 disc degeneration and L5-S1 spondylolisthesis. He stated that the lumbar strain due to the December 19, 1996 employment injury was resolving and stated, "Due solely to the work-related injury, I feel [appellant] could continue to work with restrictions of no lifting greater than 10 pounds and no reaching below knee level." Dr. Dorfman stated that he had "written her an excuse for work which is not secondary to the work-related injury of December 19, 1996."

In a report dated February 24, 1997, Dr. John A. Kostoglou, a chiropractor, noted that no x-rays were taken due to appellant's pregnancy and diagnosed contusion lumbosacral spine, possible disc herniation L5-S1 and aggravation of preexisting spondylolisthesis. Dr. Kostoglou stated that appellant was totally disabled from December 30, 1996 to the present. Dr. Kostoglou completed a report on April 2, 1997 and continued to support appellant's total disability through May 5, 1997.

Section 8101(2) of the Act<sup>3</sup> provides that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated by x-ray to exist. As Dr. Kostoglou was unable to utilize x-rays to diagnose a subluxation of the spine, he is not a

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<sup>2</sup> *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

<sup>3</sup> 5 U.S.C. §§ 8101-8193, 8101(2).

physician for the purposes of the Act and his determination of appellant's period of total disability lacks probative value. Therefore this report is not sufficient to establish that appellant was totally disabled from December 30, 1996.

In a report dated November 17, 1997, Dr. Atef A. Eitomey, a physician, noted appellant's history of injury and stated that appellant's pain symptoms resolved in April 1997. He noted that appellant sustained a recurrence of lower back and leg pain in the last two months. Dr. Eitomey stated:

"I feel that the patient has a preexisting condition of minimal lumbar spondylolisthesis at the L5-S1 level with mild associated disc protrusion and mild degenerative disc disease at that level. This preexisting condition has been aggravated by the patient's work-related injury on December 19, 1996 and resulted in persistent symptomatology."

Appellant submitted a report dated June 8, 1998 from Dr. Charles I. Choi, a Board-certified anesthesiologist. Dr. Choi noted appellant's history of injury and stated that he first examined appellant on February 10, 1998. He stated:

"According to the patient's history it is my impression that the fall that the patient took on December 19, 1996 at her workplace has positive relationship with her current low back pain. The degenerative disc disease and spondylolisthesis could be a chronic problem. However, since, the patient's current pain started only after the injury it could be assumed that the fall certainly aggravated her pain condition if not caused it."

These reports do not address the issue in this case, whether appellant's intermittent disability from December 31, 1996 through February 11, 1997 and continuing is causally related to her accepted employment injury of December 19, 1996. As appellant has failed to submit sufficient rationalized medical opinion evidence to establish that she was totally disabled intermittently from December 31, 1996 she has failed to meet her burden of proof and the Office properly denied her claim.

The July 15, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.  
March 21, 2000

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member