

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PRISCILLA McINTOSH and U.S. POSTAL SERVICE,  
POST OFFICE, New Orleans, LA

*Docket No. 97-2897; Submitted on the Record;  
Issued May 17, 2000*

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DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly found that appellant did not sustain a recurrence of disability from March 4 through March 10, 1992 and subsequent to April 25, 1992 causally related to her August 9, 1990 employment injury.

On August 9, 1990 appellant, then a 40-year-old postal clerk, experienced pain in her leg, extending to her back while pushing some equipment. Appellant filed a claim for benefits on September 5, 1990, which the Office accepted for lumbar sprain. After being placed on total disability, appellant returned to work in a modified, light-duty assignment on October 18, 1990, and continued to miss work intermittently. Appellant filed claims for recurrences of her accepted condition for March 4 to March 10, 1992, and beginning April 25, 1992, for intermittent periods thereafter.

On July 22, 1992 appellant requested benefits based on a right sacroiliac condition, covering the period from July 7 to August 3, 1992. By decision dated November 17, 1992, the Office denied the claim, finding that appellant was claiming compensation for a condition which was not causally related to the August 9, 1990 work injury. Appellant requested a hearing which was held on June 24, 1993.

Appellant requested a light-duty assignment from the employing establishment on December 30, 1992. By letter dated January 8, 1993, the employing establishment advised appellant that it had no light duty available within her restrictions.

By decision dated September 17, 1993, an Office hearing representative set aside the November 17, 1992 decision, finding that a conflict existed between appellant's physician, Dr. James Butler, a Board-certified orthopedic surgeon, and an Office referral physician, Dr. Robert Steiner, a Board-certified orthopedic surgeon, as to whether appellant's sacroilitis condition was employment related. The hearing representative instructed the district office to schedule an impartial medical evaluation to determine whether appellant's sacroiliac condition

was caused or aggravated by her employment, and whether appellant's continuing disability was causally related to the August 9, 1990 employment injury.

Appellant requested a light-duty assignment from the employing establishment on January 3, 1994. By letter dated January 7, 1994, the employing establishment advised appellant that it had no light duty available within her restrictions.

By decision dated January 14, 1994, following further development of the claim, the Office denied appellant's claim, finding that her sacroiliac dysfunction was not causally related to the accepted low back injury. The Office found that Dr. Victor P. Chisesi, the impartial medical specialist and a Board-certified orthopedic surgeon, did not support a causal relationship of appellant's sacroilitis to her employment. Appellant requested another hearing, which was held on May 15, 1994.

By decision dated December 9, 1994, the Office hearing representative set aside the January 14, 1994 decision, remanding the issue for further development to determine whether appellant had residuals from the August 9, 1990 work injury and whether the claimed condition of right sacroiliac dysfunction was caused or aggravated by employment factors. The Office hearing representative found that the reports from Dr. Chisesi were equivocal and not sufficiently rationalized to constitute the weight of the medical opinion.

In order to determine whether appellant's sacroilitis condition was caused or aggravated by the August 9, 1990 work injury, and whether this condition contributed to her current condition or disability, the Office scheduled a referee medical examination for appellant with Dr. Keith C. Donatto, a Board-certified orthopedic surgeon. Dr. Donatto's impartial medical examination took place on January 30, 1995, and he issued a report on March 7, 1995. After reviewing the statement of accepted facts and appellant's medical records, he stated that appellant by history and physical examination had findings consistent with right sacroiliac dysfunction. Dr. Donatto opined that this condition may have been aggravated by the August 9, 1990 work injury, but that this was not the sole cause of the condition. He stated that it was unclear whether appellant's condition ever returned to its preinjury status and advised that she currently had episodes of back pain at least once or twice per week. Dr. Donatto noted that she was back to work, but related that she was unable to perform any type of lifting or pulling. He further stated that appellant sustained another work injury on May 9, 1994 and that given her previous dysfunctional state, this second injury may have added to the symptomatology. Dr. Donatto concluded that appellant was not completely disabled, but advised that she should be restricted in her duties and obtain a sedentary job with no heavy lifting or pulling. He further advised that appellant should do no lifting exceeding 20 pounds and that she should not be "desk bound" but needed to limit her walking.

In supplemental reports dated June 13 and 16, 1995, Dr. Donatto advised that there was no objective evidence of ongoing sacroiliac dysfunction, stating that a March 28, 1995 bone scan was completely normal in both the S1 joint region as well as the lumbar spine region. He reiterated that appellant could do light manual duty with the restrictions already provided.

By letter dated June 27, 1995, the Office accepted that appellant's right sacroiliac dysfunction was causally related to her August 9, 1990 work injury, based on Dr. Donatto's

reports. The Office noted in the letter that Dr. Donatto opined she was able to work full time within restrictions. Appellant applied for disability retirement from the employing establishment on June 26, 1995, the day after she stopped working at the modified light-duty position, and received her disability retirement on July 5, 1995. Appellant also claimed compensation for intermittent periods from March 1992 through May 4, 1994. Appellant's claim of injury on May 9, 1994 was accepted by the Office and she received compensation for temporary total disability from June 22, 1994 through June 25, 1995, when she retired from the employing establishment.<sup>1</sup>

Appellant's treating physician, Dr. Theresa Adderly, stated in an opinion dated August 22, 1995 that appellant had been very receptive to therapy and to returning to work, although she knew at times that she had to miss work due to the lifting, twisting and bending which caused her to be in pain. Dr. Adderly, who had treated appellant since September 3, 1993, advised that from August 9, 1990, appellant had been diagnosed as having repeated exacerbation of lower back pain in the iliac region due to sacroiliac/sacral dysfunction. She opined that the sacroiliac/sacral injury was caused by prolonged stress on the sacroiliac joint and that lifting and bending caused stress to the sacroiliac joint. Dr. Adderly advised that this was a chronic long-term condition and stated:

“[Appellant] does have permanent [aggravation] of her conditions. Even under a limited or light[-]duty status, [appellant] still has to lift up to 20 [pounds]. In doing so, she does not have support to lifting and must bend and or twist her body. It is virtually impossible for [appellant] not to lift, twist or bend at work based on the description of her job even in a limited/light[-]duty status. Because of the chronic back pain [appellant] has experienced, she has been absent from work more days than she has been at work. This has caused added stress in relieving some of her back pain.”

Dr. Adderly stated that appellant's condition was getting progressively worse and opined that she would have repeated aggravation of her condition by lifting, bending and twisting on a daily basis. She stated that the intermittent days on which appellant did not work were due to exacerbation of her back pain, with spasms in the lower right sacroiliac back, minimal forward bending with pain and decreased range of motion. Dr. Adderly noted that pain and swelling and spasms were worsened and recurrent from the daily lifting of mail trays weighing up to 20

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<sup>1</sup> Appellant sustained another work injury on May 4, 1994, which the Office accepted for right hip contusion and edema of the right foot. Appellant received total disability compensation for this injury from June 22, 1994 through June 25, 1995. In its October 20, 1995 decision, the Office found that, until sustaining this injury, appellant had manifested no inability to perform the modified light-duty job.

pounds, which put prolonged stress on appellant's sacroiliac joint, causing her to miss days of work. She stated that based on appellant's medical records and her examination her symptoms were actively related to the August 9, 1990 injury. Dr. Adderly concluded:

“Based on all the [orthopedic] findings and diagnostic [tests], my opinion is that appellant is totally disabled. She cannot return to work in any position at the [employing establishment] without causing further injury to her right side. She can indeed use her wrist and elbow but she would still have to sit, stand, twist, bend, and lift for any position there, thereby causing greater pain, spasm and edema with possible nerve involvement. This makes it impossible for appellant to perform any meaningful work.”

By decision dated October 20, 1995, the Office denied appellant's claim, finding that she failed to submit medical evidence sufficient to establish that she was totally disabled for her light-duty assignment due to her accepted sacroiliac dysfunction condition from March 4 through March 10, 1992, or for any period of time subsequent to April 25, 1992.

By letter dated November 1, 1995, appellant requested an oral hearing, which was held on September 26, 1996.

By decision dated December 9, 1996, an Office hearing representative affirmed the Office's October 20, 1995 decision. The hearing representative found that appellant failed to submit evidence sufficient to establish either a change in the nature and extent of her light-duty requirements or in the nature and extent of her work-related disability. The hearing representative found that Dr. Donatto's referee opinion, which indicated that appellant was not totally disabled from gainful employment and that she could work a sedentary job with restrictions, represented the weight of the medical evidence. The hearing representative found that appellant failed to submit sufficient medical evidence demonstrating a change in the nature and extent of her injury-related condition.

The Board finds that this case is not in posture for decision.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.<sup>2</sup>

In the present case, Dr. Adderly's reports address the issue of causation by stating appellant's sacroiliac condition was aggravated by her employment, which was accepted by the Office based on Dr. Donatto's opinion. Dr. Adderly, however, does not address any specific periods of total disability for work during the periods claimed by appellant. For this reason, her

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<sup>2</sup> *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

reports are not sufficient to establish disability due to a change in her medical condition or a change in the light duty for the periods claimed. However, the record contains the employing establishment's January 8, 1993 letter to appellant informing her that there was no light duty available to her within her physical limitations. This evidence establishes a *prima facie* case for recurrence of disability; *i.e.*, a change in the nature of the light-duty work appellant was provided. Based on this information, the Office should request the employing establishment whether it had light-duty work available for appellant during the periods of disability claimed which met her physical restrictions or obtain a description of the change in appellant's light-duty job requirements.

Accordingly, the Board will set aside the Office's December 9, 1996 decision and remand the case for further development and a *de novo* decision. On remand, the Office should request clarification from the employing establishment as to the availability and nature of light-duty work assigned to appellant during the period 1992 to 1994 and determine whether there was a change in the nature and extent of the light-duty job requirements.

The Office of Workers' Compensation Programs' decision of December 9, 1996 is therefore set aside and the case is remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.  
May 17, 2000

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member