

MEMORANDUM OF LAW

DATE: September 22, 1987

TO: D. Cruz Gonzalez, Risk Management Director
FROM: City Attorney
SUBJECT: Long-Term Disability Claim; case of Jessica
Dixon

By memorandum dated August 6, 1987, Mr. Dan Teague, the Long-Term Disability Administrator requested that this office respond to two questions concerning an application for long-term disability benefits filed by Ms. Jessica Dixon on January 17, 1986. This application was the subject of a previous memorandum from this office to the Risk Management Director dated April 1, 1986, whereby we advised the Director to deny her claim at that time because of the confusion over how and when the alleged injury occurred and the apparent failure of Ms. Dixon to file a timely claim.

You have once again asked us to advise you in this matter because you received a letter from the San Diego Municipal Employees Association MEA dated July 17, 1987 requesting long-term disability benefits for Ms. Dixon for injuries described in the award in Workers' Compensation Case No. 84 SD 86185. This award extended a previous award of temporary disability to Ms. Dixon from an industrial injury occurring on March 27, 1984, for the period of October 31, 1985 to February 22, 1986. The original award in that case was based on a stipulation between The City of San Diego and Ms. Dixon.

We need not, for the purpose of this memorandum of law, recite in any great detail the applicant's previous claim for long-term disability and the difficulties the Risk Management Department faced in deciphering that claim in light of the evidence available at that time. However, it should be noted that the Risk Management Department had more than adequate reason to deny benefits in this particular case until a complete and accurate record was presented to it for evaluation.

It is now clear, however, that the injury complained of in Ms. Dixon's original application was a reoccurrence of the March 27, 1984 industrial injury and not the March 24, 1983 injury she indicated on her application (probably in error); nor was it due to a separate nonindustrial accident as Dr. Straumfjord had originally believed in February of 1986. We now believe that the record supports Ms. Dixon's claim for long-term disability benefits as described below. Although Ms. Dixon failed to file a

timely claim for long-term disability, such failure will not bar recovery unless The City of San Diego can show it was prejudiced by the delay. As indicated in the attached memorandum of law to Bruce Herring, Risk Management Director, dated November 13, 1985, prejudice to the City is not probable when the employee files a timely request for workers' compensation benefits and the City has an opportunity to investigate such claim. In this specific case, the injury complained of in the January 17, 1986 application has been ruled to be a worsening, without intervening trauma, of the injury received in the industrial accident of March 27, 1984. Based on these particular facts, we would advise you to honor this claim at this time for the period of temporary disability described in Workers' Compensation Case No. 84 SD 86185 but only for the period of time that Ms. Dixon was actually off the job in excess of any elimination period required by section 5.05 of the Plan Document.

You also asked if certain cases cited by MEA in the July 17, 1987 letter, have any effect on The City of San Diego's policy concerning denial of long-term disability benefits in cases where an employee fails to file a timely claim. You were especially interested in the effect those cases would have on claims denied prior to July 1, 1986. We have reviewed both *Joyce v. United Insurance Company*, 202 Cal.App.2d 654 (1962) and *Dalzell v. Northwestern Mutual Ins. Co.*, 218 Cal.App.2d 96 (1963). Both cases merely support our previous advice to you contained in the November 13, 1985 memorandum of law to Bruce Herring concerning the City's burden of showing it was prejudiced by the delay resulting from a late claim before The City of San Diego can deny a claim for long-term disability benefits for failing to meet the 60-day filing period.

JOHN W. WITT, City Attorney

By

John M. Kaheny

Deputy City Attorney

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Attachment

ML-87-97