

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHIRLEY A. MAROTTA and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Covington, KY

*Docket No. 00-2115; Submitted on the Record;
Issued June 27, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established entitlement to continuing compensation benefits as of January 7, 1996.

This is the second time this case has been before the Board. To briefly summarize the facts, appellant sustained injuries to her lower back, right knee and right arm on October 25, 1986, which the Office of Workers' Compensation Programs accepted for lumbosacral strain, right knee contusion and aggravation of degenerative disc disease at the L5-S1 level. Appellant was placed on the periodic rolls. In a notice of proposed termination dated November 28, 1995, the Office, based on the opinion of Dr. Schmitz, appellant's treating physician, found that the weight of the medical evidence demonstrated that appellant was no longer disabled from the October 25, 1986 employment injury and was able to perform the modified job of lead accounting technician. By decision dated January 2, 1996, the Office terminated appellant's compensation as of January 7, 1996, finding that the weight of the medical evidence established that her employment-related disability had ceased. By decision dated April 30, 1997, the Office affirmed its previous decision terminating compensation, finding that the evidence appellant submitted was not sufficient to warrant modification.

In a decision issued September 3, 1999,¹ the Board found that the Office met its burden to terminate appellant's compensation benefits as of January 7, 1996.

By letter dated March 23, 2000, appellant requested reconsideration. In support of her request, appellant submitted several reports and treatment notes from Dr. Archer W. Bishop, a Board-certified orthopedic surgeon, dated April 1998 to February 23, 2000.

¹ Docket No. 97-2156 (issued September 3, 1999).

By decision dated May 3, 2000, the Office denied appellant's claim finding that she did not submit medical evidence sufficient to warrant modification of the January 2, 1996 termination decision.²

The Board finds that appellant has not established entitlement to continuing compensation benefits as of January 7, 1996.

Following the Office's termination of compensation, the burden to establish entitlement to continuing compensation shifted to appellant.³ Causal relationship must be established by rationalized medical opinion evidence.⁴ Appellant, however, has failed to submit medical evidence following the January 2, 1996 termination decision sufficient to establish that she was disabled after January 7, 1996. Therefore, she did not meet this burden. The only new medical evidence appellant submitted consisted of the reports and treatment notes from Dr. Bishop, which did not contain a probative, rationalized medical opinion indicating that appellant was totally disabled due to her employment-related back and knee conditions.

Accordingly, as there is no reasoned medical evidence addressing and explaining why her current claimed conditions were caused by her original, accepted conditions and that these current conditions disabled her, appellant has not met her burden of proof in establishing that she continued to be disabled due to her employment-related back and knee conditions. The Board therefore affirms the Office's May 3, 2000 decision denying modification of the January 2, 1996 termination decision.

² Appellant stated in her request for reconsideration that she was requesting reconsideration of the September 3, 1999 decision. The Office stated in its May 3, 2000 decision that it was denying her request of the September 3, 1999 decision. This statement is erroneous, as the Board's September 3, 1999 decision was not subject to the Office's jurisdiction and cannot be reconsidered by the Office. This error was harmless, as the Office properly found that appellant did not submit evidence sufficient to warrant modification of the decision terminating her compensation.

³ Once the Office properly terminates compensation for disability, appellant has the burden of proof to establish further disability for work. *Virginia Davis-Banks*, 44 ECAB 389 (1993).

⁴ *Robert G. Morris*, 48 ECAB 238 (1996).

The decision of the Office of Workers' Compensation Programs dated May 3, 2000 is hereby affirmed.

Dated, Washington, DC
June 27, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member