

**United States Department of Labor
Employees' Compensation Appeals Board**

SHERRY E. WILLIAMS, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
LaMirada, CA, Employer**

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**Docket No. 05-419
Issued: May 6, 2005**

Appearances:

*Dr. Jerrell E. Woolridge, JD, for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On December 8, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' November 24, 2004 merit decision denying her claim that she had employment-related disability after September 22, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this claim.¹

ISSUE

The issue is whether appellant met her burden of proof to establish that she had disability after September 22, 2003 due to her April 8, 2002 employment injury.

¹ See 20 C.F.R. §§ 501.2(c) and 501.3(d)(2). The record also contains a March 2, 2004 decision of the Board. In the absence of further review by the Office on the issue addressed by the decision, the subject matter reviewed is *res judicata* and is not subject to further consideration by the Board. 5 U.S.C. § 8128; *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998). The Board denied appellant's petition for reconsideration of its March 2, 2004 decision. See 20 C.F.R. § 501.7.

FACTUAL HISTORY

This is the second appeal in this case. The Board issued a decision on March 2, 2004 affirming the Office's September 22, 2003 decision on the grounds that the Office met its burden of proof to terminate appellant's compensation effective September 22, 2003.² The Board found that the Office properly relied on the opinion of Dr. Thomas R. Dorsey, a Board-certified orthopedic surgeon who served as the impartial medical examiner. In a report dated February 20, 2003, Dr. Dorsey found that appellant did not have residuals of her April 8, 2002 employment injury after September 22, 2003.³ The facts and the circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

After the Board's March 2, 2004 decision, appellant submitted several brief reports, dated June 23, July 28 and September 2, 2004, in which Dr. Robert Higginbotham, an attending Board-certified orthopedic surgeon, indicated that she continued to have low back and bilateral knee problems. In another report dated June 23, 2004, Dr. Higginbotham provided a description of his examination of appellant and diagnosed lumbosacral sprain/strain with disc protrusions and bilateral chondromalacia. Appellant continued to claim that she had employment-related disability after September 22, 2003.

By decision dated November 24, 2004, the Office denied appellant's claim on the grounds that she did not meet her burden of proof to establish that she had disability after September 22, 2003 due to her April 8, 2002 employment injury.

LEGAL PRECEDENT

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.⁴ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁵ After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability which continued after termination of compensation benefits.⁶

² Docket No. 04-170 (issued March 2, 2004).

³ The Office accepted that on April 8, 2002 appellant, then a 31-year-old mail carrier, sustained a lumbar strain, left knee strain and right hand contusion.

⁴ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁵ *Id.*

⁶ *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

ANALYSIS

After the Board's March 2, 2004 decision, appellant submitted additional medical evidence which she felt showed that she was entitled to compensation after September 22, 2003 due to residuals of her April 8, 2002 employment injury. Given that the Board found in its March 2, 2004 decision that the Office properly relied on the opinion of Dr. Dorsey, a Board-certified orthopedic surgeon who served as the impartial medical examiner, in terminating appellant's compensation effective September 8, 2002, the burden shifts to appellant to establish that she is entitled to compensation after that date.

The Board has reviewed the additional evidence submitted by appellant and finds that it is not of sufficient probative value to establish that she had residuals of her April 8, 2002 employment injury after September 22, 2003. Appellant submitted several brief reports, dated between June and September 2004, in which Dr. Higginbotham, an attending Board-certified orthopedic surgeon, indicated that she continued to have low back and bilateral knee problems. These reports, however, are of limited probative value on the relevant issue of the present case in that they do not contain an opinion on causal relationship.⁷ In another report dated June 23, 2004, Dr. Higginbotham diagnosed lumbosacral sprain/strain with disc protrusions and bilateral chondromalacia, but he provided no indication that these conditions were related to appellant's April 8, 2002 employment injury.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she had disability after September 22, 2003 due to her April 8, 2002 employment injury.

⁷ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' November 24, 2004 decision is affirmed.

Issued: May 6, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member