



attributed her condition to typing, and stated that even picking up a magazine caused pain in her left wrist and arm.

In a December 17, 1999 report, Dr. Pamela Schaible, a Board-certified family practitioner, diagnosed left forearm tendinitis and stated that appellant could not do typing or repetitive work with her left arm. The Office assigned this claim file number 090461036, accepted that appellant sustained left forearm tendinitis, and began paying compensation for temporary total disability. In a January 27, 2000 report, Dr. Francis X. Florez, a Board-certified orthopedic surgeon, stated that examination revealed normal wrist motion with no signs of inflammation or tendinitis.

In a March 22, 2000 report, Dr. Luis Pagani, a Board-certified neurologist, diagnosed a herniated cervical disc and bilateral cervical radiculitis with no radiculopathy. In a March 30, 2000 report, Dr. Schaible diagnosed a herniated cervical disc. In an April 5, 2000 letter, appellant requested that the diagnosis of herniated cervical disc be accepted in her claim. The Office advised appellant, by an April 24, 2000 letter, that it needed a detailed medical report explaining how this condition was related to her employment.

In a June 17, 2000 report, Dr. William D. Tobler, a Board-certified neurosurgeon, stated that it was originally thought that appellant had tendinitis but it now appeared that her symptoms were due to cervical stenosis. In an August 21, 2000 report, Dr. Schaible stated that she originally thought appellant had a relatively minor tendinitis, but now realized this was not a correct diagnosis, as appellant was now known to have cervical disc disease.

On September 13, 2000 the Office referred appellant, her medical records, and a statement of accepted facts, to Dr. Charles Demirjian, a Board-certified neurologist, for a second opinion on whether her accepted condition had resolved and whether she had a herniated cervical disc that was causally related to her employment. In an October 5, 2000 report, Dr. Demirjian, after setting forth appellant's history, symptoms and findings on examination, stated that a magnetic resonance imaging (MRI) scan showed appellant had a cervical disc at C3-4 and a bulge at C5-6 without evidence of nerve root impingement. Dr. Demirjian stated that appellant's clinical symptoms did not fit a cervical disc as the cause of her previous complaints, that he was uncertain why she would have developed a disc from typing *per se*, and that there was no evidence of objective findings on his examination or in reviewing her medical records. In response to an Office request for clarification, Dr. Demirjian stated in a January 7, 2001 report that appellant "does not have a job-related residual at this time."

In February 13, 2001 report, Dr. Pagani stated that appellant was seen for chronic tenosynovitis of the wrist, that she had not been able to work as a clerk, and that there had been no change since she was last seen.

On March 20, 2001 the Office notified appellant of its proposal to terminate her compensation on the basis that the weight of the medical evidence established that she had no residuals of her left forearm tendinitis. In an April 8, 2001 response, appellant contended that her cervical disc displacement with radiculopathy was related to her employment. She submitted a May 10, 2001 report from Dr. Pagani diagnosing cervical disc displacement with radiculopathy, cervical strain, and tenosynovitis of the wrist.

By decision dated May 29, 2001, the Office terminated appellant's compensation, including medical benefits, on the basis that her left forearm tendinitis had resolved and there was no reasoned medical opinion of how her cervical spine condition was related to her employment.

On June 7, 2001 appellant filed a claim for compensation for an occupational disease, stating that her condition was originally diagnosed as left forearm tendinitis, but that further testing had proven that she had a herniated cervical disc. The Office assigned file number 092011369 to this claim and, on August 7, 2001, advised her of the factual and medical information needed. By decision dated September 17, 2001, the Office denied this claim on the basis that no medical evidence had been submitted to show a medical condition in connection with appellant's work duties.

On June 14, 2001 appellant, through her attorney, requested a hearing on the Office's May 29, 2001 decision terminating her compensation for left forearm tendinitis and finding that her cervical spine condition was not shown to be related to her employment. Appellant's attorney appeared at the hearing scheduled for November 29, 2001, but requested that the hearing request be withdrawn, as he would be filing a new occupational disease claim for appellant's cervical condition. The Office cancelled the hearing.

On March 5, 2002 appellant filed a claim for compensation for an occupational disease of cervical disc displacement with radiculopathy, and submitted a detailed description of her work duties since she began working at the employing establishment on November 12, 1994.

In a November 14, 2001 report, Dr. Tobler described an anterior discectomy and fusion at C4-5 and C5-6 he performed on that date for intractable neck and arm pain. In a November 27, 2001 report, Dr. Schaible stated that appellant's left arm pain was diagnosed as tendinitis, and eventually it was found that her neck and bilateral arm pain were due to a herniated disc at C5, and that this condition was related to bending, twisting, reaching and lifting heavy items in her employment. In a December 27, 2001 report, Dr. Schaible indicated that appellant's cervical disc displacement with radiculopathy was related to her employment due to chronic strain at work. An Office medical adviser reviewed the medical evidence on June 17, 2002 and concluded that it was insufficient to establish that her herniated disc was caused by work factors.

On June 24, 2002 the Office advised appellant that her March 5, 2002 claim for compensation for cervical disc displacement was a duplicate of her June 7, 2001 claim for compensation for a herniated cervical disc, and that the file for the June 7, 2001 claim, number 092011369, would remain active. On July 14, 2002 appellant's attorney requested a hearing. By decision dated September 25, 2002, the Office found that appellant was not entitled to a hearing, as the request was not made within 30 days of its last decision issued on September 17, 2001.

By letter dated January 11, 2003, appellant's attorney requested reconsideration, listing file numbers 09461036 and 092011369, and contending that the Office had not considered the medical evidence that indicated appellant's herniated cervical disc was related to her employment. By decision dated March 7, 2003, in file number 090461036 the Office found that appellant's request for reconsideration of its May 29, 2001 decision terminating compensation for left forearm tendinitis was not timely filed and did not demonstrate clear evidence of error.

By decision dated March 12, 2003, the Office modified the September 17, 2001 decision in file number 092011369 to find that appellant had established fact of injury but had not established that her cervical spine condition was causally related to her employment. On March 25, 2003 appellant's attorney requested a hearing in file number 092011369. The Office denied this request on April 23, 2003 on the basis that reconsideration had previously been requested. Appellant appealed the March 7, 2003 decision to the Board, which affirmed this decision on August 28, 2003 on the basis that her request for reconsideration was not timely filed and did not demonstrate clear evidence of error in the Office's May 19, 2001 decision.<sup>1</sup>

By letter dated June 16, 2004, appellant's attorney requested reconsideration in file number 09461036, stating that the request was within one year of August 28, 2003 and was based on a medical report from Dr. Pagani dated May 19, 2004. Dr. Pagani's May 19, 2004 report provided a detailed description of appellant's employment duties, and concluded:

"1. With reasonable medical certainty, her medical diagnosis is herniated cervical disc and cervical spondylosis.

"2. Causation -- these medical diagnoses were caused and/or aggravated by her work at the [the employing establishment], and the use of equipment necessary to sort the mail."

By merit decision dated September 13, 2004, the Office found that Dr. Pagani's May 19, 2004 report offered no pertinent information or rationalized medical opinion on appellant's left forearm condition. The Office denied modification of its prior decisions.

### **LEGAL PRECEDENT**

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>2</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>3</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further treatment.<sup>4</sup>

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<sup>1</sup> Docket No. 03-1412 (issued August 28, 2003).

<sup>2</sup> *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

<sup>3</sup> *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

<sup>4</sup> *Furman G. Peake*, 41 ECAB 361 (1990).

## ANALYSIS

Appellant's initial claim, filed on December 16, 1999, was for a left arm condition which the Office accepted for left forearm tendinitis, the condition diagnosed by her attending family practitioner, Dr. Schaible, in a December 17, 1999 report. A January 27, 2000 examination by Dr. Florez, a Board-certified orthopedic surgeon, revealed no signs of tendinitis.

To determine whether appellant's left forearm tendinitis had resolved, the Office referred her to Dr. Demirjian, a Board-certified neurologist, who reported no objective findings on examination and concluded in a January 7, 2001 report that appellant did not have a job-related residual at that time. The Board finds that Dr. Demirjian's opinion that her left forearm tendinitis had resolved because there were no objective findings constitutes the weight of the medical evidence on the issue of whether appellant's left forearm tendinitis resolved, and is sufficient to justify the Office's termination of her compensation for this condition on May 29, 2001. The only evidence that appellant's tendinitis continued beyond the date she was seen by Dr. Demirjian is the diagnosis of tenosynovitis of the wrist seen in Dr. Pagani's February 13 and May 10, 2001 reports. Both these reports predate the Office's termination of compensation, and neither reported any findings on examination that would support that appellant continued to have tendinitis.

Since April 5, 2000, when she requested that the diagnosis of herniated cervical disc be accepted in her claim, appellant has maintained that her left arm symptoms were due not to tendinitis but rather to the herniated disc. Dr. Schaible, in an August 21, 2000 report, and by Dr. Tobler, a Board-certified neurosurgeon, in a June 17, 2000 report, both stated that it was originally thought that appellant had tendinitis but that her symptoms were actually due to a condition of her cervical spine. However, appellant's claim for a cervical spine condition is being adjudicated under a separate file number,<sup>5</sup> and the only issue addressed in the Office's September 13, 2004 decision was whether her left forearm tendinitis had resolved. The Office's September 13, 2004 decision was an appropriate response to her attorney's June 16, 2004 request for reconsideration, as the attorney listed the file number and referred to the most recent decision in appellant's claim accepted for left forearm tendinitis.

## CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation for the accepted left forearm tendinitis.

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<sup>5</sup> This separation of the tendinitis claim from the cervical spine claim was done pursuant to appellant's filing of a new claim for a herniated cervical disc, and to her attorney's request to cancel a hearing on the Office's May 29, 2001 decision, which addressed both conditions, so a new occupational disease claim could be filed for her cervical spine condition.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 13, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 16, 2005  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member