

employing establishment on September 22, 1986, after which light duty was not available. Beginning that date, the Office paid compensation for temporary total disability, interrupted by a November 18, 1986 schedule award for a 43 percent permanent impairment of the arm and reduced by actual earnings from June to September 1989 and from September 1991 to March 1994.

On March 15, 2005 the Office referred appellant, her medical records and a statement of accepted facts to Dr. James W. Simmons, a Board-certified orthopedic surgeon, for a second opinion evaluation of her conditions related to her September 24, 1985 employment and of her ability to work. In an April 5, 2005 report, Dr. Simmons set forth appellant's history and noted that she continued to have pain and considerable weakness in her right wrist, as well as some numbness and tingling. Examination of the right wrist revealed good passive motion, a negative Tinel's sign and decreased strength in extension, flexion and ulnar and radial deviation. In answer to the Office's questions, Dr. Simmons stated that there were no findings that would relate to the fracture of the radial styloid or de Quervain's syndrome, that she probably had some residual weakness of the wrist, that he did not feel that she had "any significant residual other than some weakness of disuse," and that "it is not felt that the wrist injury and de Quervain's syndrome which are felt to have cleared and are asymptomatic except for the residual weakness of disuse should be considered disabling in nature." On an April 5, 2005 Office work tolerance limitations form Dr. Simmons indicated that appellant was not capable of performing her usual job due to limitations of repetitive activities and heavy lifting, but that she could work eight hours per day with restrictions related to her right wrist.

By letter dated April 22, 2005, the Office notified appellant that it proposed to terminate her compensation on the basis that she no longer had any residuals or disability due to her accepted work injury. By letter dated May 20, 2005, appellant disagreed with the proposed termination, noting that Dr. Simmons found that she had residual weakness of her wrist and could not return to her regular work. She submitted medical evidence regarding her other medical conditions, including hyperlipidemia, hypertension, allergic rhinitis, right carpal tunnel syndrome, osteoporosis, hypothyroidism, a heart condition and knee and low back problems.¹ The Office received this evidence on May 23, 2005, but in a May 23, 2005 decision terminating appellant's compensation on that date, found that it had not received any additional evidence or argument in response to the notice of proposed termination.²

By letter dated May 31, 2005, appellant requested reconsideration, stated that the Office had not considered the evidence it received on the date it issued its May 23, 2005 decision and resubmitted that evidence. By decision dated July 22, 2005, the Office found that the additional medical evidence addressed conditions not related to her employment and was not sufficient to warrant modification of its prior decision.

¹ She also submitted copies of medical reports that were already contained in the case record.

² The identical decision appears later in the case record, this time dated May 26, 2005.

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.³

ANALYSIS

The Board finds that the medical evidence does not establish that appellant's disability ended or that it is no longer related to her September 24, 1985 employment injury. As the basis of its termination of appellant's compensation, the Office relied on the April 5, 2005 report of Dr. Simmons, a Board-certified orthopedic surgeon, to whom appellant was referred for a second opinion evaluation. Contrary to the findings of the Office's May 23, 2005 decision, this report does not establish that appellant has no residuals of her September 24, 1985 injury. Dr. Simmons in fact stated that appellant had "residual weakness of the wrist," and that the wrist injury and de Quervain's syndrome "are felt to have cleared and are asymptomatic except for the residual weakness of disuse." Although this statement attributes appellant's weakness of the injured wrist to disuse, Dr. Simmons provided no explanation for this attribution. He also did not explicitly state whether he considered the disuse to be unrelated to the employment injury and, if so, why. Dr. Simmons' April 5, 2005 report also indicated that appellant could not perform her regular job. This report is not sufficient to meet the Office's burden of proof to terminate appellant's compensation.

Dr. Simmons' opinion that appellant had residuals of her September 24, 1985 employment injury is consistent with the reports of the three previous Board-certified orthopedic surgeons to whom the Office referred appellant. In a March 12, 2002 report, Dr. Fred H. Olin stated: "I do not believe that the residua of he September 24, 1985 work injury have ceased." In a September 12, 2001 report, Dr. Govindasamy Durairaj stated: "The work-related residuals still active are de Quervain's disease, chronic sprain right wrist with tear [and] triangular fibrocartilage." In a March 1, 1999 report, Dr. John S. Toohey concluded that appellant still had de Quervain's syndrome. All these specialists indicated, as did Dr. Simmons, that appellant's right wrist condition prevented her from performing her former position as a nursing assistant.

CONCLUSION

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation effective May 23, 2005.

³ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

ORDER

IT IS HEREBY ORDERED THAT the July 22 and May 23, 2005 decisions of the Office of Workers' Compensation Programs are reversed.

Issued: March 2, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board