

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHERINE J. LEE and DEPARTMENT OF THE NAVY,
NAVAL WEAPONS STATION, Yorktown, VA

*Docket No. 99-439; Submitted on the Record;
Issued December 6, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained a recurrence of total disability during the period January 4, 1994 to January 5, 1995.

In the present case, the Office of Workers' Compensation Programs has accepted that appellant, then a 47-year-old warehouse worker, sustained cervical strain, right shoulder strain and tendinitis of the left shoulder as a result of lifting boxes on December 1, 1992. Appellant returned to modified light-duty work on December 10, 1992. Appellant voluntarily resigned from the employing establishment and accepted and received a monetary separation incentive, effective January 3, 1994. The Office denied appellant's notice of recurrence of disability on March 28, 1997. An Office hearing representative affirmed the denial of the claim by decision dated July 30, 1998.

The Board has given careful consideration to the issue involved, the contentions of appellant on appeal and the entire case record. The Board finds that the decision of the Office hearing representative, dated and finalized on July 30, 1998, is in accordance with the facts and the law in this case, and hereby adopts the findings and conclusions of the hearing representative.

The Board notes that the Office hearing representative properly found that it was appellant's burden of proof to establish a recurrence of total disability in this case. When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature

and extent of the light-duty job requirements.¹ On February 16, 1995 the Office received an undated attending physician's report from Dr. Jon H. Swenson, appellant's treating physician, indicating that he had first examined appellant on January 24, 1994 and that appellant had been partially disabled from January 24 until September 23, 1994 and that appellant could return to regular work on September 23, 1994. On March 19, 1996 the Office received an undated attending physician's report from Dr. Swenson wherein he indicated that appellant had been totally disabled from January 14 until January 24, 1994 and that she had been partially disabled since January 24, 1994. The Board finds that the report received on March 19, 1996 is of limited probative value. Dr. Swenson did not explain why he concluded (some two years later) that appellant had been totally disabled from January 14 to 24, 1994 and why this period of total disability was causally related to the accepted employment injury. While there are other medical reports from Dr. Swenson of record pertaining to medical examinations during the relevant time period, there is no other medical opinion of evidence that appellant was totally disabled during the relevant time period. The Board also concurs with the hearing representative's finding that appellant had not established that there was a change in the nature of her light-duty requirements. The evidence of record only establishes that appellant's light-duty position was no longer available to her because of her voluntary separation from the employing establishment.

The decision of the Office of Workers' Compensation Programs dated July 30, 1998 is hereby affirmed.

Dated, Washington, D.C.
December 6, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹ *Mary A. Howard*, 45 ECAB 646 (1994).