

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of STEVEN A. HOLDER and DEFENSE LOGISTICS AGENCY,  
TINKER AIR FORCE BASE, OK

*Docket No. 99-955; Submitted on the Record;  
Issued November 29, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant sustained a recurrence of total disability on and after April 15, 1997 causally related to his August 14, 1987 employment injury.

On August 14, 1987 appellant, then a 30-year-old aircraft painter, sustained a calcaneal fracture of the left foot in the performance of duty. In May 1988 he accepted a limited-duty position as a supply clerk.

In clinical notes dated August 3, 1995, Dr. Gene L. Muse, appellant's attending Board-certified orthopedic surgeon, stated that he was able to perform light-duty work consisting of sedentary work, such as sitting at a desk and doing paper work, computer work, or answering the telephone. He recommended no prolonged standing, stooping, squatting, walking, or climbing and indicated that these restrictions were permanent.

Effective December 9, 1996, appellant commenced a job as a supply technician which was compatible with his work restrictions.

Appellant voluntarily resigned from his position effective April 15, 1997. He alleged a worsening of his employment injury which he attributed to his August 14, 1987 employment-related left foot fracture.

On June 25, 1997 appellant filed a notice of recurrence of disability.

By decision dated August 28, 1997, the Office of Workers' Compensation Programs denied appellant's claim for a recurrence of disability commencing on April 15, 1997 on the grounds that the evidence of record failed to establish that the claimed recurrence of disability was causally related to his August 14, 1987 employment injury.

By letter dated September 26, 1997, appellant requested an oral hearing before an Office hearing representative.

On June 16, 1998 a hearing was held before an Office hearing representative at which time appellant testified.

By decision dated October 9, 1998, the Office hearing representative affirmed the Office's August 28, 1997 decision.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a recurrence of total disability on and after April 15, 1996 causally related to his August 14, 1987 employment injury.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he 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 show that he cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.<sup>1</sup>

In the instant case, appellant has failed to establish either a change in the nature or extent of his light-duty requirements or a change in his accepted injury-related condition.

The record shows that appellant's attending physician, Dr. Muse, released appellant to perform light-duty work and that he commenced a job as a supply technician, within his work restrictions, effective December 9, 1996. The record shows that he continued working in this position until his voluntary resignation as of April 15, 1997. Appellant has failed to submit any evidence that he was unable to perform the light-duty position due to a worsening of his August 14, 1987 employment-related left foot injury or that there was a change in the light-duty position such that his medical restrictions were no longer being accommodated. Therefore, he has not discharged his burden of proof and the Office properly denied his claim for a recurrence of total disability.

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<sup>1</sup> See *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Stuart K. Stanton*, 40 ECAB 859, 864 (1989).

The decision of the Office of Workers' Compensation Programs dated October 9, 1998 is affirmed.

Dated, Washington, D.C.  
November 29, 1999

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member