

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ELIJAH STOKES and DEPARTMENT OF THE NAVY,  
PUGET SOUND NAVAL SHIPYARD, Bremerton, WA

*Docket No. 02-1510; Submitted on the Record;  
Issued October 3, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,  
DAVID S. GERSON

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of total disability on or after August 10, 2002 due to his February 22, 1995 employment injury.

On April 12, 1995 appellant, then a 43-year-old welder, filed a claim for a traumatic injury alleging that, on February 22, 1995, he sustained a right finger injury while in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for fracture of the right middle finger with surgical debridement and flexion fracture.

On February 8, 1999 the Office determined that appellant was recently reemployed as a bailer and that this position fairly and reasonably represented his wage-earning capacity. The Office then adjusted compensation to reflect his earnings of \$530.34 a week, which resulted in a compensation check of \$1,454.22 every 28 days.

In a claim Form CA-2, received by the Office on January 14, 2002, appellant alleged that he sustained a recurrence of disability.<sup>1</sup> In support of his claim, appellant submitted an October 17, 2001 report from Dr. John F. Lovejoy, Jr., a Board-certified orthopedic surgeon, who stated that based on x-rays taken that day that appellant had degenerative arthritis of the right hand and probable fracture of the index metacarpal bone. He advised stretching exercises, recommended a job with less manual manipulation and pain management. In a memorandum dated January 7, 2002, the Office noted that the vocational rehabilitation specialist advised that appellant's job at Goodwill Industries was a light-duty job requiring appellant to pick up a hand full of clothes and place them in a washer.

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<sup>1</sup> Appellant dated his form incorrectly as August 10, 2002.

By decision dated April 8, 2002, the Office denied appellant claim of total disability on the grounds that he did not submit sufficient medical evidence to establish that he sustained a recurrence of total disability due to his February 22, 1995 employment injury.<sup>2</sup>

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of total disability on or after January 14, 2002 due to his February 22, 1995 employment injury.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a limited-duty position or the medical evidence of record establishes that he can perform the limited-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 limited 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 limited-duty job requirements.<sup>3</sup>

In support of his claim, appellant submitted an October 17, 2001 report of Dr. Lovejoy, appellant's treating physician and a Board-certified orthopedic surgeon, who noted that appellant had degenerative arthritis of the right hand and probable fracture of the index metacarpal bone. However, he did not find that appellant was totally disabled and that such a condition was based on his initial work-related injury. The Office provided appellant with an opportunity to provide additional evidence in support of his claim, but he did not do so within the time allotted.

For these reasons, appellant did not meet his burden that he sustained a recurrence of total disability on or after January 14, 2002 causally related to his February 22, 1995 work-related injury.

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<sup>2</sup> The Office notified appellant in a January 9 and February 28, 2002 letters regarding the kind of evidence he needed to support his claim.

<sup>3</sup> *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

The April 8, 2002 decision of the Office of Workers' Compensation Programs is affirmed.<sup>4</sup>

Dated, Washington, DC  
October 3, 2002

Alec J. Koromilas  
Member

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

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<sup>4</sup> In his appeal, appellant argued that his compensation check amount was not awarded at the 75 percent level. A review of the record revealed that the Office completed documentation to reflect appellant's marriage on August 20, 2000, amending the percentage from two-thirds to three-fourths percentage. Should the payments received by appellant not reflect this change this needs to be addressed to the Office.