

she slipped on icy stairs while performing her work duties. She provided her address as 3071 Penns Valley Pike, Centre Hall, Pennsylvania and indicated that she stopped work on the date of injury. Appellant underwent surgery on her right ankle on January 8, 2003. By letter dated March 26, 1994, the Office accepted her claim for a bilateral right ankle fracture and authorized physical therapy from January 7 through May 31, 2003. On March 27, 2003 the Office was advised that appellant had returned to limited-duty work at the employing establishment on March 18, 2003. Appellant continued to receive medical treatment for her employment-related right ankle injury.

On June 17, 2003 appellant filed a claim alleging that she sustained a recurrence of disability. She stopped work on June 13, 2003. The Office received a June 12, 2003 report from Dr. Paul V. Suhey, appellant's treating orthopedic surgeon, in which he noted that appellant experienced pain right below the incision on her right ankle from the anterior to posterior screw. On x-ray examination, Dr. Suhey reported that the posterior fragment was a little bit offset but it was trying to heal. He stated that appellant could not work for two weeks and that she should return in two weeks for a follow-up evaluation.

On July 16, 2003 appellant filed a claim for wage-loss compensation for the period June 13 through July 7, 2003. She submitted Dr. Suhey's June 26, 2003 disability certificate, which reiterated that she was disabled for work for two weeks and noted June 26, 2003 as the date she could perform only sedentary work. Appellant also submitted Dr. Suhey's June 20, 2003 attending physician's report and June 24, 2003 supplemental attending physician's report in which he indicated that she was post status open reduction internal fixation (ORIF) of the right ankle and that she was disabled for work from June 12 until approximately June 27, 2003. In a June 26, 2003 duty status report, Dr. Suhey stated that he advised appellant on June 26, 2003 that she could return to sedentary work with certain physical restrictions. Dr. Suhey's June 26, 2003 narrative report revealed that appellant had continuing symptoms related to her right ankle and that she could perform sedentary work with certain physical limitations. His July 10, 2003 report indicated that appellant's work status remained unchanged.

In a letter dated August 11, 2003, mailed to appellant's address of record, the Office advised her that the evidence submitted was insufficient to establish her claim that she was disabled for work beginning June 13, 2003. The Office requested that she submit rationalized medical evidence supportive of total disability during the claimed period within 30 days. Appellant did not respond within the allotted time period.

In a September 18, 2003 decision, mailed to appellant's address of record, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability beginning June 13, 2003 due to her January 7, 2003 employment injury.

Following the issuance of the Office's September 18, 2003 decision, the Office received an unsigned report dated September 3, 2003, which contained the typed name of Dr. Bradley A. Barter, an orthopedic surgeon. This report provided a history of appellant's January 7, 2003 employment injury and medical and social background, findings on physical and x-ray examination and a diagnosis of status post trimalleolar ankle fracture with post-traumatic degenerative joint disease. An osteochondral injury was suspected and a magnetic resonance imaging (MRI) scan was recommended to determine whether future surgery was necessary. A

September 11, 2003 report, which contained Dr. Barter's typed name, revealed findings on physical examination and the results of an MRI scan. Appellant was diagnosed as having post-traumatic degenerative joint disease of the ankle with a likely osteochondral injury in the dome of the talus and chronic persistent pain secondary to this diagnosis. The report revealed appellant's treatment plan which included wearing a "MAFO" brace and taking medication.

By letter dated September 26, 2003, James P. Johnson, an attorney acting on appellant's behalf, advised the Office that she did not receive its August 11, 2003 development letter concerning her recurrence claim.¹

On September 29, 2003 appellant requested an oral hearing before an Office hearing representative. The Office received an October 15, 2003 report of Dr. Mark K. Perezous, a Board-certified orthopedic surgeon, in which he provided a history of appellant's January 7, 2003 employment injury and medical treatment. He also provided his findings on physical examination and reviewed appellant's x-ray and MRI scan results. Dr. Perezous diagnosed bimalleolar ankle fracture involving the posterior malleolus and distal fibula, post-traumatic degenerative change, edema within the talus and joint effusion and tenosis of the Achilles. An October 17, 2003 report which contained Dr. Perezous' typed name indicated that appellant underwent surgery on her right ankle on that date.² Dr. Mark M. Carter, a Board-certified radiologist, reported the findings of a September 4, 2003 MRI scan of appellant's right ankle. An October 27, 2003 follow-up report, which contained Dr. Perezous' typed name provided findings on physical examination and a treatment plan. The report indicated that appellant could be seated at work. In a November 3, 2003 attending physician's report, Dr. Perezous stated that appellant was post-traumatic degenerative joint disease and that she had loose bodies and retained hardware of the right ankle. He indicated with an affirmative mark that her conditions were caused by the January 7, 2003 employment injury.

The Office received reports from appellant's physical therapist, Dee Aumiller, dated December 1 and 24, 2003 and January 14 and February 11, 2004, regarding appellant's right ankle. The Office also received Dr. Perezous' January 19, 2004 disability certificate, which revealed that appellant sustained a work-related right ankle injury and that she could only perform sedentary work. An October 14, 2003 report which contained the typed name of Dr. Frank W. Corbally, an orthopedic surgeon, revealed the results of an electrocardiogram. In a January 24, 2004 report, Dr. Perezous stated that appellant was doing well and that she could return to a sedentary job. His March 2, 2004 disability certificate revealed that appellant suffered from work-related right ankle degenerative joint disease and reiterated that she could only perform sedentary work.

On February 11, 2004 appellant accepted the employing establishment's offer of a temporary alternative work assignment to conform to the physical limitations set forth by her treating physician. The Office received Ms. Aumiller's February 11, 2004 report and

¹ The Board notes that Mr. Johnson was not authorized to represent appellant before the Office when he submitted his September 26, 2003 letter.

² On July 2, 2004 the Office authorized appellant's October 17, 2003 right ankle surgery.

Dr. Perezous' October 13, 2003 report, which reiterated his October 15, 2003 findings and April 27, 2004 disability certificate which reiterated his March 2, 2004 findings.

By letter dated June 14, 2004, Mr. Johnson, who was authorized by appellant to act on her behalf before the Office, requested a schedule award and authorization for an evaluation by Dr. George L. Rodriguez, a Board-certified physiatrist, to determine the extent of her impairment. On June 30, 2004 the Office received appellant's claim for a schedule award, which was dated April 19, 2004.³

The Office received a January 19, 2004 report, which contained Dr. Perezous' typed name. The report revealed that appellant was doing well and that she could return to sedentary work. The Office also received a September 11, 2003 prescription of Dr. Douglas E.R. Roeshot, a Board-certified orthopedic surgeon, for a "MAFO" with a plastigate liner for appellant's traumatic arthritis of the right ankle. The April 30, 2004 treatment notes from a physician whose signature is illegible indicated that appellant was fitted for a "MAFO."

On August 2, 2004 appellant, through her attorney, requested a review of the written record by an Office hearing representative instead of an oral hearing. Counsel argued that Dr. Suhey's June 12, 2003 report was sufficient to establish appellant's claim and that she never received the Office's August 11, 2003 developmental letter. The Office received reports dated March 2 and April 27, 2004, which contained Dr. Perezous' typed name and noted appellant's continued knee pain and medical treatment options. In an August 23, 2004 report, Dr. Perezous diagnosed arthritis of appellant's right ankle that was post-traumatic in nature. He noted her medical treatment and recommended that she see a foot and ankle specialist, who performed a significant number of ankle fusions versus replacement, for further evaluation. Dr. Perezous' treatment notes dated October 27 and November 24, 2003 and January 2 and 19, 2004, indicated that appellant underwent physical therapy for her employment-related right ankle injury. Ms. Aumiller submitted a May 14, 2004 report regarding appellant's right ankle.

By decision dated November 26, 2004, mailed to appellant's address of record, an Office hearing representative affirmed the Office's September 18, 2003 decision, finding the evidence of record insufficient to establish that appellant sustained a recurrence of disability during the period June 13 through July 8, 2003, causally related to her January 7, 2003 employment injury.

LEGAL PRECEDENT

A "recurrence of disability" means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment.⁴

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

³ The Board notes that the record does not contain a decision issued by the Office regarding appellant's schedule award claim.

⁴ 20 C.F.R. § 10.5(x) (2002).

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.⁵

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.⁶

ANALYSIS

In this case, the Office accepted that appellant sustained an employment-related right ankle fracture on January 7, 2003. Following the January 7, 2003 employment injury, appellant returned to limited-duty work on March 18, 2003. She claimed compensation for total disability for the period June 13 through July 8, 2003 due to the January 7, 2003 employment injury.

The relevant medical evidence of record which addressed appellant's disability for work during the period June 13 through July 8, 2003, consisted of Dr. Suhey's June 12, 2003 report in which he reported that an x-ray examination revealed that the posterior fragment of appellant's right ankle was a little bit offset but that it was trying to heal and found that appellant could not work for two weeks. The Board finds that Dr. Suhey's report is insufficient to establish appellant's burden of proof because he did not address whether her disability for work was causally related to the January 7, 2003 employment injury.

Similarly, the Board finds that Dr. Suhey's June 20 and 24, 2003 reports, in which he stated that she was post status ORIF of the right ankle and that she was disabled for work from June 12 to 27, 2003, are insufficient to establish appellant's burden of proof as he failed to attribute appellant's disability to her accepted employment injury.

Further, Dr. Suhey's June 26, 2003 disability certificate which reiterated that appellant was disabled for work for two weeks and noted that as of June 26, 2003 she could perform sedentary work only failed to provide a diagnosis or to discuss how appellant's condition was caused by the January 7, 2003 employment-related injury.⁷ Thus, the Board finds that Dr. Suhey's disability certificate is insufficient to establish appellant's burden of proof.

Dr. Suhey's June 26, 2003 reports, indicated that appellant could return to sedentary work with certain physical limitations. However, he did not address whether appellant was disabled for work due to her January 7, 2003 employment injury. Thus, his reports are insufficient to establish appellant's burden of proof.

⁵ *Barry C. Petterson*, 52 ECAB 120 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁶ *James H. Botts*, 50 ECAB 265 (1999).

⁷ *Daniel Deparini*, 44 ECAB 657, 659 (1993).

The Board finds that appellant has not submitted sufficiently rationalized medical evidence establishing that she was totally disabled from June 13 through July 8, 2003 due to her January 7, 2003 employment-related fractured right ankle. Further, appellant has not alleged and there is no evidence of record establishing a change in the nature and extent of her limited-duty work during the alleged time period. Therefore, the Board finds that she has not established a recurrence of disability from June 13 through July 8, 2003, causally related to her accepted employment injury.

Regarding appellant's argument that she did not receive the Office's August 11, 2003 letter, which requested that she submit rationalized medical evidence supportive of her recurrence of disability claim, the Board notes that this letter was mailed to her address of record. Appellant has provided no evidence to rebut the presumption, known as the "mailbox rule," that a letter properly addressed and mailed in the course of business is presumed to have arrived at the mailing address.⁸ Further, she received the Office's September 18, 2003 and November 26, 2004 decisions, as shown by her request for an oral hearing before an Office hearing representative and appeal to the Board. Therefore, the Board finds that it is presumed that appellant received the Office's August 11, 2003 development letter.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a recurrence of disability during the period June 13 through July 8, 2003, causally related to her January 7, 2003 employment injury.

⁸ See *Joseph R. Giallanza*, 55 ECAB ____ (Docket No. 03-2024, issued December 23, 2003); see also *Marlon G. Massey*, 49 ECAB 650, 652 (1998); *Charles R. Hibbs*, 43 ECAB 699, 700-01 (1992).

ORDER

IT IS HEREBY ORDERED THAT the November 26, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 22, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member