

² Under OWCP File No. xxxxxx116, appellant has an accepted March 1, 2021 claim for strain of other muscles and tendons at ankle and foot level, left strain of muscle, fascia and tendon left hip, and left knee strain. The claim is open for medical care only. OWCP File No. xxxxxx116 and OWCP File No. xxxxxx205 have been administratively combined by OWCP with the former serving as the master file.

left knee. It paid appellant wage-loss compensation on its supplemental rolls as of August 25, 2021, and on the periodic roll as of September 12, 2021.

On September 1, 2021 appellant underwent an OWCP-authorized arthroscopically-aided treatment of tibial fracture, proximal (plateau); unicondylar left side with internal fixation, arthroscopic injection of calcium phosphate, percutaneous injection of calcium phosphate, left side, and left knee arthroscopy medial meniscectomy, left side.

In an April 11, 2022 report, Dr. Samuel G. Meredith, Jr., a Board-certified orthopedic surgeon serving as second opinion physician, reviewed a March 21, 2022 statement of accepted facts (SOAF)³ and noted physical examination findings. He opined that appellant had post-traumatic osteoarthritis secondary to medial tibial plateau stress fracture and medial meniscal tear due to a work-related fall, and that her work-related conditions had not resolved, as there was a problematic flexion contracture, and she was reliant on a cane. Based on her marked ambulatory impairment, Dr. Meredith advised that she could not return to her date-of-injury position but was capable of sedentary or light work with the assistance of a cane. In an April 11, 2022 work capacity evaluation (Form OWCP-5c), he advised that appellant had “occasional” limitations on walking and standing, with no bending/stooping, squatting, kneeling, or climbing and noted that while she should be able to increase the number of hours worked, he was “uncertain” as to when she would be able to achieve an eight-hour workday.

On May 12, 2022 OWCP requested that Dr. Meredith clarify his April 11, 2022 Form OWCP-5c form as to the number of hours appellant could walk daily. In response, it received a duplicate copy of the April 11, 2022 Form OWCP-5c.

On June 22, 2022 OWCP determined that the weight of the medical evidence rested with Dr. Meredith’s April 11 and May 24, 2022 reports and requested that the employing establishment offer appellant a job within those restrictions.

On October 25 and 27, 2022 the employing establishment offered appellant a light-duty assignment as a medical support assistant/medical clerk. The physical requirements of the position involved no squatting, kneeling, climbing or bending/stooping, with occasional walking and standing. The position was available November 7, 2022 with a response due from appellant no later than November 3, 2022. As of November 4, 2022, appellant did not respond the job offer.

On November 14, 2022 OWCP advised appellant that it found the November 4, 2022 job offer was suitable work within the work limitations provided by Dr. Meredith in his reports dated April 20 and May 24, 2022. It afforded her 30 days to accept the offered position or to provide valid reasons for refusal.

On November 21, 2022 OWCP received a November 9, 2022 Form CA-1 wherein appellant alleged right lower leg conditions from her March 9, 2021 work injury. On this form appellant listed a new address on Rockingham Drive in Clinton, MS. OWCP also received a December 1, 2022 report from Dr. Sergery S. Dzugan, a Board-certified orthopedic surgeon.

³ The March 21, 2022 SOAF did not reference OWCP File No. xxxxxx116. *Id.*

On December 20, 2022 OWCP notified appellant that the job remained available to her, and that she had 15 days to accept the offered modified position and report to work. It further notified her that, if she either did not provide a valid reason for accepting the job offer, or failed to report for work, it would terminate her compensation benefits and entitlement to a schedule award, pursuant to 5 U.S.C. § 8106(c)(2). OWCP noted that appellant's reasons for refusing the offered position were not justified. This letter was mailed to her former address on Kitchens Drive in Clinton, MS. Appellant did not respond.

By decision dated January 13, 2023, sent to appellant's former address on Kitchens Drive, OWCP terminated her wage-loss compensation and entitlement to schedule award benefits, effective that date, under 5 U.S.C. § 8106(c)(2) as she refused an offer of suitable work. It found that the job offer was suitable based upon her current work restrictions as provided by Dr. Meredith in his reports dated April 20 and May 24, 2022.

On February 6, 2023 appellant requested reconsideration of OWCP's January 13, 2023 decision, noting that she never received the decision. On April 5, 2023 OWCP received a copy of the January 13, 2023 decision marked "return to sender, no mail receptacle, unable to forward."

By decision dated May 3, 2023, sent to appellant's Rockingham Drive address, OWCP denied modification.

The Board finds that this case is not in posture for decision.

OWCP improperly issued its January 13, 2023 termination decision for refusal of suitable work as the record in this case contains direct evidence of nondelivery of the January 13, 2023 decision. Under the mailbox rule, a document mailed in the ordinary course of the sender's business practices to the addressee's last known address of record is presumed to be received by the addressee.⁴ As a rebuttable presumption, receipt will not be presumed, however, when there is evidence of nondelivery, and the presumption may also be rebutted by other evidence that supports that the addressee did not receive the correspondence.⁵ The Board finds that the decision was improperly addressed to appellant's former address, Kitchens Drive, even though appellant had provided OWCP her new address, Rockingham Drive, in the CA-1 form OWCP received on November 21, 2022. The decision was therefore not mailed to her last known address. The U.S. Postal Service returned the January 13, 2023 decision to OWCP as undeliverable, no mail receptacle and unable to forward, which OWCP received on April 5, 2023. Consequently, appellant has rebutted the presumption of receipt of the January 13, 2023 decision under the mailbox rule.⁶

⁴ *C.L.*, Docket No. 23-0177 (issued June 23, 2023).

⁵ *Id.*

⁶ *See L.T.*, Docket No. 20-0180 (issued December 14, 2021).

As appellant did not receive the January 13, 2023 decision, the Board finds that OWCP's January 13, 2023 termination decision for refusal of suitable work was improperly issued.⁷ Accordingly,

IT IS HEREBY ORDERED THAT the January 13 and May 3, 2023 decisions of the Office of Workers' Compensation Programs are reversed.

Issued: November 13, 2023
Washington, DC

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

⁷ *L.T., id.*; *V.R.*, Docket No. 18-1117 (issued June 20, 2019).