

**United States Department of Labor
Employees' Compensation Appeals Board**

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| L.M., Appellant |) | |
| |) | |
| and |) | Docket No. 23-0025 |
| |) | Issued: April 17, 2024 |
| DEPARTMENT OF VETERANS AFFAIRS, |) | |
| WASHINGTON VA MEDICAL CENTER, |) | |
| Washington, DC, Employer |) | |
| |) | |

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On October 11, 2022 appellant filed a timely appeal from a September 27, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work for the period June 1 through 10, 2022, causally related to her accepted October 4, 2021 employment injury.

FACTUAL HISTORY

On December 27, 2021 appellant, then a 60-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on October 4, 2021 she was exposed to COVID-19 patients while in the performance of duty. She explained that her symptoms began on October 4, 2021 and she

¹ 5 U.S.C. § 8101 *et seq.*

tested positive for COVID-19 on October 18, 2021. Appellant stopped work on October 11, 2021 and returned to work on October 30, 2021. In support of her claim, appellant submitted a polymerase chain-reaction (PCR) test result indicating that she tested positive for COVID-19 on October 18, 2021. By decision dated March 9, 2022, OWCP accepted appellant's traumatic injury claim for COVID-19. In a separate decision of even date, it denied her claim for continuation of pay (COP), finding that she had not reported the October 4, 2021 injury on an OWCP-approved form within 30 days of the date of injury.

On June 3, 2021 appellant filed a claim for compensation (Form CA-7) for disability from work for the period June 1 through 10, 2022.

In a June 21, 2022 development letter, OWCP informed appellant of the deficiencies of her claim for compensation. It advised her of the type of medical evidence needed to establish her claim and afforded her 30 days to respond. No additional evidence was received.

By decision dated September 27, 2022, OWCP denied appellant's claim for compensation, finding that the medical evidence of record was insufficient to establish disability from work for the period June 1 through 10, 2022, causally related to the accepted October 4, 2021 employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of proof to establish the essential elements of their claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³ For each period of disability claimed, the employee has the burden of proof to establish that they were disabled from work as a result of the accepted employment injury.⁴ Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.⁵

Under FECA, the term "disability" means an incapacity because of an employment injury, to earn the wages that the employee was receiving at the time of the injury.⁶ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in their employment, the employee is entitled to compensation for any loss of wages.⁷

² *Id.*

³ See *C.B.*, Docket No. 20-0629 (issued May 26, 2021); *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Y.D.*, Docket No. 20-0097 (issued August 25, 2020); *D.P.*, Docket No. 18-1439 (issued April 30, 2020); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

⁵ 20 C.F.R. § 10.5(f); *J.M.*, Docket No. 18-0763 (issued April 29, 2020).

⁶ *Id.* at § 10.5(f); see *J.T.*, Docket No. 19-1813 (issued April 14, 2020); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁷ *J.T., id.*; *Merle J. Marceau*, 53 ECAB 197 (2001).

The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the claimed disability and the accepted employment injury.⁸

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work for the period June 1 through 10, 2022 causally related to her accepted employment injury.

The medical evidence of record consists only of a positive COVID-19 test result dated October 18, 2021. As this evidence does not address the claimed period of disability, it is of no probative value and is insufficient to establish appellant's disability claim.¹⁰

As the medical evidence of record is insufficient to establish employment-related disability during the claimed period due to the accepted employment injury, the Board finds that appellant has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.¹¹

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish disability from work for the period June 1 through 10, 2022 causally related to her accepted October 4, 2021 employment injury.

⁸ *T.T.*, Docket No. 18-1054 (issued April 8, 2020).

⁹ *D.P.*, *supra* note 5; *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹⁰ *Id.*

¹¹ OWCP assigned the current claim OWCP File No. xxxxxx872. Appellant subsequently filed a February 17, 2022 Form CA-1 alleging that on October 9, 2021 she was exposed to COVID-19 while in the performance of duty. OWCP assigned that claim OWCP File No. xxxxxx091. Upon return of the case record, OWCP may consider reviewing the evidence in both of these claim files to determine whether or not OWCP File No. xxxxxx091 constitutes a duplicate claim. This will allow OWCP to avoid piecemeal adjudication of the issues in these cases and raise the possibility of inconsistent results. It is the Board's policy to avoid such an outcome. *See M.S.*, Docket No. 13-1024 (issued January 14, 2014); *William T. McCracken*, 33 ECAB 1197 (1982).

ORDER

IT IS HEREBY ORDERED THAT the September 27, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 17, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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