

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

R.G., Appellant)	
)	
and)	Docket No. 23-0859
)	Issued: July 26, 2024
DEPARTMENT OF VETERANS AFFAIRS,)	
HARLINGEN VA CLINIC, Harlingen, TX,)	
Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On June 7, 2023 appellant filed a timely appeal from a May 17, 2023 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 over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the May 17, 2023 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work commencing February 12, 2023, causally related to the accepted October 3, 2022 employment injury.

FACTUAL HISTORY

On October 12, 2022 appellant, then a 58-year-old psychologist, filed a traumatic injury claim (Form CA-1) alleging that on October 3, 2022 she was exposed to and contracted COVID-19 while in the performance of duty. On the reverse side of the claim form appellant's supervisor acknowledged that she was injured in the performance of duty. OWCP accepted appellant's claim for COVID-19.

Appellant stopped work on October 4, 2022 and returned on October 12, 2022.

In a form report dated January 23, 2023, Dr. Eron Manusov, a physician Board-certified in family medicine, reported that he had treated appellant since October 2022 and diagnosed long COVID-19 syndrome, depression, anxiety, and fatigue. He noted that appellant was totally disabled from work from January 23 through February 23, 2023. In a duty status report (Form CA-17) dated March 13, 2023, Dr. Manusov noted clinical findings of severe depression and anxiety, and diagnosed COVID-19. He noted that appellant was totally disabled from work.

On March 1, 2023 appellant filed a claim for compensation (Form CA-7) for disability from work for the period February 12 through 25, 2023. She continued to file claims for compensation for periods of disability thereafter.

In a report of work status (Form CA-3) dated March 17, 2023, OWCP indicated that appellant stopped work on January 23, 2023, returned to work on February 27, 2023, and stopped work again on February 28, 2023. It noted that appellant had a secondary complication from COVID-19 of depression and anxiety.

In a development letter dated April 17, 2023, OWCP informed appellant of the deficiencies of her claims for compensation and advised her of the type of medical evidence needed to establish her claim. By separate development letter of even date, OWCP requested additional information from the employing establishment, including when appellant returned to light- or full-duty work. It afforded both parties 30 days to respond.

OWCP subsequently received additional evidence. In a January 23, 2023 report, Dr. Manusov diagnosed mixed anxiety and depressive disorder, and non-alcoholic fatty liver. He related appellant's post-traumatic stress disorder symptoms and continued her regimen until her long COVID-19 symptoms improve. Dr. Manusov noted that appellant reported problems with her memory, and he recommended she remain off work for one month.

Dr. Manusov treated appellant on February 21, 2023 for continuous COVID-19 symptoms including cough, shortness of breath, and fatigue. He diagnosed morbid obesity, generalized aches and pains, hyperlipidemia, hypertensive disorder, mixed anxiety and depressive disorder related

to long COVID-19 symptoms, mass of the thyroid gland, abnormal mammogram, type-II diabetes mellitus, and post-acute COVID-19.

On March 14 and April 18, 2023 Dr. Manusov diagnosed degenerative aches and pains related to weight, sleep problems, and degenerative joint disease, hyperlipidemia, hypertensive disorder, mixed anxiety and depressive disorder, mass of thyroid gland, obesity, COVID-19, type II diabetes mellitus uncontrolled, and screening for a malignant neoplasm of colon. He advised that appellant experienced worsening depression, anxiety, chills, fatigue, headaches, body aches, and cough. Appellant reported returning to work on February 27, 2023, but she lasted only four hours due to brain fog. She reported increased depression, anxiety, body aches, pain and decrease in mental acuity that commenced in October 2022 after she contracted COVID-19 at work. Dr. Manusov opined that appellant was still severely depressed due to multiple confounding stressors including money, job, life, loss, and COVID-19. He advised that appellant could not work due to anxiety and multiple stressors.

By decision dated May 17, 2023, OWCP denied appellant's claims for disability from work commencing February 12, 2023, finding that the medical evidence of record was insufficient to establish disability from work during the claimed period causally related to the accepted October 3, 2022 employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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.⁴ 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.⁵ Whether a particular injury causes an employee to be disabled from employment and the duration of that disability are medical issues, which must be proven by a preponderance of the reliable, probative, and substantial medical evidence.⁶ Findings on examination are generally needed to support a physician's opinion that an employee is disabled from work.⁷

The term "disability" is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.⁸ Disability is, thus, not

³ *Id.*

⁴ See *S.F.*, Docket No. 20-0347 (issued March 31, 2023); *M.C.*, Docket No. 18-0919 (issued October 18, 2018); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *S.B.*, Docket No. 23-0999 (issued March 28, 2024); *William A. Archer*, 55 ECAB 674 (2004).

⁶ *V.H.*, Docket No. 18-1282 (issued April 2, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, *id.*

⁷ *G.P.*, Docket No. 23-1133 (issued March 19, 2024); *Dean E. Pierce*, 40 ECAB 1249 (1989).

⁸ 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁹ An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.¹⁰

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work commencing February 12, 2023, causally related to the accepted October 3, 2022 employment injury.

In a January 23, 2023 form report, Dr. Manusov diagnosed long COVID-19 syndrome, depression, anxiety, and fatigue and found that appellant was totally disabled from work for the period January 23 through February 23, 2023. Similarly, in a Form CA-17 dated March 13, 2023, Dr. Manusov diagnosed COVID-19 and found that appellant was totally disabled from work. While he noted that appellant was totally disabled, he did not offer a rationalized medical explanation to support his opinion. The Board has held that medical evidence that provides a conclusion but does not offer a rationalized medical explanation regarding the cause of an employee's condition or disability is of limited probative value on the issue of causal relationship.¹² Thus, these reports are insufficient to establish appellant's claim.

In a January 23, 2023 report, Dr. Manusov diagnosed mixed anxiety, depressive disorder, and non-alcoholic fatty liver. He noted appellant's post-traumatic stress disorder and long COVID-19 symptoms and recommended she remain off work for one month. Similarly, on March 14 and April 18, 2023 Dr. Manusov provided diagnoses and reported that she returned to work on February 27, 2023 but only lasted four hours due to brain fog. He noted that appellant was depressed due to multiple confounding stressors including money, job, life, loss, and COVID-19 and opined that she could not work. However, while Dr. Manusov noted that appellant was totally disabled, he did not offer a rationalized medical explanation to support his opinion. The Board has held that medical evidence that provides a conclusion, but does not offer a rationalized medical explanation regarding the cause of an employee's condition or disability is of limited

⁹ *G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Robert L. Kaaumoana*, 54 ECAB 150 (2002).

¹⁰ *See* 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

¹¹ *See B.K.*, Docket No. 18-0386 (issued September 14, 2018); *Amelia S. Jefferson*, *supra* note 6; *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001); *see also C.S.*, Docket No. 17-1686 (issued February 5, 2019).

¹² *C.V.*, Docket No. 18-1106 (issued March 20, 2019); *M.E.*, Docket No. 18-0330 (issued September 14, 2018); *A.D.*, 58 ECAB 149 (2006).

probative value on the issue of causal relationship.¹³ Thus, these reports are insufficient to establish appellant's claim.

Dr. Manusov treated appellant on February 21, 2023 for continuous COVID-19 symptoms and provided diagnoses. However, he did not provide an opinion that she was disabled from work during the claimed period causally related to the accepted October 3, 2022 employment injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹⁴ Therefore, this report is insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish disability from work commencing February 12, 2023, causally related to the accepted October 3, 2022 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish disability from work commencing February 12, 2023, causally related to the accepted October 3, 2022 employment injury.

¹³ *Id.*

¹⁴ *See F.S.*, Docket No. 23-0112 (issued April 26, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

ORDER

IT IS HEREBY ORDERED THAT the May 17, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 26, 2024
Washington, DC

Patricia H. Fitzgerald, Deputy 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