

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

L.B., Appellant)	
)	
and)	Docket No. 24-0381
)	Issued: May 20, 2024
U.S. POSTAL SERVICE, CLEVELAND POST)	
OFFICE, Cleveland, OH, Employer)	
)	

Appearances:

Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On February 28, 2024 appellant, through counsel, filed a timely appeal from a February 2, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work for the period March 21 through April 7, 2023, causally related to the accepted February 2, 2023 employment injury.

FACTUAL HISTORY

On February 14, 2023 appellant, then a 59-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that, on February 2, 2023, she suffered smoke inhalation while in the performance of duty during a fire in the employing establishment. She stopped work on February 3, 2023. By decision dated March 27, 2023, OWCP accepted the claim for unspecified dyspnea and unspecified asthma, uncomplicated. The employing establishment indicated that appellant received continuation of pay (COP) from February 3 through March 19, 2023.

On March 31, 2023 appellant filed a claim for compensation (Form CA-7) for disability from work for the period March 21 through 24, 2023. In support of her claim, she submitted a March 13, 2023 note from Domenica Guttuso, a medical assistant, requesting that she be excused from work for the period March 13 through April 3, 2023.

In a development letter dated April 3, 2023, OWCP informed appellant of the deficiencies of her claim for wage-loss compensation. It advised her of the type of factual and medical evidence needed and afforded her 30 days to respond.

OWCP received a Form CA-7 wherein appellant claimed disability from work for the period March 25 through April 7, 2023. It also received diagnostic testing, including a February 28, 2023 computerized tomography (CT) angiography chest scan, a February 28, 2023 chest x-ray, and March 28, 2023 transthoracic echocardiogram.

In a March 29, 2023 note, Dr. Robert A. Cirino, a Board-certified internist, requested that appellant be excused from work on March 29, 2023. He indicated that she may return to work on April 12, 2023. In an April 7, 2023 note, Dr. Cirino requested that appellant be excused from work for the period March 21 through April 12, 2023 due to smoke inhalation.

In an April 10, 2023 report, Dr. David Rosenberg, a Board-certified internist and pulmonologist, noted the history of the claimed February 9, 2023 work-related incident and appellant's February 3 and 28, 2023 emergency room visits. He reviewed her medical records, presented examination findings and opined that she probably developed reactive airways dysfunction-type syndrome. Dr. Rosenberg ordered complete pulmonary function tests.

Appellant returned to full-time work on April 12, 2023.

By decision dated May 10, 2023, OWCP denied appellant's claim for disability from work for the period March 21 through April 7, 2023. It found that the medical evidence of record was insufficient to establish disability from work during the claimed period due to the accepted employment injury.

On May 17, 2023 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held telephonically on October 11, 2023.

Dr. Cirino's progress reports dated March 13, April 11 and 16, 2023 were provided. In his March 13, 2023 report, he noted an impression of dyspnea on exertion, and other diagnoses of asthma or reactive airway disease. In pertinent part, Dr. Cirino recommended that appellant follow up "for going back to work." In his April 11, 2023 report, Dr. Cirino questioned whether appellant's diagnosis was asthma, dyspnea, "smoking elation" (sic), or other lung disease. He discussed appellant's use of an inhaler and recommended that she continue to avoid tobacco in the workplace.

OWCP received appellant's May 11, 2023 statement and diagnostic tests, including April 26, 2023 pulmonary function tests results and April 26, 2023 six-minute walk test results.

In a June 9, 2023 report, Dr. Rosenberg opined that the methacholine challenge test supported marked bronchial reactivity. Copies of the June 8, 2023 methacholine challenge test were provided.

By decision dated February 2, 2024, an OWCP hearing representative affirmed OWCP's May 10, 2023 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her 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 he or she was 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 the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment

³ See *C.B.*, Docket No. 20-0629 (issued May 26, 2021); *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *C.B.*, *id.*; *B.O.*, *id.*; *D.W.*, *id.*; see also *K.K.*, Docket No. 24-0205 (issued April 23, 2024); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

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

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.⁶

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.⁷ Rationalized medical evidence is medical evidence, which includes a physician's detailed medical opinion on the issue of whether there is a causal relationship between the claimant's claimed disability and the accepted employment injury. 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 period of 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 his or her 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 March 21 through April 7, 2023, causally related to the accepted February 2, 2023 employment injury.

OWCP received reports from Dr. Cirino dated from March 29 through April 16, 2023 wherein he requested that appellant be excused from work for the period March 21 through April 12, 2023 due to smoke inhalation. Dr. Cirino however failed to explain why appellant's accepted conditions disabled her for work. In his April 10, 2023 report, Dr. Rosenberg noted the history of the February 9, 2023 work-related injury and appellant's medical course of treatment, and opined that she probably developed reactive airways dysfunction-type syndrome. Dr. Rosenberg also did not provide any explanation as to why appellant was disabled from work. The Board finds that Drs. Cirino and Rosenberg did not provide objective medical findings explaining why appellant was totally disabled due to the accepted medical conditions of dyspnea and uncomplicated asthma, and did not explain why she could not perform her federal employment duties during the claimed period.¹⁰ A mere medical conclusion without rationale for the opinion

⁶ *Id.*

⁷ *J.M.*, Docket No. 19-0478 (issued August 9, 2019).

⁸ *R.H.*, Docket No. 18-1382 (issued February 14, 2019).

⁹ *C.E., id.; M.M., id.; see V.B.*, Docket No. 18-1273 (issued March 4, 2019); *S.M.*, Docket No. 17-1557 (issued September 4, 2018); *William A. Archer*, 55 ECAB 674, 679 (2004); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

¹⁰ *See N.L.*, Docket No. 22-1011 (issued July 5, 2023); *E.M.*, Docket No. 20-0738 (issued June 22, 2022); *E.M.*, Docket No. 18-0454 (issued February 20, 2020); *see also J.J.*, Docket No. 15-1329 (issued December 18, 2015).

reached is of diminished probative value.¹¹ Thus, their reports are insufficient to establish appellant's disability claim.

Appellant also submitted results from diagnostic testing. The Board has held that diagnostic studies, standing alone, are of limited probative value as they do not address whether the employment injury caused her to be disabled during the claimed period.¹²

OWCP received a March 13, 2023 report from a medical assistant. However, the Board has held that medical reports signed solely by a physician assistant, registered nurse, or medical assistant are of no probative value as such healthcare providers are not considered physicians as defined under FECA, and are therefore, not competent to provide medical opinions.¹³ Consequently, their medical findings and/or opinions will not suffice for the purpose of establishing entitlement to FECA benefits. This report is therefore insufficient to establish the claim.

As the medical evidence of record is insufficient to establish that appellant was disabled from work during the period March 21 through April 7, 2023 causally related to her accepted February 2, 2023 employment injury, the Board finds that she 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 for the period March 21 through April 7, 2023, causally related to the accepted February 2, 2023 employment injury.

¹¹ See *M.P.*, Docket No. 09-1752 (issued June 7, 2010); *Beverly A. Spencer*, 55 ECAB 501 (2004).

¹² See *V.A.*, Docket No. 21-1023 (issued March 6, 2023); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

¹³ Section § 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8102(2); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (May 2023); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); see also *J.D.*, Docket No. 23-0993 (issued January 3, 2024) (physician assistants and medical assistants are not considered physicians as defined by FECA); *J.G.*, Docket No. 21-1334 (issued May 18, 2022) (medical assistants are not considered physicians as defined under FECA).

ORDER

IT IS HEREBY ORDERED THAT the February 2, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 20, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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