

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

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H.P., Appellant

and

DEPARTMENT OF VETERANS AFFAIRS,  
BOSTON VA MEDICAL CENTER,  
Brockton, MA, Employer  
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**Docket No. 24-0487  
Issued: September 18, 2024**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On April 6, 2024 appellant filed a timely appeal from a March 20, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, appellant asserted that he had submitted all documents demanded by OWCP. The Board, in exercising its discretion, denies appellant's request for oral argument because this matter pertains to an evaluation of the medical evidence presented. As such, the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

The issue is whether appellant has met his burden of proof to establish intermittent disability from work for the period August 20 through 29, 2023 causally related to the accepted employment injury.

## **FACTUAL HISTORY**

On August 24, 2023 appellant, then a 40-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on August 23, 2023 he contracted COVID-19 while in the performance of duty. He stopped work on August 23, 2023. On October 18, 2023 OWCP accepted appellant's claim for COVID-19.

On January 30, 2024 appellant submitted a claim for compensation (Form CA-7) for disability from work during the period August 20 through 29, 2023.

In a development letter dated February 2, 2024, OWCP informed appellant of the deficiencies of his disability claim. It advised him of the type of medical evidence needed and afforded him 30 days to submit the necessary evidence. In a development letter to the employing establishment of even date, it requested clarification regarding appellant's work status from August 20 through 29, 2023.

In progress notes dated August 23, 2023, a nurse practitioner noted that appellant had tested positive for COVID-19 on August 23, 2023. A record of a COVID-19 home test taken on August 23, 2023 reflected a positive result for COVID-19. In a note dated August 23, 2023, Dr. Yusef Haj-Darwish, a Board-certified internist, recommended that appellant remain off work for the next seven days.

On August 30, 2023 a nurse practitioner advised that appellant had tested negative for COVID-19 on that date and was medically cleared to return to duty.

By decision dated March 20, 2024, OWCP denied appellant's claim for intermittent disability from work for the period August 20 through 29, 2023 causally related to the accepted employment injury causally related to the accepted employment injury.<sup>3</sup>

## **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.<sup>4</sup> For each period of

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<sup>3</sup> OWCP's March 20, 2024 decision notes the period of claimed disability as "August 20 through 23, 2023." However, this appears to be a typographical error as the case record supports that appellant's Form CA-7 claimed intermittent disability from August 20 through 29, 2023.

<sup>4</sup> See *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).

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.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup> 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 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.<sup>8</sup>

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.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish intermittent disability from work for the period August 20 through 29, 2023 causally related to the accepted employment injury.

On August 23, 2023 Dr. Yusef Haj-Darwish, a Board-certified internist, recommended that appellant remain off work for the next seven days. On August 30, 2023 a nurse practitioner advised that appellant had tested negative for COVID-19 on that date and was medically cleared to return to duty. The August 23, 2023 note from Dr. Haj-Darwish did not explain, with rationale, how and why appellant was unable to perform his regular work duties during the claimed period of disability due to the accepted COVID-19 condition. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given period of disability has an employment-related cause.<sup>10</sup> Therefore, Dr. Haj-Darwish’s note is insufficient to establish that appellant was disabled from work during the claimed period due to the accepted employment injury.<sup>11</sup>

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<sup>5</sup> *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018).

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

<sup>7</sup> *Id.* at § 10.5(f); *see B.K.*, Docket No. 18-0386 (issued September 14, 2018).

<sup>8</sup> *Id.*

<sup>9</sup> *A.W.*, Docket No. 18-0589 (issued May 14, 2019).

<sup>10</sup> *N.H.*, Docket No. 23-0907 (issued January 8, 2024); *B.P.*, Docket No. 23-0909 (issued December 27, 2023).

<sup>11</sup> *Id.*

Appellant submitted notes from a nurse practitioner. The Board has held that certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered physicians as defined under FECA.<sup>12</sup> Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits. Thus, this evidence is also insufficient to establish the disability claim.

Appellant also submitted a COVID-19 home test. The Board has held that diagnostic studies, standing alone, lack probative value as they do not address whether the employment injury caused him to be disabled during the claimed period.<sup>13</sup>

As the medical evidence of record is insufficient to establish intermittent disability from work for the period August 20 through 29, 2023, causally related to the accepted employment injury, the Board finds that he has not met his 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 his burden of proof to establish intermittent disability from work for the period August 20 through 29, 2023 causally related to the accepted employment injury.

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<sup>12</sup> 5 U.S.C. § 8101(2) provides that physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law, 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 *A.F.*, Docket No. 24-0469 (issued June 24, 2024) (a nurse practitioner is not considered a physician as defined under FECA).

<sup>13</sup> See *V.A.*, Docket No. 21-1023 (issued March 6, 2023); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 20, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 18, 2024  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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