United States Department of Labor
Employees' Compensation Appeals Board

R.P., Appellant	)	
and	)	**Docket No. 24-0693**
	)	**Issued: September 17, 2024**
U.S. POSTAL SERVICE, CHICAGO INTERNATIONAL SERVICE CENTER, CHICAGO INTERNATIONAL MILITARY SERVICE CENTER, Chicago, IL, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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 June 17, 2024 appellant, through counsel, filed a timely appeal from a May 31, 2024 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal

[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.

Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work on February 23, May 20 through 22, June 9 through 12, July 8 through 10, and September 8 through 11, 2023 causally related to the accepted March 18, 2020 employment injury.

FACTUAL HISTORY

This case has previously been before the Board on another issue.[4] The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On September 1, 2020 appellant, then a 58-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 18, 2020 she contracted COVID-19 when working in an environment without masks or social distancing while in the performance of duty. She stopped work on March 19, 2020. On March 10, 2021 OWCP accepted the claim for COVID-19. It subsequently expanded the acceptance of the claim to include post-COVID-19 condition; generalized anxiety disorder; and major depressive disorder, single episode. OWCP paid appellant wage-loss compensation on the supplemental rolls from April 29 through September 11, 2021, and on the periodic rolls, effective September 12, 2021.

Appellant attended a second opinion examination with Dr. Robert Marquis, a Board-certified psychiatrist. In a February 22, 2023 second opinion examination report, Dr. Marquis noted that appellant suffered from generalized anxiety and chronic major depression. He opined that these conditions persist and result in her low mood, worry about reinfection, and an inability to be actively involved in activities. Dr. Marquis advised that appellant could not return to her date-of-injury job as a postal distributor because her anxiety and depression cause fatigue and lethargy. However, he indicated that appellant could return to work with restrictions.

On February 27, 2023 Dr. Benjamin Margolis, a Board-certified pulmonologist, treated appellant for shortness of breath, cough, and fatigue since March 2020 when she contracted COVID-19. He noted that appellant returned to work full time on February 1, 2023. Dr. Margolis diagnosed COVID-9 pneumonia with residual infiltrates, scarring, residual fatigue due to viral syndrome, mild restrictive lung disease most likely due to COVID-19 pneumonia, shortness of breath, fibrosis due to COVID-19, and residual cough from COVID-19. He noted that appellant

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that, following the May 31, 2024 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.

[4] Docket No. 24-0222 (issued May 2, 2024).

was at maximum medical improvement (MMI). In a duty status report (Form CA-17) dated March 14, 2023, Dr. Margolis diagnosed lung fibrosis and COVID-19 "long hauler." He noted that appellant returned to full-time sedentary work on February 18, 2023.

In an attending physicians report (Form CA-20) dated March 14, 2023, Dr. Margolis diagnosed pulmonary fibrosis due to COVID-19 and restrictive lung disease. He checked a box marked "Yes," indicating that the diagnosed conditions were caused or aggravated by the described employment incident noting that appellant was exposed to COVID-19 at work and did not have personal protective equipment. Dr. Margolis noted that appellant was totally disabled from April 2021 through February 10, 2022 and partially disabled from February 10, 2022 to the present. He noted that appellant had limited ability to lift or ambulate but could perform sedentary work. On July 21, 2023 Dr. Margolis treated appellant for a pulmonary condition and indicated that she was unable to work from June 25 through July 13, 2023. He noted that appellant was cleared to return to work on August 5, 2023 with her usual restrictions.

On April 5, 2023 Dr. Julia Ratner, a Board-certified internist, related that appellant had a history of long COVID-19 syndrome associated with chronic fatigue and abnormal breathing. She noted that appellant was off work commencing April 2022 and returned on February 8, 2023. Dr. Ratner diagnosed COVID-19 long hauler manifesting chronic decreased mobility and endurance, chronic dyspnea, and chronic fatigue. She noted that appellant reached MMI and could continue sedentary work. Also submitted was an illegible Form CA-17 and a Form CA-20.

An April 27, 2023 report of work status (Form CA-3) indicated that appellant had returned to full-time regular-duty work with no restrictions as of February 9, 2023.

In a report dated August 21, 2023, Dr. Ratner noted evaluating appellant on August 7, 2023 and excused her from work from August 4 through 9, 2023 due to symptoms of COVID-19 long hauler syndrome. She indicated that appellant was unable to work during this period due to long hauler COVID-19 symptoms. In a Form CA-17 dated August 23, 2023, Dr. Ratner diagnosed COVID-19 long hauler and restrictive lung disease. She returned appellant to work eight hours a day with restrictions.

On September 28, 2023 appellant filed claims for compensation (Form CA-7) for disability from work for the period February 23, May 20 through 22, June 9 through 12, July 8 through 10, and September 8 through 11, 2023. She continued to file claims for compensation for periods of disability thereafter.

In a development letter dated October 3, 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. It afforded her 30 days to respond.

By decision dated December 14, 2023, OWCP denied appellant's claim for wage-loss compensation, finding that the medical evidence of record was insufficient to establish disability from work on February 23, May 20 through 22, June 9 through 12, July 8 through 10, and September 8 through 11, 2023 causally related to the accepted March 18, 2020 employment injury.

OWCP received additional evidence. On September 11, 2023 Dr. Margolis treated appellant for shortness of breath, cough, and fatigue since March 2020 when she had contracted

COVID-19. He provided diagnosis and recommended a position where walking was limited to 10 to 15 minutes, rest breaks for 15 to 30 minutes every two hours, and leave from work three or four days every four to six weeks.

In a Form CA-20 dated January 29, 2024, Dr. Ratner diagnosed COVID-19 long hauler syndrome. She checked a box marked "Yes," indicating that the diagnosed conditions were caused or aggravated by the described employment incident noting that appellant was exposed to COVID-19 at work and did not have personal protective equipment. Dr. Ratner noted that appellant was totally disabled from April 23, 2021 through February 10, 2022 and partially disabled from February 10, 2022 to the present. She indicated that appellant reached MMI and could return to light-duty work.

On December 21, 2023 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on March 15, 2024.

In a Form CA-20 dated, March 5, 2024, Dr. Margolis diagnosed pulmonary fibrosis due to COVID-19 and restrictive lung disease. He checked a box marked "Yes," indicating that the diagnosed conditions were caused or aggravated by the described employment incident. Dr. Margolis noted that appellant was totally disabled from April 2021 through February 10, 2022 and partially disabled from February 10, 2022 to the present. He noted that appellant had limited ability to lift or ambulate but could perform sedentary work.

By decision dated May 31, 2024, an OWCP hearing representative affirmed the December 14, 2023 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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.[6] 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.[7] 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

[5] *Id*.

[6] *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).

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

evidence.[8] Findings on examination are generally needed to support a physician's opinion that an employee is disabled from work.[9]

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.[10] Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.[11] 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.[12]

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.[13]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work commencing February 23, May 20 through 22, June 9 through 12, July 8 through 10, and September 8 through 11, 2023 causally related to the accepted March 18, 2020 employment injury.

On August 5, 2023 Dr. Ratner noted that appellant contracted COVID-19 and "long hauler" syndrome while at work in spring 2020. Similarly, on September 11, 2023, Dr. Margolis diagnosed COVID-9 pneumonia with residual infiltrates, scarring, residual fatigue due to viral syndrome, mild restrictive lung disease most likely due to COVID-19 pneumonia, shortness of breath, fibrosis due to COVID-19, and residual cough from COVID-19. As Drs. Ratner and Margolis did not address appellant's disability status during the specific dates of disability for which compensation was claimed, their reports are insufficient to establish appellant's claim.[14] Therefore, these reports are insufficient to establish appellant's claim.

In a February 22, 2023 second opinion examination report, Dr. Marquis indicated that appellant could return to work with restrictions. On February 27, 2023 he diagnosed COVID-19 pneumonia and noted that appellant returned to work on February 1, 2023 and could work eight

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

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

[10] 20 C.F.R. § 10.5(f); *S.T.,* Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

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

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

[13] *See B.K.*, Docket No. 18-0386 (issued September 14, 2018); *Amelia S. Jefferson, supra* note 8; *Fereidoon Kharabi,* 52 ECAB 291, 293 (2001); *see also C.S.*, Docket No. 17-1686 (issued February 5, 2019).

[14] *Id.*

hours a day with breaks. In a Form CA-17 dated March 14, 2023, Dr. Marquis provided diagnoses and returned appellant to work full-time sedentary duty on February 18, 2023. Similarly, in Form CA-20's dated March 5 and 14, 2023, Dr. Margolis provided diagnoses and noted that appellant was totally disabled from April 2021 through February 10, 2022 and partially disabled from February 10, 2022 to the present. He noted that appellant could perform sedentary work. Likewise, on April 5, 2023, Dr. Ratner provided a diagnosis and continued sedentary work. In a Form CA-17 dated August 23, 2023, she returned appellant to work eight hours a day with restrictions. However, the Board notes that these reports are of no probative value because Drs. Marquis, Margolis, and Ratner did not provide an opinion that appellant was disabled from work during the claimed period causally related to the accepted March 18, 2020 employment injury.[15] Rather, they returned appellant to work full-time sedentary duty. Therefore, these reports are insufficient to establish her claim.

In a July 21, 2023 report, Dr. Margolis treated appellant for a pulmonary condition and indicated that she was unable to work from June 25 through July 13, 2023 and could return on August 5, 2023 with restrictions. Similarly, in an August 21, 2023 report, Dr. Ratner reported evaluating appellant on August 7, 2023 and excused her from work from August 4 through 9, 2023 due to symptoms of COVID-19 "long hauler" syndrome. In a January 29, 2024 Form CA-17, she noted that appellant was totally disabled from April 23, 2021 through February 10, 2022 and partially disabled from February 10, 2022 to the present. While Drs. Ratner and Margolis noted that appellant was totally disabled, they did not offer a rationalized medical explanation to support their 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.[16] Thus, these reports are insufficient to establish appellant's claim.

Also submitted was an illegible Form CA-17 and a Form CA-20. There is no evidence that these documents from the unidentified health care provider is from a physician. Medical documents not signed by a physician are not probative medical evidence and do not establish appellant's claim.[17]

As the medical evidence of record is insufficient to establish disability from work commencing February 23, May 20 through 22, June 9 through 12, July 8 through 10, and September 8 through 11, 2023 causally related to the accepted March 18, 2020 employment injury, the Board finds that appellant has not met her burden of proof.

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[15] *See id.*

[16] *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).

[17] *See R.M.*, 59 ECAB 690 (2008); *Bradford L. Sullivan,* 33 ECAB 1568 (1982) (where the Board held that a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a "physician" as defined in FECA).

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 23, May 20 through 22, June 9 through 12, July 8 through 10, and September 8 through 11, 2023 causally related to the accepted March 18, 2020 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the May 31, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 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