United States Department of Labor
Employees' Compensation Appeals Board

J.B., Appellant	)	
and	)	**Docket No. 21-1427**
	)	**Issued: April 11, 2022**
DEPARTMENT OF VETERANS AFFAIRS, JACK C. MONTGOMERY VA MEDICAL CENTER, Muskogee, OK, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 29, 2021 appellant filed a timely appeal from a September 10, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over 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 August 19 through September 12, 2020 causally related to her accepted July 8, 2020 employment injury.

[1] 5 U.S.C. § 8101 *et seq*.

FACTUAL HISTORY

On September 1, 2020 appellant, then a 50-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on July 8, 2020 she contracted COVID-19 as a result of working in the emergency room during the pandemic while in the performance of duty. She stopped work on July 9, 2020. By decision dated September 11, 2020, OWCP accepted appellant's claim for COVID-19.[2]

On March 1, 2021 appellant filed a claim for compensation (Form CA-7) for disability from work during the period August 16 through September 12, 2020.

In an accompanying time analysis form (Form CA-7a), appellant claimed a total of 112 hours of disability from work for the period August 16 through September 12, 2020. She claimed that she used 8 hours of leave without pay (LWOP) on August 16, 2020 and 12 hours each of LWOP on August 19, 20, 24, 25, 28, and 29, 2020. Appellant "recovering from COVID" as the reason for her leave usage. She also claimed eight hours of LWOP on August 30, 2020 and indicated that she was only allowed to work four hours per medical. Appellant claimed that she used six hours of LWOP on September 2 and 3, 2020 and indicated that she was only allowed to work six hours per medical. She claimed four hours of LWOP on September 8, 11, and 12, 2020 and indicated that she was only allowed to work eight hours per medical.

In a compensation claim development letter dated April 6, 2021, OWCP informed appellant that the evidence submitted was insufficient to establish entitlement to compensation for the period August 16 through September 12, 2020. It requested that she submit medical evidence from her physician explaining how her employment-related conditions caused or contributed to her inability to work during the claimed period. By separate letter of even date, OWCP requested additional information from the employing establishment regarding appellant's claimed dates of disability. It afforded both parties 30 days to submit the necessary evidence.

In an April 12, 2021 response, the employing establishment provided appellant's payrate and wages and verified the hours of claimed disability.

By decision dated June 17, 2021, OWCP denied appellant's claim for compensation for disability from work during the period August 16 through September 12, 2020, finding that she had not submitted sufficient evidence to establish that she was disabled from work during the claimed period due to the accepted July 8, 2020 employment injury.

On July 13, 2021 appellant requested reconsideration.

OWCP received an August 18, 2020 progress report, wherein Dr. Doug M. Raymer, a Board-certified family medicine physician recounted that appellant had trouble with shortness of breath, extreme fatigue, and a slight achiness in her chest. He noted that she had tested negative

[2] By separate decision also dated September 11, 2020, OWCP denied appellant's claim for continuation of pay (COP), finding that she had not reported her injury on an OWCP-approved form within 30 days of the accepted employment injury. It noted that the denial of COP did not preclude her from filing a claim for disability due to the effects of the accepted employment injury.

for COVID-19 on August 17, 2020. Dr. Raymer explained that he had recommend that appellant remain off work due to her "prolonged symptomatic course of infection and continued symptoms of shortness of breath" and "work-related exposure to COVID-19."

Appellant submitted diagnostic test result reports, including an August 17, 2020 pulmonary chest computerized tomography angiograph and August 21, 2020 echocardiogram report.

In an August 24, 2020 progress note, Dr. Raymer reported that appellant complained of shortness of breath when she walked. He noted that she had tested positive for COVID-19 and noted various diagnostic testing results. Dr. Raymer opined that appellant should proceed with slow activity.

In an August 25, 2020 progress note, Dr. Raymer indicated that appellant continued to have shortness of breath and weakness when she exerted herself too much. He noted that diagnostic testing was unremarkable. Dr. Raymer explained that the appellant was anxious to return to work but, they would see how appellant tolerated a slow and gradual return to work after testing positive for COVID-19. He recommended that she proceed with four-hour shifts for the first three days, then progress to six-hour shifts the next week, then 8-hour shifts the following week, and 12-hour shifts the following week if she could tolerate them.

By decision dated September 10, 2021, OWCP vacated the June 17, 2021 decision in part, finding that the medical evidence of record was sufficient to establish disability from work for the period August 16 through 18, 2020 due to appellant's accepted employment injury. OWCP also affirmed the June 2021 decision in part, finding that the medical evidence of record was insufficient to establish disability from work for the period August 19 through September 12, 2020 due to her accepted employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 accepted employment injury.[4] 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.[5] 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.[6]

[3] *Supra* note 1.

[4] *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).

[5] 20 C.F.R. § 10.5(f); *C.T.*, Docket No. 20-0786 (issued August 20, 2021); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

[6] *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.G.*, Docket No. 18-0597 (issued October 3, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

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.[7] 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 medial 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 specific employment factors identified by the claimant.[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 this case is not in posture for decision.

Appellant claimed compensation for disability from work during the period August 16 through September 12, 2020. OWCP granted appellant wage-loss compensation for disability from April 16 through 19, 2020, but denied the remaining claimed period of disability, finding that the medical evidence of record was insufficient to establish that she was disabled from work due to her July 8, 2020 employment injury.

In an August 18, 2020 report, Dr. Raymer indicated that she had tested negative for COVID-19 on August 17, but still complained of shortness of breath, extreme fatigue, and a slight achiness in her chest. He recommended that appellant remain off work due to her "prolonged symptomatic course of infection and continued symptoms of shortness of breath" from COVID-19.

The Board finds that, while this report from Dr. Raymer is not fully rationalized and is insufficient to meet appellant's burden of proof to establish the claim, it raises an uncontroverted inference between her accepted condition and claimed disability from work, and thus, is sufficient to require OWCP to further develop the medical evidence.[10]

It is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.[11] While the claimant has the responsibility to establish entitlement

[7] *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *William A. Archer*, 55 ECAB 674 (2004).

[8] *T.L.*, Docket No. 20-0978 (issued August 2, 2021); *V.A.*, Docket No. 19-1123 (issued October 29, 2019).

[9] *See S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[10] *A.S.*, Docket No. 20-0406 (issued August 18, 2021); *Richard E. Simpson*, 55 ECAB 490, 500 (2004); *John J. Carlone*, 41 ECAB 354, 360 (1989).

[11] *M.T.*, Docket No. 19-0373 (issued August 22, 2019); *B.A.*, Docket No. 17-1360 (issued January 10, 2018).

to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.[12]

The Board, therefore, finds that the case must be remanded for further development of the medical evidence. OWCP shall refer appellant to a specialist in the appropriate field of medicine, along with the case record and a statement of accepted facts for a rationalized medical opinion as to as to whether disability from work during the period August 19 through September 12, 2020 is causally related to her accepted July 8, 2020 employment injury. If the physician opines that the claimed disability is not causally related to the accepted July 8, 2020 employment injury, he or she must provide a fully-rationalized explanation explaining why their opinion differs from that of Dr. Raymer. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the September 10, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 11, 2022
Washington, DC

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

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

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

[12] *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).