United States Department of Labor
Employees' Compensation Appeals Board

B.A., Appellant	)	
and	)	**Docket No. 22-0892**
	)	**Issued: November 2, 2022**
U.S. POSTAL SERVICE, POST OFFICE, Indianapolis, IN, 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
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On May 29, 2022 appellant filed a timely appeal from January 14 and March 15, 2022 merit decisions 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.[2]

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish to entitlement to continuation of pay (COP); and (2) whether appellant has met her burden of proof to establish

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the March 15, 2022 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* 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*.

disability from work commencing August 11, 2021 causally related to her accepted employment injury.

FACTUAL HISTORY

On November 27, 2021 appellant, then a 47-year-old postal clerk, filed a traumatic injury claim (Form CA-1) alleging that on August 11, 2021 she contracted COVID-19 from infected coworkers while in the performance duty. She stopped work on the date of injury.

In support of her claim, appellant submitted a rapid antigen test result dated August 16, 2021, which indicated a positive result for COVID-19.

In a note dated August 24, 2021, Jennifer Cooper, a nurse practitioner, indicated that appellant underwent a chest x-ray due to symptoms of COVID-19 and should quarantine and remain out of work until August 30, 2021.

On October 6, 2021 Melissa Merrill, a nurse practitioner, noted that appellant was undergoing testing and treatment related to post-COVID infection issues. She recommended that she remain out of work through November 2, 2021.

In a note dated November 23, 2021, an unknown medical provider recommended that appellant remain out of work until November 30, 2021 due to post-COVID lowered immunity.

In a statement dated December 19, 2021, appellant indicated that she did not realize she would experience symptoms for a lengthy period of time when she was originally diagnosed with COVID-19.

Beginning January 6, 2022, appellant filed claims for intermittent wage-loss compensation (Form CA-7) for disability from work for the period August 11, 2021 to January 6, 2022 due to COVID-19.

By decision dated January 14, 2022, OWCP accepted appellant's traumatic injury claim for COVID-19.

In a separate decision of even date, OWCP denied appellant's claim for COP, finding that she had failed to report the August 11, 2021 employment injury on a form approved by OWCP within 30 days, as required. It advised her that the denial of COP did not affect her entitlement to compensation, and that she could, therefore, file a Form CA-7 for lost wages due to the employment injury.

In a compensation claim development letter dated February 8, 2022, OWCP informed appellant that the evidence of record was insufficient to support her claim for wage-loss compensation. It advised her of the type of medical evidence needed to establish her claim, including a narrative medical report from a treating physician, containing a detailed description of findings and a diagnosis, explaining how her work activities caused, contributed to, or aggravated her medical conditions. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP thereafter received a note dated October 26, 2021 by Ms. Merrill, who indicated that appellant should remain out of work until November 30, 2021 due to post-COVID infection issues.

In a note dated February 10, 2022, Tricia Spoonmore, a nurse practitioner, diagnosed chronic post-COVID syndrome and opined that the condition was aggravating appellant's underlying autoimmune disorder. She recommended that appellant remain out of work until February 14, 2022.

Ms. Spoonmore, in a note dated February 18, 2022, again indicated that appellant had been unable to work and had experienced trouble with her autoimmune disorder after being diagnosed with COVID-19.

By decision dated March 15, 2022, OWCP denied appellant's claim for compensation, finding that she had not submitted sufficient medical evidence to establish disability from work, commencing August 11, 2021, causally related to her accepted employment condition.

LEGAL PRECEDENT -- ISSUE 1

Section 8118(a) of FECA authorizes COP, not to exceed 45 days, to an employee who has filed a claim for a period of wage loss due to a traumatic injury with his or her immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title.[3] This latter section provides that written notice of injury shall be given within 30 days.[4] The context of section 8122 makes clear that this means within 30 days of the injury.[5]

OWCP's regulations provide, in pertinent part, that to be eligible for COP, an employee must: (1) have a traumatic injury which is job related and the cause of the disability and/or the cause of lost time due to the need for medical examination and treatment; (2) file Form CA-1 within 30 days of the date of the injury; and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.[6]

FECA Bulletin No. 21-09 at subsection II.2., however, provides that, "The FECA program considers COVID-19 to be a traumatic injury since it is contracted during a single workday or shift (see 20 C.F.R. § 10.5(ee)), and considers the date of last exposure prior to the medical evidence

[3] *Id*. at § 8118(a).

[4] *Id*. at § 8122(a)(2).

[5] *E.M.*, Docket No. 20-0837 (issued January 27, 2021); *J.S.*, Docket No. 18-1086 (issued January 17, 2019); *Robert M. Kimzey*, 40 ECAB 762-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

[6] 20 C.F.R. § 10.205(a)(1-3); *see also T.S.*, Docket No. 19-1228 (issued December 9, 2019); *J.M.*, Docket No. 09-1563 (issued February 26, 2010); *Dodge Osborne*, 44 ECAB 849 (1993).; *William E. Ostertag*, 33 ECAB 1925 (1982).

establishing the COVID-19 diagnosis as the Date of Injury since the precise time of transmission may not always be known due to the nature of the virus."[7]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish entitlement to COP.

The record reflects that appellant filed written notice of his traumatic injury on a Form CA-1 on November 27, 2021, alleging that on August 11, 2021 she was exposed to COVID-19 while in the performance of duty. As previously noted, FECA Bulletin No. 21-09 defines date of injury as the date of last exposure, which in this case was August 11, 2021.[8] As appellant filed her Form CA-1 on November 27, 2021, more than 30 days after the August 11, 2021 date of injury, the Board finds that she has not met her burden of proof.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[9] 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.[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] When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint,

[7] FECA Bulletin No. 21-09.II.2 (issued April 29, 2021). On March 11, 2021 the American Rescue Plan Act (ARPA) of 2021 was signed into law. Pub. L. No. 117–2. OWCP issued FECA Bulletin No. 21-09 to provide guidance regarding the processing of COVID-19 FECA claims as set forth in the ARPA. Previously, COVID-19 claims under FECA were processed under the guidelines provided by FECA Bulletin No. 20-05 (issued March 31, 2020) and FECA Bulletin No. 21-01 (issued October 21, 2020). FECA Bulletin No. 21-09 supersedes FECA Bulletin Nos. 20-05 and 21-01.

[8] *Id*.

[9] *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009). *See also* FECA Bulletin No. 21-09 (issued April 28, 2021, which provides in pertinent part that, "acceptance of the claim for work-related COVID-19 does not alter the claimant's burden of proof for establishing disability, the need for ongoing medical treatment and any claim for a consequential condition."

[10] 20 C.F.R. § 10.5(f).

[11] *See H.B.*, Docket No. 20-0587 (issued June 28, 2021); *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

[12] *See H.B.*, *id*.; *K.H.*, Docket No. 19-1635 (issued March 5, 2020).

they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for loss of wages.[13]

The medical evidence required to establish causal relationship between a claimed period of disability and an accepted employment injury is rationalized medical opinion evidence. 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 disability and the accepted employment injury.[14]

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.[15]

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established disability from work, commencing August 11, 2021. causally related to her accepted employment injury.

Appellant submitted various notes by nurse practitioners. This Board has long held that certain healthcare providers such as nurse practitioners are not considered physicians as defined under FECA.[16] Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.[17] Consequently, these reports are insufficient to meet appellant's burden of proof.

Appellant also submitted a note by an unknown medical provider dated November 23, 2021. Reports that are unsigned or that bear illegible signatures cannot be considered probative medical evidence because they lack proper identification[18] as the author cannot be identified as a physician.[19]

[13] *See D.R.*, Docket No. 18-0323 (issued October 2, 2018).

[14] *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

[15] *J.B.*, Docket No. 19-0715 (issued September 12, 2019).

[16] Section 8101(2) of FECA 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." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *C.G.*, Docket No. 20-0957 (issued January 27, 2021); *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 K.A.*, Docket No. 18-0999 (issued October 4, 2019).

[17] *K.A.*, *id*.; *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, *id*.

[18] *W.L.*, Docket No. 19-1581 (issued August 5, 2020).

[19] *D.T.*, Docket No. 20-0685 (issued October 8, 2020); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

As appellant has not submitted rationalized medical evidence establishing causal relationship between the claimed disability and the accepted employment injury, the Board finds that she has not met her burden of proof.[20]

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 entitlement to COP. The Board further finds that she has not met her burden of proof to establish disability from work, commencing August 11, 2021, causally related to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the January 14 and March 15, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 2, 2022
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

[20] *M.N.*, Docket No. 18-0741 (issued April 2, 2020); *J.W.*, Docket No. 19-1688 (issued March 18, 2020).