

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

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**T.S., Appellant**

**and**

**DEPARTMENT OF THE NAVY, PUGET  
SOUND NAVAL SHIPYARD, Bremerton, WA,  
Employer**

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**Docket No. 22-1098  
Issued: October 14, 2022**

*Appearances:*  
*Appellant, pro se*  
*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 July 20, 2022 appellant filed a timely appeal from a June 9, 2022 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 to consider the merits of this case.

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<sup>1</sup> The Board notes that following the June 9, 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 caserecord 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.*

<sup>2</sup> 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 commencing November 29, 2021 causally related to her accepted October 12, 2021 employment injury.

## FACTUAL HISTORY

On October 27, 2021 appellant, then a 30-year-old heavy mobile equipment mechanic, filed a traumatic injury claim (Form CA-1) alleging that on October 12, 2021 she experienced chest pain, shortness of breath, left arm pain, neck pain, nausea, fatigue, muscle weakness, and a headache after receiving a COVID-19 vaccine while in the performance of duty. She stopped work on October 13, 2021.

Appellant first sought medical treatment on October 13, 2021 from Dr. Thomas J. Duncan, a Board-certified family practitioner. Dr. Duncan noted appellant's symptoms of sternal chest pain and shortness of breath and indicated that she received her COVID-19 vaccine five days prior to the initiation of these symptoms. He diagnosed dyspnea, precordial pain, and adverse effect of a vaccine. Dr. Duncan directed appellant to seek treatment at a hospital emergency department on that date.

In an October 13, 2021 emergency room report, Dr. Charles H. Shen, a Board-certified diagnostic radiologist, reviewed and determined that appellant's chest x-ray was normal. Anthony Roland, a physician assistant, examined her on October 13, 2021 and advised her to isolate until her COVID-19 test results resolved.

In an October 18, 2021 unsigned note from Dr. Duncan's office, appellant was noted to have symptoms of ongoing chest pain, shortness of breath, anxiety, and nausea.

In an October 25, 2021 note, Dr. James Gregg Julin, a Board-certified internist specializing in cardiovascular disease, noted that there was a temporal relationship between appellant's COVID-19 immunization and her onset of symptoms which raised the likelihood that her symptoms were from its immunologic effect. He also examined appellant on November 4 and 11, 2021 finding that her heart rate monitor and electrocardiogram (EKG) were normal.

On November 9, 2021 Devon M. Rutherford, a physician assistant, completed a duty status report (CA-17) and indicated that appellant was totally disabled.

In a November 18, 2021 note, Mr. Rutherford listed appellant's date of injury as October 8, 2021 and indicated that appellant was totally disabled from October 13 through November 10, 2021.

By decision dated December 2, 2021, OWCP accepted the claim for adverse effects of a viral vaccine.

On December 8, 2021 the employing establishment notified OWCP that appellant had received continuation of pay from October 19 through November 28, 2021. It offered her a temporary light-duty position on November 15, 2021.

Beginning on December 20, 2021 appellant filed claims for compensation (Form CA-7) for disability from work for the period November 29, 2021 through January 10, 2022.

OWCP, in a December 22, 2021 development letter, informed appellant of the deficiencies of her wage-loss compensation claim. It advised her of the type of medical evidence needed and afforded her 30 days to respond.

OWCP continued to receive evidence. In a December 13, 2021 report, Dr. Vinay Malhotra, a Board-certified cardiologist, diagnosed possible myopericarditis post-COVID-19 vaccine. Mr. Rutherford provided December 14, and 30 2021 notes and a December 14, 2021 Form CA-17.

In a January 26, 2022, development letter, OWCP informed appellant of the deficiencies of her wage-loss compensation claim. It advised her of the type of medical evidence needed and afforded her 30 days to respond.

OWCP continued to receive medical evidence. Mr. Rutherford provided notes dated November 11 and December 13, 2021, a December 16, 2021 duty status report (Form CA-17), and notes dated January 10, 20, and 27, 2022.

On December 13, 2021 appellant underwent a SARS COVID 2 Ab IgG antibodies test which was positive. On December 15, 2021 she underwent a transthoracic echocardiogram (TTE) which demonstrated a normal left ventricle and no aortic valve stenosis.

By decision dated June 9, 2022, OWCP denied appellant's claim for disability. It found that the medical evidence of record was insufficient to establish disability from work commencing November 29, 2021 due to the accepted employment injury.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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 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

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<sup>3</sup> *Id.*

<sup>4</sup> *See S.T.*, Docket No. 21-1060 (issued March 11, 2022); *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). *See also* FECA Bulletin No. 20-05 (issued March 31, 2020) entitled Federal Employees Contracting COVID-19 in Performance of Duty, which provides in pertinent part: "DISABILITY: FECA pays compensation for partial or total disability of an employee resulting from injury in the performance of duty. Just as with other conditions/claims, disability is claimed by the filing of a CA-7, Claim for Compensation, with the employing agency and requires an incapacity because of an employment-related injury to earn wages."

<sup>5</sup> *See S.T., id.*; *L.F.*, Docket No. 19-0324 (issued January 2, 2020); *T.L.*, Docket No. 18-0934 (issued May 8, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

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 an incapacity because of an employment injury, to earn the wages the employee was receiving at the time of the injury.<sup>7</sup> When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.<sup>8</sup>

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.<sup>9</sup> The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work for the period commencing November 29, 2021, causally related to her accepted October 12, 2021 employment injury.

In support of her claim for compensation, appellant submitted reports dated October 13, and 25, and December 13, 2021 from Drs. Duncan, Julin and Malhotra, respectively, addressing her diagnosed conditions and medical treatment. However, these reports did not offer an opinion on disability from work during the claimed period commencing November 29, 2021 through January 10, 2022 due to the accepted employment injury. As such, the Board finds that this medical evidence is of no probative value and insufficient to establish appellant's disability claim.<sup>11</sup>

Appellant also submitted an October 13, 2021 chest x-ray, a December 13, 2021 SARS COVID 2 Ab IgG antibodies test, and December 15, 2021 TTE. The Board has held, however, that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as

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

<sup>7</sup> *Id.* at § 10.5(f); *see, e.g., G.T.*, 18-1369 (issued March 13, 2019); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>8</sup> *G.T., id.*; *Merle J. Marceau*, 53 ECAB 197 (2001).

<sup>9</sup> *See S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

<sup>10</sup> *C.B.*, Docket No. 18-0633 (issued November 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>11</sup> Medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value. *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

they do not address whether the accepted employment injury resulted in appellant's period of disability on specific dates.<sup>12</sup>

OWCP also received progress notes and form reports from physician assistants dated October 13, 2021 through January 27, 2022. Physician assistants are not considered physicians as defined under FECA.<sup>13</sup> As such, this evidence is also of no probative value and insufficient to establish the claim.<sup>14</sup>

As noted, for each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work during the claimed period due to the accepted employment injury.<sup>15</sup> As appellant has not submitted rationalized medical opinion evidence sufficient to establish employment-related disability during the period November 29, 2021 through January 10, 2022 due to her accepted employment injury, the Board finds that she has not met her burden of proof to establish her claim.

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 commencing November 29, 2021 causally related to her accepted October 12, 2021 employment injury.

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<sup>12</sup> *D.M.*, Docket No. 20-0548 (issued November 25, 2020); *O.C.*, Docket No. 20-0514 (issued October 8, 2020); *R.J.*, Docket No. 19-0179 (issued May 26, 2020).

<sup>13</sup> Section 8101(2) of FECA provides that the term 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); *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 *T.P.*, Docket No. 22-0465 (issued July 29, 2022); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (a physician assistant is not considered a physician as defined under FECA).

<sup>14</sup> *Id.*

<sup>15</sup> *Supra* note 5.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 9, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 14, 2022  
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