

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

_____)
H.J., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
WESTERN NEW YORK HEALTHCARE)
SYSTEM, BUFFALO, NY, Employer)
_____)

Docket No. 21-0665
Issued: March 6, 2023

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
JANICE B. ASKIN, Judge

JURISDICTION

On March 15, 2021 appellant filed a timely appeal from a February 23, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 commencing October 23, 2020 causally related to her accepted employment injury.

FACTUAL HISTORY

On December 13, 2020 appellant, then a 47-year-old nursing assistant, filed an occupational disease claim (Form CA-2) alleging that she contracted COVID-19 when engaged in

¹ 5 U.S.C. § 8101 *et seq.*

one-on-one patient observation while in the performance duty. She noted that she first became aware of her illness on October 23, 2020 and realized its relation to her federal employment on November 8, 2020. Appellant stopped work on October 23, 2020.

A health insurance letter dated November 12, 2020 indicated that appellant's medical condition required hospital admission as of November 11, 2020. In a letter dated November 13, 2020, Juliana Chapman, a registered nurse, noted that she was admitted to the hospital on November 11, 2020.

In a progress note dated November 16, 2020, Dr. Sonia Timothy, an internal medicine specialist, related that appellant had been admitted to the hospital on November 12, 2020 secondary to COVID-19.

Beginning December 22, 2020, appellant began filing claims for compensation (Form CA-7) for disability from work commencing October 23, 2020 due to COVID-19.

By decision dated January 6, 2021, OWCP accepted appellant's occupational disease claim for COVID-19.

OWCP continued to receive medical evidence, including work excuse notes from Dr. Qamrunnisa Rahman, an internal medicine specialist, dated December 7, 11, and 28, 2020 and January 25, 2021, excusing appellant from work through February 1, 2021.

In a development letter dated January 15, 2021, OWCP informed appellant of the deficiencies of her claim for wage-loss compensation. It advised her of the type of medical evidence needed to establish her claim, and afforded her 30 days to submit the necessary evidence.

Thereafter, OWCP received a November 20, 2020 discharge summary by Tiffany L. Phalen, a physician assistant, indicating that appellant was admitted to the hospital from November 12 through 20, 2020 for symptoms of malaise, fatigue, and shortness of breath. Appellant was treated with convalescent plasma and remdesivir, as well as insulin for exacerbation of uncontrolled blood sugars from steroid use. The discharge diagnoses included acute hypoxic respiratory failure, COVID-19 viral pneumonia, hepatic steatosis, type 2 diabetes mellitus, hypertension/dyslipidemia, and depression.

By decision dated February 23, 2021, OWCP denied appellant's claim for compensation, finding that she had not submitted sufficient medical evidence to establish disability from work commencing October 23, 2020, causally related to her accepted employment conditions.

LEGAL PRECEDENT

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.² Under FECA, the term "disability" means the incapacity, because of an employment injury, to earn the wages that

² S.W., Docket No. 18-1529 (issued April 19, 2019); J.F., Docket No. 09-1061 (issued November 17, 2009).

the employee was receiving at the time of injury.³ Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁴ 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.⁵ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for loss of wages.⁶

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 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.⁷

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.⁸

ANALYSIS

The Board finds that appellant has met her burden of proof to establish disability from work for the period November 12 through 20, 2020 due to the accepted employment injury.

In support of her claim for disability, appellant submitted a November 16, 2020 signed progress note from Dr. Timothy, confirming that she was in fact admitted to the hospital due to COVID-19 illness on November 12, 2020. A subsequent discharge summary indicated that she was released from the hospital on November 20, 2020. The Board finds that these notes are sufficient to establish total disability for the claimed period beginning November 12 through 20, 2020, causally related to appellant's accepted employment injury.⁹

The Board further finds, however, that appellant has not met her burden of proof to establish disability for the periods October 23 through November 11, 2020 and November 21, 2020 and continuing. In notes dated December 7, 11, and 28, 2020 and January 25, 2021,

³ 20 C.F.R. § 10.5(f).

⁴ See *H.B.*, Docket No. 20-0587 (issued June 28, 2021); *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

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

⁶ See *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

⁷ *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

⁸ *J.B.*, Docket No. 19-0715 (issued September 12, 2019).

⁹ *Supra* note 7.

Dr. Rahman excused appellant from work through February 1, 2021; however, he did not provide an opinion explaining why her disability from work was causally related to the accepted employment condition.¹⁰ The Board has held that medical evidence that does not provide an opinion as to whether a period of disability is due to an accepted employment-related condition is insufficient to meet a claimant's burden of proof.¹¹ Therefore, these reports are insufficient to establish appellant's claim for disability for the periods October 23 through November 11, 2020 and November 21, 2020 and continuing.

As appellant has not submitted rationalized medical evidence establishing causal relationship between the accepted employment condition and her claimed periods of disability for the periods October 23 through November 11, 2020 and November 21, 2020 and continuing, the Board finds that she has not met her burden of proof for those claimed periods.

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 met her burden of proof to establish disability from work for the period November 12 through 20, 2020 causally related to her accepted employment condition. The Board further finds that she has not established disability for the periods October 23 through November 11, 2020 and November 21, 2020 and continuing.

¹⁰ See *T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹¹ *R.J.*, Docket No. 19-0179 (issued May 26, 2020); *M.A.*, Docket No. 19-1119 (issued November 25, 2019); *S.I.*, Docket No. 18-1582 (issued June 20, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

ORDER

IT IS HEREBY ORDERED THAT the February 23, 2021 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part.

Issued: March 6, 2023
Washington, D.C.

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board