

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

R.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Duluth, GA, Employer**

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**Docket No. 22-1323
Issued: March 21, 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
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On September 6, 2022 appellant filed a timely appeal from March 31 and July 18, 2022 merit decisions 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.²

ISSUES

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

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the July 18, 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 for the period December 19, 2021 through February 10, 2022 causally related to his accepted December 15, 2021 employment injury.

FACTUAL HISTORY

On February 20, 2022 appellant, then a 58-year-old tractor trailer operator, filed a traumatic injury claim (Form CA-1) alleging that on December 15, 2021 he contracted COVID-19 while in the performance of duty. On the reverse side of the claim form the employing establishment controverted his request for COP contending that he had not provided notice of the injury within 30 days, noting that the claim was not received until February 20, 2022. Appellant stopped work on December 15, 2021 and returned to work on February 22, 2022.

In support of his claim, appellant submitted a cell phone screen shot of polymerase chain reaction (PCR) COVID-19 test result by an unknown healthcare provider dated December 22, 2021, which indicated that he was positive for COVID-19. The note further indicated that he was presumed contagious due to a current infection.

A cell phone screen shot of a PCR test result dated January 17, 2022 for an unknown patient indicated a positive result for COVID-19.

A cell phone screen shot of an after-visit summary, also for an unknown patient, dated February 10, 2022 by Sebrena La'nae Mallard, a pulmonary function technologist, noted a diagnosis of COVID-19. A pulmonary function test was ordered.

By decision dated March 31, 2022, OWCP denied appellant's claim for COP, finding that he had failed to report the December 15, 2021 employment injury on a form approved by OWCP within 30 days, as required. It advised him that the denial of COP did not affect his entitlement to compensation, and that he could, therefore, file a claim for compensation (Form CA-7) for lost wages due to the alleged employment injury.

On April 7, 2022 appellant filed a Form CA-7 for disability from work for the period December 19, 2021 through February 10, 2022.

On April 21, 2022 OWCP accepted the claim for COVID-19.

OWCP, in an April 22, 2022 development letter, informed appellant of the deficiencies of his wage-loss compensation claim. It advised him of the type of medical evidence needed and afforded him 30 days to respond.

By decision dated July 18, 2022, OWCP denied appellant's claim for disability. It found that the medical evidence of record was insufficient to establish disability from work during the claimed period due to the accepted employment injury.

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 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 his 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 February 20, 2022 alleging that on December 15, 2021 he 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 December 15, 2021.⁸ As appellant filed his Form CA-1 on February 20, 2022 more than 30 days after the December 15, 2021 date of injury, the Board finds that he has not met his burden of proof.

³ *Supra* note 1 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).

⁷ FECA Bulletin No. 21-09.II.2 (issued April 29, 2021). On March 11, 2021 the American Rescue Plan Act of 2021 (ARPA) 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.*

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, 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 for the period December 19, 2021 through February 10, 2022 causally related to his accepted employment injury.

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).

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).

In support of his claim, appellant submitted a PCR test result from an unknown healthcare provider dated December 22, 2021, which indicated that he was positive for COVID-19 and presumed contagious due to a current infection. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship.¹⁶ In addition, reports that are unsigned or that bear illegible signatures cannot be considered probative medical evidence because they lack proper identification¹⁷ as the author cannot be identified as a physician.¹⁸ Therefore, this test result is insufficient to establish appellant's disability claim.

The January 17, 2022 PCR test result and February 10, 2022 visit summary did not indicate a patient name and did not directly address the specific dates of disability for which appellant claimed compensation. Consequently, this additional evidence is also insufficient to establish appellant's disability claim.¹⁹

As appellant has not submitted rationalized medical evidence establishing causal relationship between the claimed disability and the accepted employment injury, the Board finds that he has not met his 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 his burden of proof to establish entitlement to COP. The Board further finds that he has not met his burden of proof to establish disability from work for the period December 19, 2021 through February 10, 2022, causally related to his accepted employment injury.

¹⁶ See *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

¹⁷ *W.L.*, Docket No. 19-1581 (issued August 5, 2020).

¹⁸ *D.T.*, Docket No. 20-0685 (issued October 8, 2020); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹⁹ *Supra* note 15.

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

ORDER

IT IS HEREBY ORDERED THAT the July 18 and March 31, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 21, 2023
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