

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

L.R., Appellant)	
)	
and)	Docket No. 23-0573
)	Issued: September 15, 2023
U.S. POSTAL SERVICE, INDIANA)	
OCCUPATIONAL HEALTH CLAIMS OFFICE,)	
Indianapolis, IN, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On March 8, 2023 appellant filed a timely appeal from a January 11, 2023 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 21, 2022, causally related to her accepted August 8, 2022 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 16, 2022 appellant, then a 47-year-old human resources clerk, filed a traumatic injury claim (Form CA-1) alleging that, on August 8, 2022, she contracted COVID-19 while in the performance of duty. She stopped work on August 12, 2022, and returned to full-time regular duty on August 23, 2022. OWCP accepted the claim for COVID-19.

In a September 1, 2022 report, Dr. Samuel A. Gbenro, a family medicine specialist, noted that appellant was seen on August 30, 2022, and that due to prior complications of COVID-19, she was unable to perform work duties currently, and was not cleared to return to work until she was evaluated at her next doctor visit on September 27, 2022.

In a September 15, 2022 attending physician's report (Form CA-20), Dr. Gbenro noted a history of COVID-19 complications and diagnosed chronic post viral fatigue. In a September 15, 2022 report, he noted that appellant complained of fatigue which began on August 30, 2022 due to complications of COVID-19. Appellant noted symptoms of general malaise, fatigue, diffuse soft tissue aches and pain, and poor athletic performance. In a note of even date, Dr. Gbenro indicated that due to prior complications of COVID-19, appellant was unable to perform her work duties, and would not be cleared to return to work until her next evaluation on November 11, 2022.

In October 11, 2022 progress notes, Dr. Gbenro noted that appellant was seen for COVID-19 complications and chronic fatigue syndrome. He assessed chronic fatigue syndrome, mixed hyperlipidemia, and acute left ankle pain.

On October 28, 2022 appellant filed a claim for compensation (Form CA-7) for disability from work during the period October 4 through 21, 2022. On November 4, 2022 appellant filed a Form CA-7 for disability from work during the period October 22 through November 4, 2022.

In a development letter dated November 8, 2022, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of medical evidence necessary to establish her claim and that a medical slip disabling her from work, or a duty status report (Form CA-17) would not be sufficient. OWCP afforded appellant 30 days to submit the necessary evidence.

In a November 11, 2022 after visit summary, Dr. Gbenro noted that appellant was seen for post viral fatigue syndrome, low back pain of multiple sites of the spine with sciatica, and obstructive sleep apnea. In a Form CA-17 of the same date, he noted critical findings of chronic fatigue and pain, diagnosis of "none," and other disabling conditions of low back pain. In a report of the same date, Dr. Gbenro indicated that due to prior complications of COVID-19, appellant was unable to perform work duties and that she was not cleared to return to work until she was reevaluated at her next doctor visit on January 3, 2023.

OWCP also received September 21 and November 11, 2022 laboratory reports.

On November 21, 2022 appellant filed a Form CA-7 for disability from work during the period November 5 through 18, 2022.

On December 2, 2022 appellant filed a Form CA-7 for disability from work during the period November 19 through December 2, 2022.

By decision dated January 11, 2023, OWCP denied appellant's claims for wage-loss compensation for disability from work commencing October 21, 2022, finding that the medical evidence of record was insufficient to establish disability from work during the claimed period due to the accepted employment injury.²

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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.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

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 the reliable, probative, and substantial medical evidence. 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.⁷

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work commencing October 21, 2022, causally related to her accepted August 8, 2022 employment injury.

In a September 1, 2022 report, Dr. Gbenro noted that appellant was seen on August 30, 2022 due to prior complications of COVID-19, and that she was not cleared to return to work. However, as this report predated the period of disability in question, Dr. Gbenro did not provide an opinion on causal relationship between the claimed disability and the accepted employment

² The Board notes that OWCP did not address appellant's claim for disability from October 4 through 20, 2022.

³ 5 U.S.C. § 8101 *et seq.*

⁴ *See L.R.*, Docket No. 21-0018 (issued February 17, 2023); *C.B.*, Docket No. 20-0629 (issued May 26, 2021); *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989); *see also Amelia S. Jefferson*, 57 ECAB 183 (2005); *Nathaniel Milton*, 37 ECAB 712 (1986).

⁵ 20 C.F.R. § 10.5(f); *see A.N.*, Docket No. 20-0320 (issued March 31, 2021); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁶ *See D.G.*, Docket No. 18-0597 (issued October 3, 2018); *Amelia S. Jefferson*, *supra* note 4.

⁷ *W.C.*, Docket No. 19-1740 (issued June 4, 2020); *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

injury.⁸ Therefore, this evidence is of no probative value and is insufficient to establish appellant's disability claim.

In a September 15, 2022 report, Dr. Gbenro indicated that appellant was not cleared to return to work until her next doctor visit on November 11, 2022, due to prior complications of COVID-19. He noted that her symptoms began on August 30, 2022. Dr. Gbenro also provided a Form CA-20 in which he diagnosed chronic post viral fatigue. On October 11, and November 11, 2022 he again assessed chronic fatigue syndrome. The Board finds, however, that Dr. Gbenro's reports are conclusory in nature as they did not provide rationale explaining how or why appellant was disabled from work due to the accepted injury.⁹ Therefore, this evidence is of limited probative value and is insufficient to establish appellant's disability claim.

In an October 11, 2022 report, Dr. Gbenro noted that appellant had acute left ankle pain. On November 11, 2022 he noted that she was seen for low back pain of multiple sites of the spine with sciatica. The Board has held that a medical report lacking an opinion regarding causal relationship is of no probative value.¹⁰ This evidence is therefore insufficient to establish appellant's disability claim.

Appellant also submitted laboratory reports. The Board has held, however, that diagnostic test reports, standing alone, lack probative value as they do not provide an opinion on causal relationship.¹¹ Thus, this evidence is also insufficient to establish the disability claim.

As the medical evidence of record is insufficient to establish disability from work commencing October 21, 2022, causally related to the accepted August 8, 2022 employment injury, the Board finds that appellant has not met her burden of proof.

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 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 commencing October 21, 2022, causally related to her accepted August 8, 2022 employment injury.

⁸ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

⁹ See *T.B.*, Docket No. 20-0255 (issued March 11, 2022).

¹⁰ *Supra* note 8.

¹¹ *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

ORDER

IT IS HEREBY ORDERED THAT the January 11, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 15, 2023
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board