



Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

### **ISSUE**

The issue is whether appellant has met her burden of proof to establish disability from work on February 23, May 20 through 22, June 9 through 12, July 8 through 10, and September 8 through 11, 2023 causally related to the accepted March 18, 2020 employment injury.

### **FACTUAL HISTORY**

This case has previously been before the Board.<sup>4</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On September 1, 2020 appellant, then a 58-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 18, 2020 she contracted COVID-19 when working in an environment without masks or social distancing while in the performance of duty. She stopped work on March 19, 2020. On March 10, 2021 OWCP accepted the claim for COVID-19. It subsequently expanded the acceptance of the claim to include post-COVID-19 condition; generalized anxiety disorder; and major depressive disorder, single episode. OWCP paid appellant wage-loss compensation on the supplemental rolls from April 29 through September 11, 2021, and on the periodic rolls, effective September 12, 2021.

Appellant attended a second opinion examination with Dr. Robert Marquis, a Board-certified psychiatrist. In a February 22, 2023 report, Dr. Marquis noted that appellant suffered from generalized anxiety and chronic major depression. He opined that these conditions resulted in her low mood, worry about reinfection, and an inability to be actively involved in activities. Dr. Marquis advised that appellant could not return to her date-of-injury job as a postal distributor because her anxiety and depression cause fatigue and lethargy. However, he indicated that appellant could return to work with restrictions.

On February 27, 2023 Dr. Benjamin Margolis, a Board-certified pulmonologist, treated appellant for shortness of breath, cough, and fatigue since March 2020 when she contracted COVID-19. He diagnosed COVID-19 pneumonia with residual infiltrates, scarring, residual fatigue due to viral syndrome, mild restrictive lung disease most likely due to COVID-19 pneumonia, shortness of breath, fibrosis due to COVID-19, and residual cough from COVID-19. Dr. Margolis noted that appellant was at maximum medical improvement (MMI) and returned to work full-time

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the October 10, 2024 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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.*

<sup>4</sup> Docket No. 24-0693 (issued September 17, 2024).

on February 1, 2023. In a duty status report (Form CA-17) dated March 14, 2023, he diagnosed lung fibrosis and COVID-19 “long hauler.” Dr. Margolis noted that appellant returned to full-time sedentary work on February 18, 2023.

In an attending physician’s report (Form CA-20) dated March 14, 2023, Dr. Margolis diagnosed pulmonary fibrosis due to COVID-19 and restrictive lung disease. He checked a box marked “Yes,” indicating that the diagnosed conditions were caused or aggravated by the described employment incident noting that appellant was exposed to COVID-19 at work and did not have personal protective equipment. Dr. Margolis noted that appellant was totally disabled from April 2021 through February 10, 2022, and partially disabled from February 10, 2022 to the present. He noted that appellant had limited ability to lift or ambulate, but could perform sedentary work. On July 21, 2023 Dr. Margolis treated appellant for a pulmonary condition, and indicated that she was unable to work from June 25 through July 13, 2023. He noted that appellant was cleared to return to work on August 5, 2023 with her usual restrictions.

An April 27, 2023 report of work status (Form CA-3) indicated that appellant had returned to full-time regular-duty work with no restrictions as of February 9, 2023.

On September 28, 2023 appellant filed claims for compensation (Form CA-7) for disability from work for the period February 23, May 20 through 22, June 9 through 12, July 8 through 10, and September 8 through 11, 2023. She continued to file claims for compensation for periods of disability thereafter.

In a development letter dated October 3, 2023, OWCP informed appellant of the deficiencies of her claims for compensation and advised her of the type of medical evidence needed to establish her claim. It afforded her 30 days to respond.

By decision dated December 14, 2023, OWCP denied appellant’s claim for wage-loss compensation, finding that the medical evidence of record was insufficient to establish disability from work on February 23, May 20 through 22, June 9 through 12, July 8 through 10, and September 8 through 11, 2023 causally related to the accepted March 18, 2020 employment injury.

OWCP received additional evidence. On September 11, 2023 Dr. Margolis treated appellant for shortness of breath, cough, and fatigue since March 2020 when she had contracted COVID-19. He provided a diagnosis and recommended a position where walking was limited to 10 to 15 minutes, rest breaks for 15 to 30 minutes every two hours, and leave from work three or four days every four to six weeks.

On December 21, 2023 appellant, through counsel, requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review. The hearing was held on March 15, 2024.

In a Form CA-20 dated, March 5, 2024, Dr. Margolis diagnosed pulmonary fibrosis due to COVID-19 and restrictive lung disease. He checked a box marked “Yes,” indicating that the diagnosed conditions were caused or aggravated by the described employment incident. Dr. Margolis noted that appellant was totally disabled from April 2021 through February 10, 2022 and partially disabled from February 10, 2022 to the present. He noted that appellant had limited ability to lift or ambulate but could perform sedentary work.

By decision dated May 31, 2024, an OWCP hearing representative affirmed the December 14, 2023 decision.

Appellant, through counsel, appealed to the Board. By decision dated September 17, 2024, the Board affirmed the May 31, 2024 decision, finding that she had not met her burden of proof to establish disability from work commencing February 23, May 20 through 22, June 9 through 12, July 8 through 10, and September 8 through 11, 2023 causally related to the accepted March 18, 2020 employment injury.<sup>5</sup>

On October 8, 2024 appellant, through counsel, requested reconsideration.

OWCP received additional evidence. Appellant submitted a report from Claire Baker, a nurse practitioner, dated September 9, 2024, who treated her for an insect bite that occurred two days earlier. Ms. Baker diagnosed insect bite of other part of neck.

On September 10, 2024 Dr. Margolis treated appellant in follow up for management of shortness of breath, cough, and fatigue since she had COVID-19. He diagnosed COVID-19 pneumonia with residual infiltrates, scarring, residual fatigue due to viral syndrome, mild restrictive lung disease most likely due to COVID-19 pneumonia, shortness of breath, fibrosis due to COVID-19, and residual cough from COVID-19. Dr. Margolis recommended a position where walking was limited to 10 to 15 minutes, rest breaks for 15 to 30 minutes every two hours, and leave from work three or four days every four to six weeks.

By decision dated October 10, 2024, OWCP denied modification of the September 17, 2024 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>6</sup> has the burden of proof to establish the essential elements of their claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>7</sup> For each period of disability claimed, the employee has the burden of proof to establish that they were disabled from work as a result of the accepted employment injury.<sup>8</sup> Whether a particular injury causes an employee to be disabled from employment and the duration of that disability are medical issues, which must be proven by a preponderance of the reliable, probative, and substantial medical

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<sup>5</sup> *Id.*

<sup>6</sup> *Supra* note 2.

<sup>7</sup> *See S.F.*, Docket No. 20-0347 (issued March 31, 2023); *M.C.*, Docket No. 18-0919 (issued October 18, 2018); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> *S.B.*, Docket No. 23-0999 (issued March 28, 2024); *William A. Archer*, 55 ECAB 674 (2004).

evidence.<sup>9</sup> Findings on examination are generally needed to support a physician’s opinion that an employee is disabled from work.<sup>10</sup>

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.<sup>11</sup> Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.<sup>12</sup> 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.<sup>13</sup>

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence 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.<sup>14</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work commencing February 23, May 20 through 22, June 9 through 12, July 8 through 10, and September 8 through 11, 2023 causally related to the accepted March 18, 2020 employment injury.

Initially, the Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of OWCP’s May 31, 2024 decision, which was considered by the Board in its September 17, 2024 decision. Findings made in prior Board decisions are *res judicata* absent further merit review by OWCP under section 8128 of FECA.<sup>15</sup>

On September 10, 2024 Dr. Margolis diagnosed COVID-9 pneumonia with residual infiltrates, scarring, residual fatigue due to viral syndrome, mild restrictive lung disease most likely due to COVID-19 pneumonia, shortness of breath, fibrosis due to COVID-19, and residual cough from COVID-19. He recommended a position where walking was limited to 10 to 15 minutes, rest breaks for 15 to 30 minutes every two hours, and leave from work three or four days every four to six weeks. However, the Board notes that this report is of no probative value because Dr. Margolis did not provide an opinion that appellant was disabled from work during the claimed

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<sup>9</sup> *V.H.*, Docket No. 18-1282 (issued April 2, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, *id.*

<sup>10</sup> *G.P.*, Docket No. 23-1133 (issued March 19, 2024); *Dean E. Pierce*, 40 ECAB 1249 (1989).

<sup>11</sup> 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>12</sup> *G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Robert L. Kaaumoana*, 54 ECAB 150 (2002).

<sup>13</sup> *See* 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

<sup>14</sup> *See B.K.*, Docket No. 18-0386 (issued September 14, 2018); *Amelia S. Jefferson*, *supra* note 9; *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001); *see also C.S.*, Docket No. 17-1686 (issued February 5, 2019).

<sup>15</sup> *C.M.*, Docket No. 19-1211 (issued August 5, 2020); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

period causally related to the accepted March 18, 2020 employment injury.<sup>16</sup> Therefore, this report is insufficient to establish her claim.

Appellant also submitted a report from a nurse practitioner. The Board has held that treatment notes signed by nurse practitioners are not considered medical evidence as these providers are not physicians under FECA<sup>17</sup> and are not competent to render a medical opinion under FECA. Thus, this evidence is not sufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish disability from work commencing February 23, May 20 through 22, June 9 through 12, July 8 through 10, and September 8 through 11, 2023 causally related to the accepted March 18, 2020 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(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 commencing February 23, May 20 through 22, June 9 through 12, July 8 through 10, and September 8 through 11, 2023 causally related to the accepted March 18, 2020 employment injury.

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<sup>16</sup> See *P.L.*, Docket No. 22-0337 (issued September 9, 2022); *K.F.*, Docket No. 19-1846 (issued November 3, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>17</sup> Section 8101(2) of FECA defines a "physician" as 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) (May 2023). See also *David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under the FECA); *Paul Foster*, 56 ECAB 208 (2004) (where the Board found that a nurse practitioner is not a "physician" pursuant to FECA).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 10, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 9, 2024  
Washington, DC

Alec J. Koromilas, 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