

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

N.H., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
NORTH LAS VEGAS VA MEDICAL CENTER,)
North Las Vegas, NV, Employer)
_____)

**Docket No. 23-0907
Issued: January 8, 2024**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On June 16, 2023 appellant filed a timely appeal from a March 6, 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.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the March 6, 2023 decision, appellant submitted additional evidence to OWCP. 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work for the period October 15, 2022 and continuing, causally related to her accepted October 10, 2022 employment injury.

FACTUAL HISTORY

On November 2, 2022 appellant, then a 47-year-old practical nurse, filed a traumatic injury claim (Form CA-1) alleging that on October 10, 2022 she contracted COVID-19 during routine job duties while in the performance of duty. She stopped work on that date. OWCP accepted the claim for novel coronavirus (COVID-19).

In notes dated October 20, 2022 through January 4, 2023, Dr. Rulon Douglas Owen, a Board-certified family physician, held appellant off work from October 17, 2022 through February 8, 2023.

On January 25, 2023 appellant began filing claims for wage-loss compensation (Form CA-7) for disability from work commencing October 11, 2022.

In support of her claim, appellant submitted an October 24, 2022 visit note from Dr. Owen assessing Severe Acute Respiratory Syndrome (SARS)-associated coronavirus as the cause of diseases classified elsewhere, Vitamin D deficiency, metabolic syndrome, acute maxillary sinusitis, and palpitations.

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

Thereafter, OWCP received a February 9, 2023 note from Dr. Owen holding appellant off work from February 9 to 28, 2023. In a visit note of even date, Dr. Owen assessed SARS-associated coronavirus as the cause of diseases classified elsewhere, Vitamin D deficiency, and metabolic syndrome.

In a February 28, 2023 note, Dr. Owen noted that appellant was off work due to medical problems including ongoing COVID-19 symptoms of shortness of breath, dizziness, anxiety, and fatigue. He returned her to work on March 20, 2023 pending a reasonable accommodation review. In a visit note of even date, Dr. Owen treated appellant and assessed metabolic syndrome, SARS-associated coronavirus as the cause of diseases classified elsewhere, migraine with aura, and palpitations.

By decision dated March 6, 2023, OWCP denied appellant's claim for compensation for disability from work for the period October 11, 2022, and continuing, finding that the medical evidence of record was insufficient to establish disability from work for the claimed period causally related to her accepted October 10, 2022 employment injury.

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 Under FECA, the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of 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 probative and reliable medical opinion evidence.⁷

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 appellant, 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.⁸

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.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work for the period October 15, 2022, and continuing, causally related to the accepted October 10, 2022 employment injury.

OWCP accepted appellant's claim for novel coronavirus (COVID-19). In notes dated October 20, 2022 through February 9, 2023, Dr. Owen held her off work from October 17, 2022 through February 28, 2023. Similarly, in a February 28, 2023 note, he held appellant off work due to ongoing COVID-19 related symptoms including shortness of breath, dizziness, anxiety, and

³ *Supra* note 1.

⁴ *See S.F.*, Docket No. 20-0347 (issued March 31, 2023); *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).

⁵ 20 C.F.R. § 10.5(f); *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

⁶ *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

⁷ *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

⁸ *See D.W.*, Docket No. 20-1363 (issued September 14, 2021); *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

⁹ *See M.J.*, Docket No. 19-1287 (issued January 13, 2020); *William A. Archer*, 55 ECAB 674 (2004).

fatigue, and returned her to work on March 20, 2023. However, Dr. Owen offered no rationalized medical opinion as to whether her accepted conditions were the cause of her disability. The Board has held that medical evidence that does not provide an opinion regarding whether a period of disability is due to an accepted employment condition is of no probative value and is insufficient to establish a claim.¹⁰ Consequently, these notes are insufficient to establish that appellant was disabled from work during the claimed period due to her accepted employment injury.¹¹

Appellant also submitted visit notes dated October 24, 2022 and February 9 and 28, 2023 from Dr. Owen assessing SARS-associated coronavirus as the cause of diseases classified elsewhere, Vitamin D deficiency, metabolic syndrome, acute maxillary sinusitis, migraine with aura, and palpitations. However, as Dr. Owen did not provide an opinion in these notes regarding whether she was disabled from work during the claimed period due to the accepted employment injury, this evidence is of no probative value.¹²

As appellant has not submitted medical evidence sufficient to establish disability during the claimed period due to her accepted October 10, 2022 employment injury, the Board finds that she has not met her burden of proof.¹³

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 October 15, 2022 and continuing, causally related to her accepted October 10, 2022 employment injury.

¹⁰ See *S.D.*, Docket No. 20-1255 (issued February 3, 2021); *L.L.*, Docket No. 19-1794 (issued October 2, 2020); *C.R.*, Docket No. 19-1427 (issued January 3, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹¹ *Id.*

¹² See *T.S.*, Docket No. 20-1229 (issued August 6, 2021); *J.M.*, Docket No. 19-1169 (issued February 7, 2020); *A.L.*, Docket No. 19-0285 (issued September 24, 2019); *L.B.*, *supra* note 10; *D.K.*, *supra* note 10.

¹³ *K.A.*, Docket No. 17-1718 (issued February 12, 2018).

ORDER

IT IS HEREBY ORDERED THAT the March 6, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 8, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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