United States Department of Labor
Employees' Compensation Appeals Board

G.C., Appellant	)	
and	)	**Docket No. 25-0513**
	)	**Issued: July 7, 2025**
DEPARTMENT OF VETERANS AFFAIRS, UPSTATE NEW YORK HEALTHCARE SYSTEM, BUFFALO VA MEDICAL CENTER, Buffalo, NY, Employer	)	

Appearances:
Thomas S. Harkins, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 30, 2025 appellant, through counsel, filed a timely appeal from December 13, 2024 and March 12, 2025 merit decisions of the Office of Workers' Compensation Programs

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id*. An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id*.; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

(OWCP).[2] Pursuant to the Federal Employees' Compensation Act[3] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[4]

ISSUES

The issue are: (1) whether appellant has met her burden of proof to establish the remaining claimed intermittent disability from work of 1.5 hours for the period October 6 through 19, 2024 as causally related to her accepted August 19, 2023 employment injury; and (2) whether appellant has met her burden of proof to establish a recurrence of disability commencing October 18, 2024, causally related to her accepted employment August 19, 2023 employment injury.

FACTUAL HISTORY

On January 9, 2024 appellant, then a 59-year-old registered nurse, filed a traumatic injury claim (Form CA-1) alleging that on August 19, 2023 she injured her right shoulder and arm, neck, and back while in the performance of duty. She noted that she fell from a stretcher while being unloaded from an ambulance as a result of dizziness and mental fogginess following a COVID-19 vaccination. Appellant stopped work on the date of injury and returned to full-duty work, six hours per day, on September 25, 2023. OWCP accepted the claim for dizziness, giddiness, right shoulder joint dislocation, right shoulder sprain, and adverse effect of viral vaccination. It paid appellant compensation for partial disability on the supplemental rolls effective August 23, 2023.

In an October 8, 2024 medical report, Scott E. Clark, a physician assistant, noted that appellant related complaints of worsening pain in her neck and right shoulder, which she attributed to the August 19, 2023 employment injury. He indicated that she had been working full duty with a six-hour maximum per shift,[5] and that she experienced dizziness three times per week that resolved with use of medication. Mr. Clark performed a neurological examination, which was normal, and diagnosed dizziness secondary to COVID-19 vaccine. He released appellant to return to work five hours per day with no overnight shifts.

On October 9, 2024 appellant accepted a light-duty position with the employing establishment for five hours per day, three days per week. The duties of the position included charting, patient care, medication pass, chart audits, rounding, checking equipment, and floating

[2] The Board notes that there is a February 4, 2025 merit decision by an OWCP hearing representative affirming OWCP's denial of continuation of pay (COP), which is also within the Board's jurisdiction. As counsel did not appeal from the February 4, 2025 COP decision, the Board will not address the February 4, 2025 decision in this appeal. 20 C.F.R. § 501.3; *see E.B.,* Docket No. 24-0775 (issued September 27, 2024); *D.K.,* Docket No. 22-0111 (issued February 8, 2023); *E.R.,* Docket No. 20-1110 (issued December 23, 2020).

[3] 5 U.S.C. § 8101 *et seq*.

[4] The Board notes that, following the March 12, 2025 decision, OWCP received additional evidence. 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.*

[5] Prior to the August 19, 2023 employment injury, appellant worked three days per week, 12 hours per shift.

to other households. OWCP continued to pay appellant wage-loss compensation for partial disability on the supplemental rolls.

In a work capacity evaluation (Form OWCP-5c) dated October 15, 2024, Mr. Clark indicated that appellant could work five hours per shift, three days per week.

On October 18, 2024 appellant filed a claim for compensation (Form CA-7) for intermittent disability from work for the period October 6 through 19, 2024. In support thereof, she submitted a statement in which she claimed 50 hours of leave without pay (LWOP) to include 7 hours per day on October 7, 9, 11, 14, 16, and 17, 2024 and 8 hours on October 18, 2024 to attend a medical appointment.

For the period October 7 through 18, 2024, the employing establishment completed a time analysis form (Form CA-7a) dated October 18, 2024 reporting that appellant used LWOP for right arm pain and dizziness as follows: 1.5 hours on October 7, 2024; 4.5 hours on October 9, 2024; and 3 hours per day on October 11, 14, 16, 17, and 18, 2024, for a total of 21 hours.

In a development letter dated October 28, 2024, OWCP noted that it had received appellant's claim for compensation for time lost from work for the period October 6 through 19, 2024. It explained that her claim was not payable in its entirety but authorized payment for a total of 19.5 hours of LWOP for the period October 7 through 18, 2024. OWCP informed appellant that the evidence of record was insufficient to establish her claims for an additional 1.5 hours of disability on October 9, 2024.[6] It advised her of the type of medical evidence needed to establish her claim and afforded her 30 days to submit the necessary evidence.

In a medical report dated October 18, 2024, Hillary Paille, a nurse practitioner, noted that appellant requested an out-of-work note. She indicated that meclizine was no longer effective in controlling her dizziness and claimed that the employing establishment was not adhering to her work restrictions. Ms. Paille noted a prior history of anxiety and normal psychiatric examination findings. She diagnosed exacerbation of adverse effects from the COVID-19 vaccine, anxiety, and dizziness and indicated that she would provide an out-of-work note.

In a note also dated October 18, 2024, Dr. Lily Snyder, Board-certified in family medicine, indicated that appellant was "to remain out of work until further notice due to exacerbation of adverse reaction from COVID vaccine, which is a known diagnosis for this patient."

On October 29, 2024 appellant filed a notice of recurrence (Form CA-2a) for disability from work commencing October 18, 2024 causally related to the accepted August 19, 2023 employment injury. She indicated that she had not sustained any new injuries and was experiencing worsening adverse effects from COVID-19 vaccines and right shoulder pain with limited range of motion (ROM).

[6] The October 28, 2024 OWCP decision noted the additional 1.5 hours of disability was for October 9, 2024; however, this appears to be a typographical error as the Form CA-7a indicates that she claimed 1.5 hours on October 7, 2024.

In a recurrence claim development letter dated November 8, 2024, OWCP provided a definition of recurrence of disability and informed appellant of the deficiencies of her claim. It notified her of the additional evidence required and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the requested evidence.

In a medical report dated November 14, 2024, Dr. Kathleen L. Austin, an osteopathic family physician, indicated that appellant had been under her care since October 30, 2023 due to shoulder, neck, and back pain and dizziness following COVID-19 immunization. She noted that she was taken out of work on October 18, 2024 and should remain out of work "until further notice due to exacerbation of previously established symptoms related to adverse reaction from COVID vaccine."

In a November 27, 2024 response to OWCP's questionnaire, appellant indicated that her right shoulder symptoms returned in approximately August 2024, and her dizziness and mental fog had continued to worsen over time, including that meclizine was no longer effective.

OWCP also received physical therapy reports.

By decision dated December 13, 2024, OWCP denied appellant's claim for the remaining claimed intermittent disability from work of 1.5 hours during the period October 6 through 19, 2024, finding that the medical evidence of record was insufficient to establish causal relationship between the claimed disability and the accepted August 19, 2023 employment injury.

In a separate decision also dated December 13, 2024, OWCP denied appellant's recurrence claim, finding that she had not established disability from work commencing, October 18, 2024, due to a worsening of the accepted work-related conditions without intervening cause.

OWCP continued to receive evidence, including a January 29, 2025 medical report by Dr. Richard K. Hoy, a Board-certified orthopedic surgeon, who noted that appellant related complaints of right shoulder stiffness and pain, which she attributed to the August 19, 2023 employment injury. Dr. Hoy indicated that she had been diagnosed with lung cancer and was no longer working. He performed a physical examination where he observed mild right shoulder swelling, limited ROM due to pain, positive impingement signs with abduction and internal rotation, and pain in the neck. Dr. Hoy diagnosed separation of right acromioclavicular (AC) joint, cervical radiculopathy, and cervicalgia.

On February 7, 2025 appellant, through counsel, requested reconsideration of OWCP's December 13, 2024 decisions. In support thereof, she submitted a follow-up report dated February 3, 2025 by Mr. Clark, who indicated that she related improving pain in her neck and right shoulder, worsening dizziness, and that she was treating for an unrelated medical issue. Mr. Clark observed normal neurological examination findings and diagnosed dizziness secondary to COVID-19 vaccine. He recommended that appellant remain out of work until her next visit. In a work note of even date, Mr. Clark diagnosed dizziness secondary to COVID-19 vaccine and recommended that appellant remain out of work for the period February 3 through April 7, 2025. The February 3, 2025 medical report and work note were co-signed by Dr. Stephen Mawn, a Board-certified occupational medicine specialist.

By decision dated March 12, 2025, OWCP denied modification of the December 13, 2024 recurrence decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA 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.[7] 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.[8] Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.[9] 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.[10] 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.[11]

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.[12]

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.[13]

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[7] *S.F.*, Docket No. 20-0347 (issued March 31, 2023); *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009) *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] 20 C.F.R. § 10.5(f).

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

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

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

[12] *F.B.,* Docket No. 22-0679 (issued January 23, 2024); *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

[13] *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *Fereidoon Kharabi,* 52 ECAB 291, 293 (2001).

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish the remaining claimed intermittent disability from work of 1.5 hours for the period October 6 through 19, 2024 as causally related to her accepted August 19, 2023 employment injury.

In support of her claim for compensation, appellant submitted an October 8, 2024 medical report and an October 15, 2024 Form OWCP-5c by Mr. Clark, a physician assistant. The Board has held that certain healthcare providers such as nurses, physician assistants, and physical therapists are not considered physicians as defined under FECA and, therefore, are not competent to provide a medical opinion. Therefore, this evidence is of no probative value and is insufficient to establish appellant's disability claim.[14]

As the medical evidence of record is insufficient to establish the remaining claimed disability of 1.5 hours during the period October 6 through 19, 2024, as causally related to her accepted August 19, 2023 employment injury, the Board finds that appellant has not met her burden of proof.[15]

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.

LEGAL PRECEDENT -- ISSUE 2

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.[16] This term also means an inability to work because a light-duty assignment made

[14] Section 8101(2) of FECA provides that physician includes 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); *David P. Sawchuk,* 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA). *See also C.M.,* Docket No. 25-0408 (issued April 16, 2025) (physician assistants and nurse practitioners are not considered physicians as defined under FECA); *B.D.,* Docket No. 22-0503 (issued September 27, 2022) (nurse practitioners are not considered physicians as defined under FECA and their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits); *L.S.,* Docket No. 19-1231 (issued March 30, 2021) (a nurse practitioner is not considered a physician as defined under FECA); *V.R.,* Docket No. 19-0758 (issued March 16, 2021) (a physical therapist is not considered a physician under FECA); *C.K.,* Docket No. 19-1549 (issued June 30, 2020) (physical therapists are not considered physicians as defined under FECA).

[15] For a routine medical appointment, a maximum of four hours of compensation for time lost to obtain medical treatment is usually allowed. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.19c (February 2013); *see also K.A.,* Docket No. 19-0679 (issued April 6, 2020); *William A. Archer,* 55 ECAB 674 (2004).

[16] 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2b (June 2013); *J.D.*, Docket No. 18-1533 (issued February 27, 2019); *L.B.,* Docket No. 18-0533 (issued August 27, 2018).

specifically to accommodate an employee's physical limitations, and which is necessary because of a work-related injury or illness, is withdrawn or altered so that the assignment exceeds the employee's physical limitations. A recurrence does not occur when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force.[17]

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, based on a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.[18] Where no such rationale is present, the medical evidence is of diminished probative value.[19]

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability commencing October 18, 2024, causally related to her accepted August 19, 2023 employment injury.

In support of her recurrence claim, appellant submitted a medical report and out of work note dated February 3, 2025 by Mr. Clark, co-signed by Dr. Mawn, who diagnosed dizziness secondary to COVID-19 vaccine and recommended that appellant remain out of work. However, the February 3, 2025 report and work note do not provide an opinion regarding causal relationship between the claimed disability and the accepted employment injuries. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.[20] As such, the February 3, 2025 report and work note are insufficient to establish appellant's claim.

Appellant also submitted an October 18, 2024 note by Dr. Snyder who indicated that appellant was "to remain out of work until further notice due to exacerbation of adverse reaction from COVID vaccine, which is a known diagnosis for this patient." In a report dated November 14, 2024, Dr. Austin related that she was taken out of work on October 18, 2024 and should remain out of work "until further notice due to exacerbation of previously established symptoms related to adverse reaction from COVID vaccine." However, neither Dr. Snyder nor Dr. Austin provided a sufficiently rationalized opinion which explained how the claimed recurrence of disability commencing October 18, 2024 was physiologically caused by the accepted

[17] *Id.*

[18] *See J.D.,* Docket No. 18-0616 (issued January 11, 2019); *see C.C.,* Docket No. 18-0719 (issued November 9, 2018).

[19] *See M.T.,* Docket No. 25-0180 (issued January 25, 2025); *H.T.,* Docket No. 17-0209 (issued February 8, 2018).

[20] *T.H.,* Docket No. 23-0811 (issued February 13, 2024); *F.B.*, *supra* note 12; *Y.S.*, *supra* note 12; *see also L.B.*, *supra* note 16; *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

employment injury.[21] Medical evidence that provides a conclusion, but does not offer a rationalized medical explanation regarding the cause of an employee's condition, is of limited probative value.[22] As such, this evidence is insufficient to establish appellant's claim.

In a January 29, 2025 medical report, Dr. Hoy diagnosed separation of right AC joint, cervical radiculopathy, and cervicalgia due to the August 19, 2023 employment injury. He indicated that appellant had also been diagnosed with lung cancer and was no longer working. Dr. Hoy did not, however, indicate that appellant was totally disabled from work due to her August 19, 2023 employment injury, commencing October 18, 2024.[23] Accordingly, his report is of diminished probative value, and is insufficient to establish appellant's recurrence claim.

Appellant also submitted an October 18, 2024 medical report by Ms. Paille, a nurse practitioner and physical therapy records. As noted above, that certain healthcare providers such as nurses and physical therapists are not considered physicians as defined under FECA and, therefore, are not competent to provide a medical opinion. Therefore, this evidence is of no probative value and is insufficient to establish appellant's recurrence claim.[24]

As the medical evidence of record is insufficient to establish a recurrence of disability commencing October 18, 2024 causally related to the accepted August 19, 2023 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 the remaining claimed intermittent disability from work of 1.5 hours for the period October 6 through 19, 2024 as causally related to her accepted August 19, 2023 employment injury. The Board also finds that appellant has not met her burden of proof to establish a recurrence of disability commencing October 18, 2024, causally related to her accepted August 19, 2023 employment injury.

[21] *See M.B.,* Docket No. 25-0009 (issued December 18, 2024); *T.L.,* Docket No. 23-0073 (issued January 9, 2023); *V.D.,* Docket No. 20-0884 (issued February 12, 2021); *C.B.*, Docket No. 18-0400 (issued May 7, 2019); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[22] *See S.S.,* Docket No. 24-0814 (issued September 27, 2024); *C.T.,* Docket No. 22-0013 (issued November 22, 2022); *R.B.,* Docket No. 22-0173 (issued July 26, 2022).

[23] *C.B.*, *supra* note 21.

[24] *Supra* note 14.

ORDER

IT IS HEREBY ORDERED THAT the December 13, 2024 and March 12, 2025 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 7, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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