

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

L.R., Appellant)	
)	
and)	Docket No. 23-0508
)	Issued: January 13, 2026
U.S. POSTAL SERVICE, MAIN POST OFFICE, Providence, RI, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 28, 2023 appellant filed a timely appeal from a September 13, 2022 merit decision and February 15, 2023 nonmerit 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 to consider the merits of this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to expand the acceptance of her claim to include additional conditions causally related to her accepted December 8, 2020 employment injury; (2) whether appellant has met her burden of proof to establish disability from work commencing December 19, 2020, causally related to her accepted employment injury; and (3) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 22, 2021 appellant, then a 57-year-old mail handler assistant, filed a traumatic injury claim (Form CA-1) alleging that on December 8, 2020 she contracted COVID-19 while in the performance of duty. She explained that she worked in a warehouse where she was exposed to many people who had contracted COVID-19. Appellant stopped work on December 8, 2020.

On November 4, 2021 appellant filed a claim for compensation (Form CA-7) for disability from work from December 19, 2020 through November 5, 2021.

OWCP, by development letter dated November 12, 2021, informed appellant of the deficiencies in her claim and advised her of the type of evidence needed to establish her traumatic injury claim. It afforded her 30 days for a response.

A December 9, 2020 laboratory report indicated that appellant tested positive for COVID-19. A December 12, 2020 letter from appellant's state department of health confirmed that she had COVID-19.

OWCP received a November 10, 2021 attending physician's report (Form CA-20) by Dr. Fernando Calero Baquerizo, a Board-certified infectious disease specialist. Dr. Baquerizo noted a history of injury that on December 8, 2020 appellant was diagnosed as having COVID-19, and that she was currently suffering from disabling chronic fatigue and diarrhea. He diagnosed post-COVID-19 syndrome and diarrhea. Dr. Baquerizo checked a box marked "Yes" indicating that the diagnosed conditions were caused or aggravated by an employment activity. He advised that appellant was totally disabled commencing December 8, 2020. Dr. Baquerizo indicated that appellant was undergoing additional testing to determine her return-to-work date.

In an undated report, Dr. Baquerizo indicated that appellant was treated for long COVID.

In progress notes dated June 14, July 13, August 9, and September 7, 2021, a sick visit note dated July 29, 2021, and a December 6, 2021 letter, Molly Miller, a physician assistant, provided assessments of history of COVID-19; shortness of breath; long COVID; pharyngeal; urinary tract infection; acute otitis media, and unspecified otitis media type. In the December 6, 2021 letter, Ms. Miller noted that appellant's long COVID symptoms prevented her from completing her job duties.

In a sick visit note dated July 21, 2021, Dr. Rinchen T. Emgushov, an internist, indicated that appellant was screened for coronavirus and depression. He reported his physical examination findings. Dr. Emgushov provided assessments of recurrent acute suppurative otitis media of right ear without spontaneous rupture of tympanic membrane; and pharyngitis, unspecified etiology. In an addendum dated September 3, 2021, he noted that appellant had a positive screening for depression.

OWCP, by decision dated December 23, 2021, accepted appellant's claim for COVID-19.

In a development letter dated December 23, 2021, OWCP informed appellant of the deficiencies of her claim for compensation for disability from work commencing December 19,

2020 and continuing. It advised her of the type of medical evidence needed to establish her claim. Appellant was afforded 30 days to submit the necessary evidence.

Appellant submitted a January 14, 2022 letter from Dr. Baquerizo. Dr. Baquerizo noted that appellant had received treatment in his office for several months and had been diagnosed as having long COVID symptoms. He further noted that she continued to be treated in his office and by infectious disease specialists for her long COVID symptoms that had prevented her from completing her work duties. Dr. Baquerizo indicated that he did not have appellant's positive COVID-19 test results, but he reviewed a letter indicating that she had a positive COVID-19 test.

OWCP, by decision dated February 1, 2022, denied appellant's claim for compensation for disability from work commencing December 19, 2020. It found that the medical evidence of record was insufficient to establish disability from work during the claimed period due to her accepted December 8, 2020 employment injury.

On February 7, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP continued to receive medical evidence. A March 20, 2022 unsigned after-visit summary indicated that appellant was seen by Dr. Ned H. Gutman, a cardiologist, for COVID, pericardial effusion, other dysphagia, and chest pain on breathing.

In an April 7, 2022 letter, Dr. Baquerizo reiterated the history of his treatment of appellant's long COVID symptoms. He noted that she had gastrointestinal (GI) and cardiac complications which caused difficulty with swallowing, and frequent dizzy spells and palpitations. Dr. Baquerizo indicated that appellant's symptoms prevented her from returning to work.

By decision dated June 30, 2022, an OWCP hearing representative set aside the February 1, 2022 decision. The hearing representative remanded the case for OWCP to further develop the issue of whether the acceptance of appellant's claim should be expanded to include other conditions such as long COVID syndrome, and whether appellant had any disability for the period commencing December 19, 2020 due to her accepted condition.

Subsequently, appellant submitted additional medical evidence. In a January 8, 2021 chest x-ray report, Dr. Thomas Eggun, a Board-certified diagnostic radiologist, provided an impression of no acute cardiopulmonary abnormality and hyperventilated clear lungs.

In a December 27, 2021 report, Dr. Arthur Noel, Board-certified in diagnostic radiology and nuclear medicine, noted that he performed a barium swallow test that was unremarkable.

In a January 21, 2022 report, Dr. Marguerite Neill, Board-certified in infectious disease and internal medicine, noted a history of the December 8, 2020 employment injury and appellant's medical treatment. She discussed her examination findings, and reviewed laboratory and diagnostic test results. Dr. Neill provided assessments of abdominal pain and intermittent diarrhea; physical deconditioning; near syncope, anxiety; and need for COVID vaccination.

Dr. Gutman, in a July 15, 2022 report, noted that a transthoracic echocardiogram revealed normal biventricular sizes, wall thickness, diastolic function, valve structures, and Doppler flows;

and trace circumferential pericardial effusion without tamponade physiology. He reviewed images from a March 3, 2022 study and found no significant change.

In a July 19, 2022 letter, Helen Nguyen, a certified physician assistant, indicated that appellant had chronic symptoms of fatigue, abdominal pain, and difficulty with swallowing and more. She had undergone testing and still had continuing symptoms. Ms. Nguyen noted that appellant had requested light-duty work while undergoing additional testing.

Undated and unsigned notes provided that appellant had COVID-19 since December 2020 and continuing complaints of difficulty with swallowing and chest pains, and a history of GI cramps. The notes also provided an impression that based on appellant's history of COVID-19, it was possible that she had peri or myocarditis and residual inflammation.

On August 4, 2022 OWCP referred appellant, together with a statement of accepted facts (SOAF), the case record, and a series of questions, to Dr. Robert B. Swotinsky, Board-certified in occupational medicine, for a second opinion examination to determine the nature of her condition, extent of disability, and medical treatment recommendations, causally related to her December 8, 2020 employment injury.

In a September 8, 2022 report, Dr. Swotinsky noted that he examined appellant on September 7, 2022. He reviewed the SOAF and the medical record. Dr. Swotinsky reported appellant's normal findings on physical examination. He advised that appellant had subjective symptoms, which she described as long COVID symptoms. Dr. Swotinsky advised that examination findings of attending medical providers and his own examination findings were unremarkable and, thus, did not support the presence or severity of a diagnosis. He noted that some or all of appellant's symptoms may meet the long COVID case definition, which referred to timing and not cause. Dr. Swotinsky further maintained that appellant may have preexisting depression and anxiety based on her medical records, which could have caused her reported symptoms of fatigue, cognitive problems, and other nonspecific symptoms. Additionally, he noted that the diagnostic workup did not corroborate cardiac, gastroenterological, pulmonary, otolaryngological, or other medical problems due to the accepted condition. Dr. Swotinsky opined that appellant's reported symptoms for two months after her accepted COVID-19 condition met the case definition of long COVID, but that the term long COVID referred to timing and not to a diagnosis. He explained that there was no agreed upon diagnostic criteria for long COVID, no established mechanism of injury, and no consensus that long COVID is a diagnosis. Dr. Swotinsky advised that the medical record was too scant to determine whether the accepted condition aggravated or accelerated an underlying preexisting medical condition. He explained that he had little information regarding a preexisting condition as appellant's medical records, with the exception of a January 8, 2021 chest x-ray, did not start until June 2021. Dr. Swotinsky related that he needed to review additional records, particularly before December 2020, to provide an informed response. He also advised that the medical record was too scant to adequately address whether the accepted condition caused or contributed to appellant's disability commencing December 8, 2020. Dr. Swotinsky reasoned that in general, people are no longer infectious 5 to 10 days after testing positive for COVID-19, and, thus, they can return to work. As such, he opined that appellant was disabled from work commencing December 9, 2020, the day she tested positive for COVID-19, through December 18, 2020. Dr. Swotinsky concluded that there was no need for

further medical treatment. In a work capacity evaluation (Form OWCP-5c) dated September 7, 2022, he advised that appellant could perform her usual job with no restrictions.

OWCP, by *de novo* decision dated September 13, 2022, denied appellant's claim for disability commencing December 19, 2020, and denied expansion of the acceptance of the claim. It accorded the weight of the medical evidence to Dr. Swotinsky's September 8, 2022 report.

On February 10, 2023 appellant requested reconsideration. In support of the request, she submitted an undated progress note from Dr. Matthew J. Franco, Board-certified in cardiovascular disease. Dr. Franco related appellant's complaints of chest pain, associated nausea, and light-headed sensations. He advised that she may have a mild case of acute myocarditis, and despite ongoing and worsening symptoms of COVID that may be at issue, a treatment plan was discussed to find definitive evidence of significant ischemic disease which could cause wall motion. Dr. Franco also advised that a GI condition was an alternative diagnosis considering common GI complaints post-COVID.

By decision dated February 15, 2023, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUES 1 & 2

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.²

The medical evidence required to establish causal relationship between a specific condition, as well as any attendant disability claimed, and the employment injury, is rationalized medical opinion evidence.³ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.⁴ Additionally, the opinion of the physician must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the specific employment factor(s) identified by the claimant.⁵

When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent

² *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

³ *T.C.*, Docket No. 19-1043 (issued November 8, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

⁴ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁵ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

intervening cause attributable to the claimant's own intentional misconduct.⁶ Thus, a subsequent injury, be it an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.⁷

An employee seeking benefits under FECA⁸ 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.⁹ 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.¹⁰ 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.¹¹

Under FECA, the term disability means an incapacity because of an employment injury, to earn the wages the employee was receiving at the time of the injury.¹² When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.¹³

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.¹⁴ The opinion of the physician 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.¹⁵

⁶ *M.M.*, Docket No. 20-1557 (issued November 3, 2021); *I.S.*, Docket No. 19-1461 (issued April 30, 2020); *Charles W. Downey*, 54 ECAB 421 (2003).

⁷ *J.M.*, Docket No 19-1926 (issued March 19, 2021); *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n. 7 (2001).

⁸ *Supra* note 1.

⁹ See *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).

¹⁰ See *L.F.*, Docket No. 19-0324 (issued January 2, 2020); *T.L.*, Docket No. 18-0934 (issued May 8, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

¹¹ See 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

¹² *Id.* at § 10.5(f); see e.g., *G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

¹³ *G.T.*, *id.*; *Merle J. Marceau*, 53 ECAB 197 (2001).

¹⁴ See *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

¹⁵ *T.S.*, Docket Nos. 20-1177 and 20-1296 (issued May 28, 2021); *V.A.*, Docket No. 19-1123 (issued October 29, 2019).

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 their disability and entitlement to compensation.¹⁶

ANALYSIS -- ISSUES 1 & 2

The Board finds that this case is not in posture for decision.

In a September 8, 2022 report, Dr. Swotinsky noted that he examined appellant on September 7, 2022. He reviewed the SOAF and the medical record. Dr. Swotinsky reported appellant's normal findings on physical examination. With regard to the issue of expansion, he related that appellant had subjective symptoms which she described as long COVID symptoms and attributed the symptoms to her accepted COVID-19 condition. Dr. Swotinsky advised, however, that the medical record was too scant to determine whether the accepted condition aggravated or accelerated an underlying preexisting medical condition. He explained that he had little information regarding a preexisting condition as appellant's medical records, with the exception of a January 8, 2021 chest x-ray, did not start until June 2021. Dr. Swotinsky related that he needed to review additional records, particularly before December 2020, to provide an informed response. With regard to the issue of disability, he again advised that the medical record was too scant to adequately address whether the accepted condition caused or contributed to appellant's disability commencing December 8, 2020.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter.¹⁷ While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.¹⁸ Accordingly, once OWCP undertook development of the evidence by referring appellant to Dr. Swotinsky, it had an obligation to obtain a proper evaluation that sufficiently addresses the issues in this case.¹⁹

The case shall, therefore, be remanded for further development. On remand, OWCP shall refer appellant, along with a SOAF, and the case record to a new second opinion specialist in the appropriate field of medicine for a reasoned opinion on the issues of expansion and disability. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

¹⁶ *W.H.*, Docket No. 21-0139 (issued October 26, 2021); *Fereidoon Kharabi*, *supra* note 10.

¹⁷ See *B.W.*, Docket No. 21-0785 (issued September 1, 2022); *N.L.*, Docket No. 19-1592 (issued March 12, 2020); *M.T.*, Docket No. 19-0373 (issued August 22, 2019); *B.A.*, Docket No. 17-1360 (issued January 10, 2018).

¹⁸ *Id.*; see also *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹⁹ See *V.P.*, Docket No. 22-0706 (issued November 3, 2022); *E.M.*, Docket No. 20-1153 (issued August 4, 2022).

CONCLUSION

The Board finds that this case is not in posture for decision.²⁰

ORDER

IT IS HEREBY ORDERED THAT the September 13, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board. The February 15, 2023 decision of the Office of Workers' Compensation Programs is set aside as moot.

Issued: January 13, 2026
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

²⁰ In light of the Board's disposition of Issues 1 and 2, Issue 3 is rendered moot.