United States Department of Labor
Employees' Compensation Appeals Board

M.V., Appellant	)	
and	)	**Docket No. 18-1132**
	)	**Issued: September 16, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Kalamazoo, MI, Employer	)	

Appearances:
Stuart H. Deming, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 14, 2018 appellant, through counsel, filed a timely appeal from a December 8, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[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.

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that, following the December 8, 2017 decision, OWCP received additional evidence. 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 his burden of proof to establish a lumbar condition causally related to an accepted February 12, 2013 employment incident.

FACTUAL HISTORY

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

On March 2, 2013 appellant, then a 55-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on February 12, 2013 he sustained a back injury when he was picking up a tray of standard fliers and felt a pop in the middle of his back, while in the performance of duty. OWCP assigned the claim OWCP File No. xxxxxx968.[5]

By development letter dated March 18, 2013, OWCP advised appellant that further factual and medical evidence was necessary to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a March 28, 2013 response to OWCP's questionnaire, appellant indicated that, while at work on February 12, 2013, he was lifting a tray that weighed approximately 40 to 50 pounds, which caused injury to his back. He further indicated that the same injury occurred again at work on February 20, 2013.

In a March 12, 2013 treatment note, Dr. Fabi noted a history that, following appellant's lumbar fusion, appellant had returned to work, but recently felt something pop in his back while at work, and when he returned to work several days later, a similar incident happened. On physical examination he demonstrated normal lumbar range of motion with no tenderness, swelling, edema, pain, or spasm. FABER and straight leg raise tests were normal. Dr. Fabi reviewed a March 4, 2013 magnetic resonance imaging (MRI) scan, noting findings of postsurgical changes at L5-S1, but no evidence of adjacent spondylotic disease and no evidence of recurrent disc herniation. He diagnosed chronic and acute low back pain, and degenerative joint and degenerative disc disease of the lumbar spine.

By decision dated April 23, 2013, OWCP denied appellant's claim. It found that the February 12, 2013 incident occurred as alleged, but that he failed to submit any medical evidence

[4] Docket No. 15-1340 (issued April 1, 2016).

[5] Appellant has two prior claims before OWCP. Under OWCP File No. xxxxxx735, OWCP accepted a January 20, 2011 injury for lumbar sprain and displacement of lumbar intervertebral disc without myelopathy. Dr. Alain Y. Fabi, a Board-certified neurosurgeon, performed a lumbar fusion on February 24, 2012. OWCP paid appellant compensation on the periodic rolls and he returned to full-time full-duty work on November 24, 2012. OWCP File No. xxxxxx735 remains open for medical care. Under OWCP File No. xxxxxx609, OWCP accepted a January 26, 2000 back injury for low back strain and mild herniated disc at L5-S1. It terminated appellant's wage-loss compensation and medical benefits under that claim on August 29, 2000 as he no longer had residuals of the accepted conditions. OWCP administratively combined the three claims on July 16, 3013, with OWCP File No. xxxxxx735 serving as the master file.

containing a diagnosis in connection with this incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On May 17, 2013 appellant requested reconsideration and submitted additional medical evidence.[6] In a May 8, 2013 report, Dr. Fabi noted a normal lumbar spine examination. He further diagnosed low back pain radiating to the right leg and failed back syndrome of the lumbar spine.

Connie L. Harris, a nurse practitioner, provided treatment notes dated May 2 and June 4, 2013, wherein she noted appellant's complaint of low back pain, described physical examination findings, and diagnosed low back pain.

By decision dated July 17, 2013, OWCP denied appellant's request for reconsideration, finding the evidence submitted insufficient to warrant merit review.

On January 7, 2014 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

This included a May 9, 2013 treatment note in which Dr. Fabi included appellant's complaint of continued significant back pain. Lumbar examination was negative. Dr. Fabi advised that appellant had an aggravation of a preexisting condition, and in all likelihood a failed back syndrome. He reiterated his diagnoses and recommended additional treatment. Dr. Fabi noted seeing appellant on July 30, 2013 for radiating low back pain. In correspondence dated July 31, 2013, he reported that appellant had a successful recovery from the L5-S1 lumbar surgery and ultimately returned to work, but shortly thereafter sustained a recurrence of back pain on February 12, 2013 when lifting a container. Dr. Fabi reported that appellant had chronic back pain and a failed back syndrome.

In a May 14, 2013 report, Dr. Michael Chafty, Board-certified in anesthesiology and pain medicine, related that appellant's pain began on February 13, 2013 when he was lifting a container at work and had developed low back and right leg pain, worse with activity, especially lifting, and that appellant also reported that after his return to work in November 2012 following February 2012 lumbar surgery, by Christmas his back pain had progressively worsened, but became more severe in February 2013. He noted appellant's medical and surgical history and reviewed the March 2014 lumbar MRI scan. Physical examination demonstrated a stable lumbar spine with some very mild weakness in the L5-S1 distribution and some mild straight leg raising on the right. Dr. Chafty diagnosed low back syndrome, radiculopathy, post lumbar laminectomy syndrome, and myofascial pain.

Dr. Chafty provided treatment notes dated July 2 to November 20, 2013 describing appellant's pain management which included epidural steroid injections. He diagnosed thoracolumbar radiculopathy.

By decision dated January 13, 2014, OWCP again denied appellant's request for reconsideration. It found the evidence submitted insufficient to warrant merit review.

[6] Appellant also submitted a number claims for compensation (Form CA-7).

On April 25, 2014 appellant, through counsel, again requested reconsideration. Counsel maintained that OWCP had failed to properly consider the medical evidence submitted. He resubmitted medical reports previously of record and a February 25, 2013 emergency department report, completed by Dr. David Alan Hartman and Dr. Gary Paul Hurt, both Board-certified in emergency medicine. The report described a history of recurrent back pain that had been gradually worsening, and that appellant reported that he heard a "pop" at work and had not been able to work much over the past few weeks. Physical examination demonstrated lumbar tenderness and spasm. Chronic low back pain was diagnosed.

In an April 4, 2014 deposition, Dr. Chafty noted a history of appellant lifting a tray in February 2013 when a sudden onset of severe back pain radiated down his right leg and dropped him to his knees. He reported that appellant indicated that this pain mimicked pain he had before his back surgery, and that he had a second incident of severe back pain at work about a week later and had not returned to work since that time. Dr. Chafty described Dr. Fabi's treatment and his opinion that appellant had failed back syndrome and further noted that appellant had a functional capacity evaluation (FCE) which demonstrated that he could only perform light-duty work. He reported that he began treating appellant in May 2013 and diagnosed post lumbar laminectomy syndrome which, he believed, occurred when appellant lifted the mail tray in February 2013. Dr. Chafty reported that appellant continued to have radiating back pain and described appellant's pain management. He concluded that the two incidents at work in February 2013 caused a recurrence of symptoms which were not a natural progression of appellant's disease, but an aggravation or acceleration of his lumbar spine condition. Dr. Chafty also provided treatment notes dated February 7 to April 1, 2014. He additionally diagnosed post lumbar laminectomy syndrome and failed low back syndrome. Appellant underwent a dorsal column stimulator trial in March 2014 which was successful.

By decision dated February 11, 2015, OWCP denied appellant's reconsideration request, finding that it was untimely filed and failed to demonstrate clear evidence of error.

On May 28, 2015 appellant, through counsel, appealed to the Board.

On February 1, 2016 the Director of OWCP filed a motion to remand, requesting that the Board set aside the January 13, 2014 and February 11, 2015 OWCP decisions and remand the case to OWCP for specified further medical development.

By order dated April 1, 2016, the Board granted the Director's Motion to Remand. The Board remanded the case to OWCP for review of appellant's medical evidence to be followed by further development. After this, OWCP was to issue an appropriate merit decision to protect his appeal rights.[7]

Additional evidence of record included an FCE dated October 4, 2013, completed by a physical therapist, which indicated that appellant could perform work at a light physical demand level.

In correspondence dated December 2, 2013, received by OWCP on June 5, 2015 Dr. Chafty opined that it appeared to be very clear, per appellant, that he reinjured his back on

[7] *Supra* note 4.

February 12, 2013 and this caused low back pain that radiated into his right leg, which continued. He agreed that appellant could perform light-duty work and diagnosed low back syndrome, right lumbar radiculopathy, and post lumbar laminectomy syndrome. Dr. Chafty concluded that appellant's recurrent right leg pain was secondary to lifting a stack of letters at work on February 12, 2013.

In a report dated July 16, 2015, Dr. Martin James Buckingham, a Board-certified neurosurgeon, described appellant's medical and surgical history, noting that, shortly after his return to work, he had severe back pain and retired on disability. He described physical examination findings, reviewed a lumbar MRI scan, and indicated that appellant was possibly becoming symptomatic from the slip at L4-5 or, as a remote possibility, he could have a nonsolid fusion at L5-S1.[8] Dr. Buckingham noted that appellant was overweight and could possibly get significant relief of his symptoms if he could lose 50 to 75 pounds.

By report dated June 26, 2016, Dr. Fabi described his treatment of appellant since 2009, including the January 10, 2011 employment injury, which was followed by lumbar surgery in February 2012. He noted that appellant had an increase in back pain on February 12, 2013 that was a recurrence of his back pain reported in January 2011, opining that the recurrence was associated with residuals of his L5-S1 protrusion with failed back syndrome, specifically postlaminectomy syndrome, lumbago, aggravation of preexisting lumbar disc displacement, and chronic back pain. Dr. Fabi explained that, following a spinal fusion, the spine was stiffer, muscles are altered, and the adjacent facets had an added strain that left appellant prone to a recurrence of pain. He generally opined that the February 12, 2013 incident triggered an exacerbation of appellant's condition from the 2000 and 2011 injuries which led to appellant's current condition.

By decision dated October 6, 2016, OWCP denied appellant's traumatic injury claim. It reviewed the medical evidence of record including Dr. Fabi's July 31, 2013 and June 26, 2015 reports and found the evidence insufficient to establish causal relationship between his diagnosed condition and the February 12, 2013 employment incident.

Counsel requested reconsideration on September 13, 2017. He referenced appellant's prior employment-related back injuries and asserted that, as evidenced by Dr. Fabi's opinion, appellant's current lumbar condition was aggravated by the February 12, 2013 employment incident or was a consequence of the January 20, 2011 employment injury, adjudicated under OWCP File No. xxxxxx735. Counsel maintained that appellant had established a recurrence of disability due to failed back syndrome.

With the request for reconsideration, OWCP July 17, 2017 correspondence from Dr. Fabi which described appellant's job duties as a mail handler and his treatment history. Dr. Fabi opined that appellant certainly had a recurrence associated with residuals of his L5-S1 disc protrusion. He noted that appellant had the same symptoms of lumbosacral low back pain and spasms and

[8] A June 29, 2015 MRI scan of the lumbar spine demonstrated postsurgical changes, unchanged since a March 4, 2013 study. No central canal stenosis was present. X-rays of the thoracolumbar spine on July 16, 2015 x-rays of the thoracolumbar spine on July 16, 2015 demonstrated postsurgical changes, mild spinal curvature, minimal anterolisthesis of L4 upon L5, numerous wedged contiguous mid and lower thoracic vertebral bodies, likely chronic, resulting in increased kyphosis, multilevel thoracic and thoracolumbar disc height loss with endplate sclerosis and marginal osteophytes, and endplate osteophytes, and degenerative facet hypertrophy resulting in neural foraminal narrowing at L5-S1.

radicular pain radiating down both lower extremities before the surgical intervention and that these had returned. Dr. Fabi wrote that this was a natural progression from the protrusion at L5-S1 caused by employment injuries, that surgery to address the protrusion at LS-S1 was a natural progression, as was the failure of the surgery to relieve appellant's symptoms. He indicated that there was no intervening event outside of this progression that caused his current condition and opined that appellant had failed back or postlaminectomy syndrome, lumbago, and chronic back pain. Dr. Fabi noted that not all surgery was successful in providing pain relief, particularly back surgery, and defined failed back syndrome as directly related to a surgical procedure that failed to accomplish its objective in providing pain relief and was characterized by chronic pain following back surgery. He explained that the nature and type of appellant's pain symptoms was fully consistent with and directly related to the residuals of his L5-S1 protrusion and that, in addition, following the surgery, appellant's spine was stiffer, the muscles were altered, and there was added strain on the adjacent facet joint, which left appellant more prone to recurrence of pain. Dr. Fabi further opined that appellant's diagnosed conditions of postlaminectomy syndrome, lumbago, aggravation of preexisting lumbar disc displacement, and chronic low back pain "are causally related to the work incident in February 2012 whereby [appellant] felt a pop in his back after lifting a container weighing from 40 to 50 pounds," noting that it was very similar to the events that triggered the exacerbation of appellant's condition in 2000 and 2011. He related that, in each instance, the lifting prompted similar symptoms as well as aggravated and accelerated appellant's condition associated with the residuals of the protrusion at L5-S1. Dr. Fabi continued that, while appellant's symptoms may well have developed regardless of the events at work in February 2013, the progression towards a recurrence or, alternatively, the likelihood of a recurrence, was certainly accelerated if not aggravated by the February 2013 incident. He indicated that appellant was predisposed to having ongoing issues with his back and was not capable of returning to the physically demanding work of a mail handler.

In an August 18, 2017 statement, appellant noted that he had two incidents of shooting pain and lack of stability which caused him to drop to his knees. Counsel submitted a September 12, 2017 declaration in which he maintained that appellant was never offered a light-duty position. He also submitted physical therapy notes and copies of prior Board decisions.

By report dated October 6, 2017, Dr. Chafty noted that he last saw appellant in 2014. He noted appellant's past history and treatment and his continued complaint of constant, aching low back pain that radiated bilaterally into the feet. Physical examination findings included facet joint pain at L5-S1, worse with flexion, low back myofascial pain, and paraspinous muscle tenderness at L4-5 and L5-S1. Range of motion was limited. Dr. Chafty diagnosed postlaminectomy syndrome, lumbar radiculopathy, low back pain, and obesity. He indicated that weight loss was essential and recommended further pain management. In treatment notes dated October 9 and November 8, 2017, Dr. Chafty described appellant's pain management.

By decision dated December 8, 2017, OWCP denied modification of its October 6, 2016 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[9] has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation in claimed is causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[10]

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury.[11]

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[12] The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident.[13]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a lumbar condition causally related to the accepted February 12, 2013 employment incident.

The medical evidence most contemporaneous with the claimed February 12, 2013 employment injury was the February 25, 2013 emergency department report. Drs. Hartman and Hurt merely reported that appellant had a history of recurrent back pain that had gradually worsened, and since he heard a "pop" at work, he had not been able to work much. Physical examination demonstrated lumbar tenderness and spasm, and chronic low back pain was diagnosed. The report did not mention a specific February 12, 2013 employment incident.

Similarly, Dr. Fabi, who began treating appellant in 2009 and performed the February 2012 surgery, related on March 12, 2013 that appellant felt two pops at work that resulted in pain, one on February 12, 2013 and one a few weeks thereafter. Appellant's lumbar examination at that time was essentially normal. In a May 8, 2013 report, Dr. Fabi diagnosed radiating low back pain

[9] *Supra* note 2.

[10] *D.J.*, Docket No. 18-0620 (issued October 10, 2018).

[11] *K.L.*, Docket No. 18-1029 (issued January 9, 2019).

[12] *C.W.*, Docket No. 19-0231 (issued July 15, 2019).

[13] *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

and failed back syndrome, but did not mention the February 12, 2013 employment incident. On May 9, 2013 he advised that appellant had an aggravation of a preexisting condition, but did not mention any circumstances or mention a specific event. It was not until a report dated July 31, 2013 that Dr. Fabi reported that appellant had a recurrence of back pain on February 12, 2013 when lifting a container at work. The Board has held that to be of probative medical value a medical opinion must be based on a complete factual and medical background, and must provide medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment activity or incident.[14] As these reports did not provide a proper factual background regarding the accepted February 12, 2013 employment incident, they are insufficient to establish appellant's claim.

In a comprehensive report dated June 26, 2016, Dr. Fabi alluded to the fact that appellant's current back condition was a consequence of his January 10, 2011 employment injury. He noted that appellant's increase in back pain that occurred on February 12, 2013 was a recurrence of his back pain reported in January 2011, opining that the recurrence was associated with residuals of his L5-S1 protrusion with failed back syndrome, specifically postlaminectomy syndrome, lumbago, aggravation of preexisting lumbar disc displacement, and chronic back pain. Dr. Fabi explained that, following a spinal fusion, the spine was stiffer, muscles are altered, and the adjacent facets had an added strain that left appellant prone to a recurrence of pain. He advised that the 2013 incident triggered an exacerbation of appellant's condition from the 2000 and 2011 injuries which led to appellant's current condition.

Likewise, in a July 17, 2017 report, Dr. Fabi opined that appellant had a recurrence associated with residuals of his L5-S1 disc protrusion. He noted that appellant had the same symptoms of lumbosacral low back pain spasms and radicular pain radiating down both lower extremities before the February 2012 surgery and these symptoms had returned. Dr. Fabi indicated that this was a natural progression from the protrusion at L5-S1 caused by employment injuries, that surgery to address the protrusion at LS-S1 was a natural progression, as was the failure of the surgery to relieve him of his symptoms. He indicated that there was no intervening event outside of this progression that caused his current condition and opined that appellant had failed back or postlaminectomy syndrome, lumbago, and chronic back pain. Dr. Fabi further opined that appellant's diagnosed conditions of postlaminectomy syndrome, lumbago, aggravation of preexisting lumbar disc displacement, and chronic low back pain were causally related to the February 12, 2013 work incident because it prompted similar symptoms as well as aggravated and accelerated appellant's condition associated with the residuals of the protrusion at L5-S1. He continued that, while appellant's symptoms may well have developed regardless of the events at work in February 2013, the progression towards a recurrence or, alternatively, the likelihood of a recurrence, was certainly accelerated if not aggravated by the February 2013 incident. Dr. Fabi did not clarify his opinion that appellant's condition was both a natural progression and caused by the February 12, 2013 employment incident, or explain the mechanism of how lifting on February 12, 2013 aggravated and accelerated appellant's prior lumbar condition.

Medical rationale is especially important in a case such as this wherein, as reported by Dr. Fabi, appellant had a previous January 20, 2011 back injury that required surgery. The Board has explained that if a preexisting condition involving the same part of the body is present and the

[14] *A.M.*, Docket No. 16-1091 (issued November 10, 2016).

issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the preexisting condition and the current employment incident.[15] Dr. Fabi's reports are, therefore, of limited probative value as he provided an inadequate and contradictory explanation regarding the cause of appellant's current lumbar condition.[16]

Dr. Chafty began pain management in May 2013. He reported a history that appellant had undergone lumbar surgery in February 2012, returned to work in November 2012, and that by Christmas 2012 appellant's back pain had progressively worsened and became more severe on February 13, 2013 when he was lifting a container at work. Dr. Chafty diagnosed thoracolumbar radiculopathy. In an April 4, 2014 deposition, he noted that appellant had two events of severe pain at work in February 2013 and opined that these two incidents caused a recurrence of symptoms that was not a natural progression of appellant's disease, but an aggravation or acceleration of his lumbar condition. Dr. Chafty reiterated this opinion on December 2, 2013.

While Dr. Chafty diagnosed post lumbar laminectomy syndrome caused by lifting mail trays in February 2013, he included no explanation of the mechanics of how these incidents aggravated or accelerated appellant's lumbar condition as opposed to a natural progression due to the January 10, 2011 employment injury and February 2012 surgery, especially in light of the contradictory history appellant provided in May 2013, that his pain had increased by Christmas 2012, and Dr. Chafty's diagnosis of postlaminectomy syndrome.[17] His report is, therefore, of insufficient rationale to establish a February 12, 2013 employment injury.[18]

Dr. Buckingham, in a report dated July 16, 2015, noted appellant's medical and surgical history and that, within a short time of appellant's return to work, he had severe back pain. He, however, did not reference the February 12, 2013 employment incident or specifically provide a cause of appellant's lumbar condition. As Dr. Buckingham provided no opinion on causal relationship, his report is of no probative value on this issue.[19]

Several MRI scans and x-ray studies of the lumbar spine were also submitted. The Board has held that diagnostic studies lack probative value as they do not address whether the employment incident caused any diagnosed conditions.[20]

Appellant also submitted reports signed solely by Ms. Harris, a nurse practitioner, and an FCE signed by a physical therapist. These reports do not constitute competent medical evidence because neither a nurse practitioner nor a physical therapist is considered a "physician" as defined

[15] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *See R.D.*, Docket No. 18-1551 (issued March 1, 2019).

[16] *See P.D.*, Docket No. 18-1461 (issued July 2, 2019).

[17] *See L.D.*, Docket No. 19-0263 (issued June 19, 2019).

[18] *K.G.*, Docket No. 18-1691 (issued May 1, 2019).

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

[20] *Id*.

under FECA.[21] Consequently, the medical findings and/or opinions of a nurse practitioner or physical therapist will not suffice for purposes of establishing entitlement to compensation benefits.[22]

As the record lacks rationalized medical evidence establishing causal relationship between the February 12, 2013 employment incident and appellant's diagnosed lumbar condition, the Board finds that he has not met his burden of proof.[23]

On appeal counsel maintains that appellant's current lumbar condition is due to both a natural consequence of the accepted protrusion at L5-S1 and was also caused by the February 12, 2013 employment incident. As explained above, the evidence of record does not contain sufficient rationale to establish appellant's traumatic injury claim.

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 his burden of proof to establish a lumbar condition causally related to the accepted February 12, 2013 employment incident.

[21] *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (neither a nurse practitioner nor a physical therapist is a physician under FECA); *see David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. *Supra* note 17 at Chapter 2.805.3a (January 2013). Under FECA the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law. 5 U.S.C. § 8101(2).

[22] *Id.*

[23] *Supra* note 18.

ORDER

IT IS HEREBY ORDERED THAT the December 8, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 16, 2019
Washington, DC

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

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

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