

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

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C.C., Appellant )

and )

DEPARTMENT OF JUSTICE, FEDERAL )  
BUREAU OF INVESTIGATION, Las Vegas, NV, )  
Employer )  
\_\_\_\_\_ )

**Docket No. 22-0198  
Issued: July 7, 2022**

*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  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On November 19, 2021 appellant filed a timely appeal from a September 24, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has established a medical condition causally related to the accepted July 26, 2021 employment incident.

**FACTUAL HISTORY**

On July 30, 2021 appellant, then a 54-year-old criminal investigator, filed a traumatic injury claim (Form CA-1) alleging that on July 26, 2021 he sustained an injury to his lower back

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

when training for an employing establishment physical fitness test while in the performance of duty. He reported that he was jogging, sprinting, and doing various plyometrics on the outdoor track when he felt a sharp pain in his lower back, his back locked up, and he experienced a back strain or spasm. On the reverse side of the claim form appellant's supervisor acknowledged that appellant was injured while in the performance of duty.

In a development letter dated August 25, 2021, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed. OWCP afforded appellant 30 days to respond.

Appellant subsequently submitted a July 28, 2021 report from Dr. Brian Spencer Eaton, a chiropractor, relating appellant's history of lumbar pain beginning on July 21, 2021, attributable to overarching or reaching while exercising. Dr. Eaton noted pain and tenderness in the upper lumbar, lower lumbar, lumbosacral, and sacral spine and observed reduced range of motion in the lumbar spine and reduced thoracic flexion and extension. He diagnosed spinal restriction/subluxation at C1, C5, T5, T12, L5, left sacrum, and right pelvis, with findings on examination of severe muscle spasms in the left lumbar, lumbar, right lumbar, left sacroiliac, right sacroiliac, left pelvic, right pelvic, left buttock, and right buttock areas. Dr. Eaton performed spinal manipulation and mechanical traction. In a July 29, 2021 report, he diagnosed spinal restriction/subluxation at C1, C7, T5, T12, L5, left sacrum, and right pelvis, with findings on examination of severe muscle spasms in the left lumbar, lumbar, right lumbar, left sacroiliac, right sacroiliac, left pelvic, right pelvic, left buttock, and right buttock areas. Dr. Eaton again treated appellant with spinal manipulation and mechanical traction.

In a July 30, 2021 medical note, Dr. Jeaniene Talley, a Board-certified family practitioner, related that appellant experienced severe low back pain with back lockup while sprinting and doing plyometrics on July 26, 2021. Her examination revealed antalgic gait due to evident back pain and right lumbar paraspinal musculature with trigger points. Dr. Talley diagnosed low back pain and advised appellant to rest, avoid strenuous activity, and continue with his chiropractor.

Chiropractic reports from Dr. Eaton dated August 2, 6, and 12, 2021 documented his treatment of appellant's spinal subluxations with spinal manipulation and mechanical traction.

An August 13, 2021 report from Dr. Michael Trainor, a Board-certified orthopedist, related that appellant was injured at work while training for a fitness test on July 26, 2021 and experienced constant lumbar pain since then. Dr. Trainor's lumbar examination revealed tenderness to the thoracic, lumbar, gluteals, sacrum, sacroiliac joint, and trochanter, mild muscle spasm, decreased bilateral L5 sensation in the foot, ankle, and lower leg, and bilateral leg pain to foot with straight leg raise. He reviewed lumbar spine x-rays taken that day, which demonstrated moderate spondylosis, degenerative disc disease at L4-5 and L5-S1, grade 1 L4 on L5 anterolisthesis without instability, and multilevel foraminal stenosis. Dr. Trainor diagnosed low back pain, moderate lumbar spondylosis, moderate L4-5 and L5-S1 degenerative disc disease, and L4 on L5 anterolisthesis low grade 1 with stability. He noted that the low back pain, degenerative disc disease, and anterolisthesis arose following the accepted July 26, 2021 employment incident and that the lumbar spondylosis was aggravated by the employment incident. Dr. Trainor advised that appellant could resume progressive activities without restrictions and should continue his conservative management of chiropractic treatments, anti-inflammatories, and a muscle relaxant.

Appellant received additional chiropractic treatment for spinal subluxations from Dr. Eaton on August 18 and 24, and September 13, 2021.

By decision dated September 24, 2021, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that his medical condition was causally related to the accepted July 26, 2021 employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> 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 period of FECA,<sup>3</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup> 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.<sup>5</sup>

To determine whether 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. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.<sup>6</sup> The second component is whether the employment incident caused a personal injury.<sup>7</sup>

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the

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<sup>2</sup> *Supra* note 1.

<sup>3</sup> *S.S.*, Docket No. 19-1815 (issued June 26, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *S.A.*, Docket No. 19-1221 (issued June 9, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>6</sup> *R.K.*, Docket No. 19-0904 (issued April 10, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> *Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted July 26, 2021 employment incident.

In a July 30, 2021 medical note, Dr. Talley related that appellant experienced severe low back pain with back lockup while sprinting and doing plyometrics on July 26, 2021. She diagnosed low back pain. Similarly, in his August 13, 2021 report, Dr. Trainor related that appellant was injured at work while training for a fitness test on July 26, 2021. He diagnosed acute low back pain, moderate lumbar spondylosis, moderate L4-5 and L5-S1 degenerative disc disease, and L4 on L5 anterolisthesis low grade 1 with stability. Dr. Trainor noted that the low back pain, degenerative disc disease, and anterolisthesis arose following the accepted July 26, 2021 employment incident and that the lumbar spondylosis was aggravated by the employment incident. While both Dr. Talley and Dr. Trainor provided affirmative opinions suggestive of causal relationship, neither offered medical rationale sufficient to explain how appellant's employment duties resulted in or contributed to his diagnosed condition. Without explaining how appellant's employment duties caused or aggravated his condition, these reports are of limited probative value and are insufficient to meet appellant's burden of proof.<sup>10</sup>

The record contains multiple reports from Dr. Eaton, a chiropractor, dated between July 28 and September 13, 2021 diagnosing various spinal subluxations and muscle spasms. Chiropractors, however, are only considered physicians for purposes of FECA if they diagnose spinal subluxation based upon x-ray evidence.<sup>11</sup> Though appellant underwent lumbar spine x-rays on August 13, 2021, which were reviewed by Dr. Trainor, Dr. Eaton did not indicate that he obtained or reviewed those x-rays or any others prior to diagnosing spinal subluxations. The Board finds that most of Dr. Eaton's reports diagnosing spinal subluxations predate the August 13, 2021 x-rays. Therefore, his reports are of no probative value and are insufficient to establish the claim.

As appellant has not submitted rationalized medical evidence establishing that his diagnosed medical condition is causally related to the accepted factors of his federal employment, the Board finds that he has not met his burden of proof to establish his claim.

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<sup>9</sup> *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>10</sup> *See A.P.*, Docket No. 19-0224 (issued July 11, 2019).

<sup>11</sup> Section 8101(2) of FECA provides that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulations by the Secretary. 5 U.S.C. § 8101(2); *K.W.*, Docket No. 20-0230 (issued May 21, 2021); *J.D.*, Docket No. 19-1953 (issued January 11, 2021); *George E. Williams*, 44 ECAB 530 (1993).

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 medical condition causally related to the accepted July 26, 2021 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 24, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 7, 2022  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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