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**F.C., Appellant** )  
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**and** ) **Docket No. 21-1420**  
 ) **Issued: June 29, 2022**  
**DEPARTMENT OF THE AIR FORCE, TINKER** )  
**AIR FORCE BASE, OK, Employer** )  
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*Christopher L. Kannady, Esq.*, for the appellant<sup>1</sup>  
*Office of Solicitor*, for the Director

## DECISION AND ORDER

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

## JURISDICTION

On September 27, 2021 appellant, through counsel, filed a timely appeal from an April 2, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

<sup>1</sup> 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 an 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that appellant submitted additional evidence on appeal. 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 the accepted June 24, 2014 employment incident.

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>4</sup> The facts and circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On July 24, 2014 appellant, then a 51-year-old aircraft engine mechanical work inspector, filed an occupational disease claim (Form CA-2) alleging that he was performing a two-man lift with a ladder when his back began to hurt, and he had back spasms. He explained that he was lifting above his head over the side of a ladder as a coworker was lifting from the ground. Appellant finished his shift, was off work for two weeks, and missed work intermittently thereafter. He noted that he first became aware of his condition on June 24, 2014 and realized its relation to his federal employment on June 26, 2014.

In a report dated July 21, 2014, Dr. W.J. Choe, Board-certified in internal medicine, related that appellant had a work-related injury causing persistent back pain. He recommended that appellant undergo a magnetic resonance imaging (MRI) scan.

By decision dated November 21, 2014, OWCP denied appellant's claim. It found that the evidence submitted was insufficient to establish that the injury or events occurred as described, and that appellant had not submitted any medical evidence containing a medical diagnosis in connection with the alleged event.

On December 3, 2014 counsel requested a hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on August 6, 2015. During the hearing, appellant clarified that he was claiming a traumatic injury.

By decision dated October 8, 2015, an OWCP hearing representative modified the November 21, 2014 decision to find that appellant had established that the June 24, 2014 incident occurred as alleged; however, the claim remained denied as the medical evidence of record was insufficient to establish causal relationship between the diagnosed medical conditions and the accepted June 24, 2014 employment incident.

On March 3, 2016 appellant, through counsel, timely appealed to the Board. By decision dated November 21, 2016, the Board affirmed the October 8, 2015 decision, finding that the medical evidence of record was insufficient to establish that his diagnosed lumbar conditions were causally related to the June 24, 2014 employment incident.<sup>5</sup>

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<sup>4</sup> Docket No. 19-1267 (issued December 20, 2019); Docket No. 16-0743 (issued November 21, 2016).

<sup>5</sup> Docket No. 16-0743 (issued November 21, 2016).

On February 13, 2017 appellant, through counsel, requested reconsideration and submitted additional evidence.

In an October 21, 2015 report, Dr. Qualls Stevens, an osteopathic physician Board-certified in neurosurgery, noted that appellant initially was seen in March 2015, when he presented for a work-related accident that had occurred in June 2014. He related that appellant was “working on an airplane engine when he felt a pop in his back.” Dr. Stevens noted that, since the work incident, appellant was plagued with back pain and radiating pain in both lower extremities. He also noted that appellant underwent an anterior and posterior lumbar fusion on April 27, 2015, but still had ongoing chronic pain. Dr. Stevens opined that the need for treatment and surgery were the result of the work-related injury.

By decision dated February 23, 2018, OWCP denied modification of its prior decision.

On December 26, 2018 appellant requested reconsideration.

OWCP continued to receive medical evidence. In a report dated June 28, 2018, Dr. M. Stephen Wilson, an orthopedic surgeon, noted appellant’s history of injury, including the June 24, 2014 work incident and a prior injury at work in December 2008. He examined appellant and noted physical examination findings, which included lumbar muscle spasms (palpable in the bilateral paraspinal musculature from L1 through S1), restricted range of motion, weakness, decreased sensation, decreased two-point discrimination with testing in the L5 nerve distribution of the right lower extremity, and positive straight leg raising. Dr. Wilson diagnosed other intervertebral disc displacement, lumbosacral region; other intervertebral disc displacement, lumbosacral region, with radiculopathy; lumbar radiculopathy; and status post anterior and posterior lumbar fusion at L4-5.

With regard to appellant’s December 2008 injury to his lumbar spine, Dr. Wilson noted that this resulted in a bulging disc at L4-5, appellant was provided with medications, was off work for a short period of time, and returned to full-time work without restrictions. He opined that the injury on June 24, 2014 caused a significant increase in appellant’s back pain along with bilateral lower extremity radicular symptoms, not previously present. Dr. Wilson opined, “[t]herefore, in my medical opinion, based upon a reasonable degree of medical certainty, the sole and major cause of the significant and identifiable injury and need for treatment to the lumbar spine is directly related to the event that he was involved in on June 24, 2014, while at work.”

By decision dated March 20, 2019, OWCP denied modification of the February 23, 2018 decision.

On May 20, 2019 appellant, through counsel, filed a timely appeal to the Board from the March 20, 2019 merit decision. By decision dated December 20, 2019, the Board affirmed the March 20, 2019 decision, finding that the medical evidence of record was insufficient to establish a lumbar condition causally related to the accepted June 24, 2014 employment incident. The Board noted that Dr. Wilson, in his June 28, 2018 report, opined that the June 24, 2014 employment incident caused a significant increase in appellant’s back pain, along with bilateral lower extremity radicular symptoms, which were not present prior to the incident. However, the Board explained

that his opinion was conclusory in nature and failed to provide the necessary medical rationale to explain, physiologically, how the employment incident caused the diagnosed conditions.<sup>6</sup>

On December 18, 2020 appellant, through counsel, requested reconsideration and submitted additional evidence.

In a December 17, 2020 report, Dr. Wilson noted that he had reevaluated appellant regarding the injury he sustained to his lumbar spine as the result of his work-related duties. He related the history of injury and treatment, which included the fact that appellant was lifting a hydraulic bundle weighing upwards of 375 pounds, when he developed a sharp pain in the lumbar spine. Dr. Wilson further related that appellant was performing a two-man lift with a hydraulic system and was the man on top of a ladder with a large bucket that he had to balance on. He explained that his employer had previously taken away the ladders without these large buckets because they did not have the right counterbalances. Dr. Wilson explained that appellant had to stand on his toes and reach out to line the candidate up while his coworker was on the ground lining up another candidate. He explained that appellant was up in the air tilting out and then looking over and down onto the engine. Dr. Wilson related that, as appellant was bending over and away while balancing on the small edge of the bucket on the ladder, he hurt his back and informed his coworker; however, he finished the job. He related that appellant explained that the next day, he was barely able to get out of bed and had to call in sick, and that after using heating pads, and his home whirlpool, the symptoms did not improve, and appellant developed severe back pain and radiculopathy.

Dr. Wilson also noted appellant's history of treatment and his prior work injury to the lumbar spine in 2008, indicating that in 2008, appellant "twinged" his lower back and sustained a bulging disc at L4-5. He indicated that appellant made a substantial recovery from the 2008 injury and returned to full-time work without restrictions and only minimal recurring symptoms. Dr. Wilson explained that the work incident on June 24, 2014 caused a significant increase in appellant's back pain with bilateral lower extremity radicular symptoms which were not present prior to the June 24, 2014 work incident. He explained that the mechanism of injury was consistent with appellant's work-related duties and that not having proper equipment and having to improvise would result in more injuries.

By decision dated April 2, 2021, OWCP denied modification of the December 20, 2019 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>7</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 of FECA,<sup>8</sup> that an injury was sustained in the performance of duty as alleged, and

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<sup>6</sup> Docket No. 19-1267 (issued December 20, 2019).

<sup>7</sup> 20 C.F.R. § 10.607(a).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (February 2016).

that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>9</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>10</sup>

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.<sup>11</sup> 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>12</sup> The second component is whether the employment incident caused a personal injury.<sup>13</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>14</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment incident must be based on a complete factual and medical background.<sup>15</sup> Additionally, the physician's opinion 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 appellant's specific employment factor(s).<sup>16</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that his diagnosed lumbar conditions were causally related to the accepted June 24, 2014 employment incident.

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence that appellant submitted prior to the issuance of OWCP's March 20, 2019 merit decision because the Board considered that evidence in its December 20, 2019 decision. Findings made in prior Board decisions are *res judicata*, absent any further review by OWCP, under section 8128 of FECA.<sup>17</sup>

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<sup>9</sup> *G.G.*, Docket No. 18-1072 (issued January 7, 2019); *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

<sup>10</sup> *See* 20 C.F.R. § 10.607(b); *M.H.*, Docket No. 18-0623 (issued October 4 2018); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

<sup>11</sup> *L.C.*, Docket No. 18-1407 (issued February 14, 2019); *M.L.*, Docket No. 09-0956 (issued April 15, 2010). *See also* 20 C.F.R. § 10.607(b); *supra* note 8 at Chapter 2.1602.5 (February 2016).

<sup>12</sup> *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>13</sup> *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 8 at Chapter 2.1602.5(a) (February 2016).

<sup>14</sup> 20 C.F.R. § 10.607(a); *see J.W.*, *supra* note 12; *Alberta Dukes*, 56 ECAB 247 (2005).

<sup>15</sup> *Supra* note 8 at Chapter 2.1602.4 (February 2016); *Veletta C. Coleman*, 48 ECAB 367, 370 (1997).

<sup>16</sup> 20 C.F.R. § 10.607(b); *see Debra McDavid*, 57 ECAB 149 (2005).

<sup>17</sup> *J.T.*, Docket No. 18-1757 (issued April 19, 2019).

In support of his claim, appellant submitted a new report from Dr. Wilson dated December 17, 2020. In this report, Dr. Wilson noted that, in 2008, appellant “twinged” his lower back and sustained a bulging disc at L4-5. He related that appellant recovered from the 2008 injury and returned to full-time work without restrictions and only minimal recurring symptoms. Dr. Wilson opined that the accepted June 24, 2014 employment incident caused a significant increase in appellant’s back pain with bilateral lower extremity radicular symptoms, which were not present prior to the June 24, 2014 work incident. However, the Board has held that an opinion that a condition is causally related to an employment incident simply because the employee was asymptomatic before the injury, is insufficient, without adequate rationale, to establish causal relationship.<sup>18</sup> Medical opinion evidence must offer a rationalized explanation of how the specific employment incident or work factors, physiologically caused injury.<sup>19</sup> The Board finds that this report is, therefore, insufficient to establish appellant’s claim.

As the medical evidence of record is insufficient to establish that appellant’s diagnosed lumbar conditions were causally related to the accepted June 24, 2014 employment incident, the Board finds that appellant has not met his 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 his burden of proof to establish that his diagnosed lumbar conditions were causally related to the accepted June 24, 2014 employment incident.

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<sup>18</sup> See *D.V.*, Docket No. 21-1259 (issued March 15, 2022); *S.D.*, Docket No. 20-1255 (issued February 3, 2021); *F.H.*, Docket No. 18-1238 (issued January 18, 2019).

<sup>19</sup> See *G.R.*, Docket No. 21-1196 (issued March 16, 2022); *K.J.*, Docket No. 21-0020 (issued October 22, 2021); *L.R.*, Docket No. 16-0736 (issued September 2, 2016); *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 2, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 29, 2022  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

A handwritten signature in cursive script, appearing to read "J. D. McGinley", written in dark ink.

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