



L5-S1 level pinching the S1 nerve root when rerunning in full gear on a rocky dirt road with loose gravel while in the performance of duty. He indicated that he was participating in training as part of his physical fitness program. Appellant did not stop work.

In a report dated November 23, 2022, Dr. Philip Balikian, a Board-certified orthopedic surgeon, noted that appellant was seen for complaints of lumbar spine pain. He indicated that the onset of injury occurred one year prior, due to “lifting a heavy object.” On examination of the lumbar spine, Dr. Balikian observed tenderness on the right sciatic notch and no muscle spasm. Seated straight leg raise testing on the right demonstrated pain below the knee. Dr. Balikian reported that range of motion testing was normal. He diagnosed spinal stenosis of the lumbar region and chronic right-sided low back pain with right-sided sciatica.

A lumbar magnetic resonance imaging (MRI) scan dated December 2, 2022 by Dr. Bassem A. Georgy, a Board-certified interventional radiologist, showed right paracentral disc herniation causing moderate narrowing of the central canal and impinging over the S1 nerve root, and moderate narrowing of the right neural foramen.

In a report dated December 8, 2022, Dr. Balikian indicated that appellant was seen for follow up of musculoskeletal lumbar spine pain for the past six weeks. He reported lumbar examination findings of tenderness on the right sciatic notch and pain with seated straight leg raise testing on the right. Dr. Balikian diagnosed spinal stenosis of the lumbar region with neurogenic claudication.

In reports dated January 6 and 23 and February 6, 2023, Dr. Arian Nasiri, a diagnostic radiologist, Dr. Justin Gooding, a vascular and interventional radiologist, and Dr. Charles McGraw, Jr., a Board-certified diagnostic and vascular and interventional radiologist, respectively, indicated that appellant received intra-articular injections to treat his diagnosed conditions of lumbar radiculopathy involving the right lower extremity and lumbar spinal stenosis with neurogenic claudication.

In an April 3, 2023 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. By separate development letter of even date, OWCP requested additional information from the employing establishment, including details about appellant’s participation in the physical fitness program. It afforded both parties 60 days to respond.

OWCP received a copy of a trail map, which showed that on October 18, 2021 at 8:37 a.m., appellant ran five miles.

In a July 23, 2021 memorandum to the employing establishment, appellant requested 16 hours of administrative leave in order to participate in the Tactical Games at the Ben Avery Shooting Facility on October 23 and 24, 2021. He explained that the Tactical Games event was a sanctioned competition involving fitness and shooting challenges while wearing a full gun belt, body armor, and carrying a rifle and pistol. Appellant contended that the event was directly related to the skills necessary to be a border patrol agent, and that his participation would improve his

skills as a law enforcement officer. Appellant's request was approved by J.A. on September 14, 2021.

In an April 12, 2023 statement, appellant explained that, after his request was approved, he began to use his allotted on-duty physical fitness time for training. He further described the nature of his claimed October 18, 2021 employment injury and medical treatment.

OWCP also received reports dated November 8, 2021 through February 27, 2023 from a provider with an illegible signature.

In a letter dated May 2, 2023, OWCP requested that the employing establishment respond to OWCP's April 3, 2023 development letter.

In a letter dated May 11, 2023, an employing establishment supervisor, explained that records indicated that appellant was on duty on the date of his injury. He indicated that the employing establishment allowed agents to perform physical fitness activities during work hours as part of the agency-wide physical fitness program. The supervisor reported that agents who are enrolled in the fitness program were given the opportunity to perform physical activities for an hour a day and five times a week. He included a list of approved activities, which included cardiorespiratory endurance, muscular strength, and endurance and flexibility activities.

In a statement dated May 11, 2023, appellant indicated that he had reviewed Dr. Balikian's November 23, 2022 report, and noted some inaccuracies in the section for History of Present Illness. He related that Dr. Balikian incorrectly noted that his injury on October 18, 2021 occurred during a lifting competition at work when he had informed Dr. Balikian that his training for the Tactical Games competition involved a mix of marksmanship and physical fitness, which included some weightlifting. Appellant explained that his training for the Tactical Games included some weightlifting, but this was not the cause of his injury on that date. He noted the medical treatment he received following his alleged injury.

By decision dated June 13, 2023, OWCP accepted that the October 18, 2021 employment incident occurred as alleged and that a lumbar condition was diagnosed; however, it denied his claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed condition and the accepted employment incident. Consequently, it found that the requirements had not been met to establish an injury as defined by FECA.

### **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 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>3</sup> that an injury was sustained in the performance of duty, as alleged, and that

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<sup>2</sup> *Id.*

<sup>3</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 a federal employee has sustained a traumatic injury in the performance of duty, OWCP must first determine whether fact of injury has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.<sup>6</sup>

To establish causal relationship between a diagnosed condition, as well as any attendant disability claimed, and the accepted employment incident, the employee must submit rationalized medical opinion evidence.<sup>7</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 nature of the relationship between the diagnosed condition and the specific employment incident identified by the employee.<sup>8</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a lumbar condition causally related to the accepted October 18, 2021 employment incident.

In support of his claim, appellant submitted reports dated November 23 and December 8, 2022, wherein Dr. Balikian recounted appellant's complaints of lumbar spine pain. Dr. Balikian also described that the injury occurred one year ago and noted that it occurred when "lifting a heavy object." He provided examination findings and diagnosed spinal stenosis of the lumbar region and chronic right-sided low back pain with right-sided sciatica. The Board finds that these reports are of limited probative value, as Dr. Balikian provided an inaccurate history of injury. Dr. Balikian's reports, therefore, are insufficient to establish appellant's claim.

Appellant also submitted reports from Drs. Nasiri, Gooding, and McGraw, which addressed his lumbar conditions and medical treatment. None of these reports, however, provided

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<sup>4</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>6</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>7</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *see also Robert G. Morris*, 48 ECAB 238 (1996).

<sup>8</sup> *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

an opinion on causal relationship between his lumbar conditions and the accepted employment incident. As noted, the Board has held that medical evidence that does not offer an opinion on causal relationship is of no probative value.<sup>9</sup> These reports, therefore, are insufficient to establish the claim.

The December 2, 2022 MRI scan by Dr. Georgy is also insufficient to establish appellant's claim because diagnostic studies, standing alone, lack probative value on causal relationship as they do not address whether the employment incident caused any of the diagnosed conditions.<sup>10</sup> This evidence is, therefore, insufficient to establish the claim.

OWCP also received reports dated November 8, 2021 through February 27, 2023 from a provider with an illegible signature. However, the Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.<sup>11</sup>

As the medical evidence of record is insufficient to establish a lumbar condition causally related to the accepted October 18, 2021 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 a lumbar condition causally related to the accepted October 18, 2021 employment incident.

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<sup>9</sup> *Id.*

<sup>10</sup> *S.P.*, Docket No. 23-0436 (issued September 18, 2023); *C.B.*, Docket No. 20-0464 (issued July 21, 2020); *V.Y.*, Docket No. 18-0610 (issued March 6, 2020); *G.S.*, Docket No. 18-1696 (issued March 26, 2019).

<sup>11</sup> *L.B.*, Docket No. 21-0353 (issued May 23, 2022); *T.D.*, Docket No. 20-0835 (issued February 2, 2021); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 13, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 24, 2024  
Washington, DC

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

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

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