

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

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B.Y., Appellant )  
and ) Docket No. 25-0490  
DEPARTMENT OF THE ARMY, U.S. ARMY )  
CORPS OF ENGINEERS, Rock Island, IL, )  
Employer ) Issued: June 11, 2025

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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On April 17, 2025 appellant filed a timely appeal from a March 3, 2025 merit and an April 2, 2025 nonmerit 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.<sup>2</sup>

**ISSUES**

The issues are: (1) whether appellant has met his burden of proof to establish a medical condition causally related to the accepted November 9, 2024 employment incident; and

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

<sup>2</sup> The Board notes that following the April 2, 2025 decision, OWCP received additional evidence. 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.*

(2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

### **FACTUAL HISTORY**

On December 11, 2024 appellant, then a 47-year-old lock and dam operator, filed a traumatic injury claim (Form CA-1) alleging that on November 9, 2024 he sustained a herniated disc in his lower back when throwing an upper tow haulage cable over a gate while in the performance of duty. He stopped work on November 9, 2024, and returned to work on November 19, 2024.

In a December 27, 2024 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of medical evidence required along with an attending physician's report (Form CA-20). It afforded him 60 days to submit the necessary evidence. No response was received.

In a follow-up development letter dated January 10, 2025, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted that he had 60 days from the December 27, 2024 letter to submit the necessary evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

OWCP thereafter received November 15 and 22, 2024 treatment reports from Dr. Jeffrey A. Jacoby, a Board-certified orthopedic surgeon. In his reports, Dr. Jacoby reviewed diagnostic testing, which included November 15, 2024 x-rays of the lumbar spine and pelvis and a November 21, 2024 magnetic resonance imaging (MRI) scan of the lumbar spine. In his November 15, 2024 report, Dr. Jacoby noted that appellant had back pain on and off for years and that approximately a week prior, he began to have severe pain down his right leg with a numb foot. He noted examination findings and diagnosed acute right lumbar disc herniation with mild footdrop.

The November 21, 2024 MRI lumbar spine demonstrated a broad-based disc herniation with rightward predominance at L5-S1.

In a December 17, 2024 report, Dr. Ryan M. Unger, a Board-certified physiatrist, diagnosed a lumbar radiculopathy.

OWCP also received reports dated December 3 and 30, 2024 from a certified physician assistant diagnosing lumbar radiculopathy.

By decision dated March 3, 2025, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish a medical condition causally related to the accepted November 9, 2024 employment incident.

On March 27, 2025 appellant requested reconsideration and submitted additional evidence.

In a November 22, 2024 report, Dr. Jacoby provided examination findings and results of diagnostic testing. He diagnosed an acute right lumbar disc herniation with mild footdrop and SI radiculopathy.

In January 15 and February 25, 2025 reports, Dr. Unger continued to diagnose lumbar radiculopathy and provide right L5-S1 epidural steroid injections. He also provided work status notes dated December 17, 2024 and March 14, and May 14, 2025.

In an attending physician's report (Form CA-20) dated March 18, 2025, Dr. Jacoby opined that appellant's lumbar radiculopathy was caused or aggravated by the employment activity of lifting, twisting, and throwing a barge cable over a locked gate as appellant stated that he had immediate back and right leg pain thereafter.

In a March 26, 2025 order, Dr. Jacoby indicated that appellant would undergo a right L5-S1 lumbar microdiscectomy as a result of intervertebral disc disorders with radiculopathy, lumbar region. Work status notes dated November 15, 2024 and March 25, 2025 were also submitted.

A February 3, 2025 report from a certified physician assistant was provided along with a December 3, 2024 work status note.

By decision dated April 2, 2025, OWCP denied appellant's reconsideration request of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>3</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>4</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>5</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>6</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined 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 an injury.<sup>7</sup>

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<sup>3</sup> See *supra* note 2.

<sup>4</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Elyett*, 41 ECAB 992 (1990).

<sup>7</sup> *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Caralone*, 41 ECAB 354 (1989).

The medical evidence required to establish causal relationship 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 nature of the relationship between the diagnosed condition and specific employment incident identified by the employee.<sup>9</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted November 9, 2024 employment incident.

In support of his claim, appellant submitted medical reports from Dr. Jacoby dated November 15 and 22, 2024, which diagnosed acute right lumbar disc herniation with mild footdrop, and a December 17, 2024 report from Dr. Unger, which diagnosed lumbar radiculopathy. Neither Drs. Jacoby nor Unger offered an opinion as to whether appellant's diagnosed condition was caused or aggravated by the accepted November 9, 2024 employment incident. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>10</sup> Accordingly, these reports are insufficient to establish appellant's claim.

OWCP also received physician assistant reports dated December 3 and 30, 2024 and February 3, 2025. Physician assistants, however, are not considered physicians as defined under FECA, and their medical findings and opinions are insufficient to establish entitlement to compensation benefits.<sup>11</sup> Consequently, these reports will not suffice for purposes of establishing appellant's claim.<sup>12</sup>

The remainder of the evidence of record consisted of a November 21, 2024 MRI lumbar spine diagnostic report. The Board has held that diagnostic studies, standing alone, lack probative

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<sup>8</sup> See *C.M.*, Docket No. 25-0408 (issued April 16, 2025); *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).

<sup>9</sup> See *C.M.*, *id.*; *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> *C.M.*, *supra* note 9; *G.M.*, Docket No. 24-0388 (issued May 28, 2024); *L.B.*, Docket No. 19-1907 (issued August 14, 2020); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>11</sup> Section 8101(2) of FECA provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See *Federal (FECA) Procedure Manual*, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (May 2023); *M.J.*, Docket No. 19-1287 (issued January 13, 2020) (physician assistants are not considered physicians as defined under FECA); *P.H.*, Docket No. 19-0119 (issued July 5, 2019) (physician assistants are not physicians under FECA); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA).

<sup>12</sup> *Id.*

value on the issue of causal relationship.<sup>13</sup> Consequently, this evidence is insufficient to establish the claim.

As the medical evidence of record is insufficient to establish causal relationship between a medical condition and the accepted November 9, 2024 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.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his or her own motion or on application.<sup>14</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>15</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>16</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>17</sup> If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>18</sup>

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<sup>13</sup> C.C., Docket No. 25-0388 (issued April 16, 2025); F.D., Docket No. 19-0932 (issued October 3, 2019); J.S., Docket No. 17-1039 (issued October 6, 2017).

<sup>14</sup> 5 U.S.C. § 8128(a); *see W.P.*, Docket No. 25-0367 (issued April 4, 2025); *S.B.*, Docket No. 24-0703 (issued December 13, 2024); *M.S.*, Docket No. 19-1001 (issued December 9, 2019); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *W.C.*, 59 ECAB 372 (2008).

<sup>15</sup> 20 C.F.R. § 10.606(b)(3); *see S.B.*, *id.*; *L.D.*, *id.*; *see also K.L.*, Docket No. 17-1479 (issued December 20, 2017); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>16</sup> *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

<sup>17</sup> *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

<sup>18</sup> *Id.* at § 10.608(b); *M.S.*, Docket No. 19-0291 (issued June 21, 2019); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

## **ANALYSIS -- ISSUE 2**

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

In his reconsideration request, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a new and relevant legal argument not previously considered. Therefore, the Board finds appellant was not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

The Board, however, finds that the evidence submitted with appellant's reconsideration request included relevant and pertinent new evidence pertaining to the underlying issue of causal relationship. Specifically, Dr. Jacoby opined in his March 18, 2025 Form CA-20 that appellant's diagnosed lumbar radiculopathy was caused or aggravated by appellant's employment activity of lifting, twisting and throwing barge cable over a locked gate and included rationale for his opinion. As the March 18, 2025 Form CA-20 addresses the underlying issue of causal relationship with medical rationale, the report constitutes relevant and pertinent new evidence that was not previously considered by OWCP.<sup>19</sup> Therefore, the submission of this evidence requires reopening of appellant's claim for merit review, pursuant to the third above-noted requirement of 20 C.F.R. § 10.606(b)(3).<sup>20</sup>

The Board shall, therefore, set aside OWCP's April 2, 2025 decision and remand the case for an appropriate merit decision.

## **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted November 9, 2024 employment incident. The Board further finds that OWCP improperly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

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<sup>19</sup> *M.K.*, Docket No. 25-0022 (issued November 21, 2024).

<sup>20</sup> *Id.*; *see also* *B.D.*, Docket No. 23-0240 (issued December 13, 2023); *R.L.*, Docket No. 21-0220 (issued October 19, 2021); *L.M.*, Docket No. 20-1185 (issued January 13, 2021); *C.H.*, Docket No. 17-1065 (issued December 14, 2017); *J.W.*, Docket No. 18-0822 (issued July 1, 2020); *D.M.*, Docket No. 10-1844 (issued May 10, 2011); *Kenneth R. Mroczkowski*, 40 ECAB 855 (1989).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 3, 2025 decision of the Office of Workers' Compensation Program is affirmed. The April 2, 2025 decision is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 11, 2025  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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