

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

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J.P., Appellant )

and )

DEPARTMENT OF AGRICULTURE, U.S. )  
FOREST SERVICE, TONTO NATIONAL )  
FOREST, Tonto Basin, AZ, Employer )

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**Docket No. 25-0740**

**Issued: September 26, 2025**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

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

**JURISDICTION**

On July 16, 2025 appellant filed a timely appeal from an April 17, 2025 merit decision and a June 12, 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.

**ISSUES**

The issues are: (1) whether appellant has met his burden of proof to establish a medical condition causally related to the accepted December 14, 2024 employment incident; and (2) whether OWCP properly denied appellant's request for oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b).

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

## **FACTUAL HISTORY**

On February 5, 2025 appellant, then a 69-year-old volunteer, filed a traumatic injury claim (Form CA-1) alleging that on December 14, 2024 he developed “inflamed sciatica” due to lifting and moving rocks while in the performance of duty. On the reverse side of the claim form, the employing establishment confirmed that appellant was injured in the performance of duty.

In hospital records dated December 14 and 15, 2024, Dr. David A. Guttman, a Board-certified emergency room specialist, diagnosed nerve root inflammation. He noted that appellant reported to the emergency room with sharp right-sided low back discomfort that radiated to the right buttock through the right hip and to the right knee, with symptoms progressing over the past two months. Dr. Guttman further noted appellant’s prior back and vascular surgery, reviewed diagnostic testing, provided examination findings, and diagnosed acute lumbar radiculopathy.

Copies of December 15, 2024 laboratory reports and diagnostic tests were also provided. This included a right lower extremity venous doppler ultrasound, which was negative for right leg deep venous thrombosis; a lumbar spine magnetic resonance imaging (MRI) scan, which revealed no acute pathology in the lumbar spine, prominent facet arthrosis at L4-5 with mild right capsulitis, advanced degenerative disc disease at L5-S1, and severe right foraminal narrowing with mass effect on the existing right L5 nerve root; x-rays of the pelvis and right knee were negative for the pelvis and right hip, and essentially normal for the right knee.

In a December 24, 2024 report, Dr. Keven S. Burns, a Board-certified orthopedic surgeon, noted that appellant presented with complaints of back pain ongoing for the last week, with a history of disc herniations in 1986. He related physical examination findings and results of diagnostic testing. Dr. Burns provided an impression of multilevel disc degeneration, severe right foraminal stenosis at L5-S1, and multilevel facet arthropathy. In a January 22, 2025 progress report, he noted examination findings with progression of motor decline. Dr. Burns diagnosed acute lumbar back pain, right leg dysesthesias, acute right foot drop, and history of disc herniations 1986.

A January 29, 2025 electromyography (EMG) report indicated acute right L5 radiculopathy with evidence of axonal loss; no evidence of peripheral nerve entrapment of lumbosacral plexopathy involving bilateral lower limits; and no evidence of left lower limb lumbosacral radiculopathy.

A January 31, 2025 lumbar spine MRI scan demonstrated multilevel multifactorial lumbar degenerative changes, central stenosis, mild L4-5; and foraminal stenosis, moderate at right L5-S1, mild right L3-4, and bilateral L4-5 and L5-S1.

In a development letter dated February 14, 2025, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and afforded him 60 days to submit the necessary evidence.

In a follow-up development letter dated March 12, 2025, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted he had been afforded 60 days from the February 14, 2025 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. No additional evidence was received.

By decision dated April 17, 2025, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a medical condition causally related to the accepted December 14, 2024 employment incident.

On June 2, 2025 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. He also submitted a June 2, 2025 statement further explaining the facts and circumstances surrounding his claimed December 14, 2024 employment injury.

By decision dated June 12, 2025, OWCP denied appellant's request for an oral hearing, finding that it was untimely since it was not filed within 30 days of OWCP's April 17, 2025 decision. It further exercised its discretion and determined that the issue in the case could equally well be addressed through a request for reconsideration before OWCP along with the submission of new evidence.

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

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 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 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>6</sup>

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

<sup>3</sup> *S.J.*, Docket No. 25-0359 (issued April 15, 2025); *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>4</sup> *S.J.*, *id.*; *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>5</sup> *S.J.*, *supra* note 3; *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>6</sup> *J.P.*, Docket No. 25-0507 (issued June 10, 2025); *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

The medical evidence required to establish causal relationship is 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 specific employment incident identified by the employee.<sup>8</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 December 14, 2024 employment incident.

In hospital records dated December 14 and 15, 2024, Dr. Guttman diagnosed nerve root inflammation. He noted that appellant reported to the emergency room with sharp right-sided low back discomfort that radiated to the right buttock through the right hip and to the right knee, with symptoms progressing over the past two months. Dr. Guttman further noted appellant's prior back and vascular surgery, reviewed diagnostic testing, provided examination findings, and diagnosed acute lumbar radiculopathy. However, he did not provide an opinion that appellant's diagnosed conditions were causally related to the accepted December 14, 2024 employment incident. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.<sup>9</sup> Therefore, this evidence is insufficient to establish appellant's claim.

Dr. Burns, in a report dated December 24, 2024, provided an impression of multilevel disc degeneration, severe right foraminal stenosis at L5-S1, and multilevel facet arthropathy. In his January 22, 2025 report, he diagnosed right leg dysesthesias, acute right foot drop, and history of disc herniations 1986. Dr. Burns did not, however, provide an opinion regarding causal relationship between appellant's diagnosed conditions and the accepted December 14, 2024 employment incident. As noted, medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.<sup>10</sup> Therefore, this evidence is also insufficient to establish appellant's claim.

The remainder of the evidence of record consists of a December 15, 2024 laboratory report and December 15, 2024, January 29 and 31, 2025 diagnostic study reports. However, diagnostic studies, standing alone, lack probative value on causal relationship as they do not address whether employment factors caused the diagnosed condition or any period of disability.<sup>11</sup>

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<sup>7</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>8</sup> See *R.D.*, Docket No. 25-0625 (issued July 30, 2025); *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>9</sup> See *J.B.*, Docket No. 24-0946 (issued November 4, 2024); *F.S.*, Docket No. 23-0112 (issued April 26, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>10</sup>*Id.*; see also *C.S.*, Docket No. 21-0051 (issued September 2, 2021).

<sup>11</sup> *M.G.*, Docket No. 25-0427 (issued July 22, 2025); *T.Y.*, Docket No. 25-0255 (issued April 2, 2025); *B.O.*, Docket No. 25-0049 (issued January 10, 2025); *A.D.*, Docket No. 24-0770 (issued October 22, 2024); *T.L.*, Docket No. 22-0881 (issued July 17, 2024); *L.R.*, Docket No. 23-0573 (issued September 15, 2023).

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted December 14, 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 and 20 C.F.R. §§ 10.605 through 10.607.

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

Section 8124(b)(1) of FECA provides that a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his or her claim before a representative of the Secretary.<sup>12</sup> Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.<sup>13</sup> A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier's date marking, or the date received in the Employees' Compensation Operations and Management Portal (ECOMP) and before the claimant has requested reconsideration.<sup>14</sup> Although there is no right to a review of the written record or an oral hearing, if not requested within the 30-day time period, OWCP may within its discretionary powers grant or deny appellant's request and must exercise its discretion.<sup>15</sup>

### **ANALYSIS -- ISSUE 2**

On June 2, 2025 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review; however, this request was made more than 30 days after OWCP's April 17, 2025 decision. Section 8124(b)(1) is unequivocal on the time limitation for filing a request for a hearing.<sup>16</sup> As such, the request was untimely filed, and appellant was not entitled to an oral hearing as a matter of right.

The Board further finds that OWCP, in its June 12, 2025 decision, properly exercised its discretionary authority, finding that his claim could be equally-well addressed through a reconsideration request.

The Board has held that the only limitation on OWCP's authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, clearly unreasonable

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<sup>12</sup> 5 U.S.C. § 8124(b).

<sup>13</sup> 20 C.F.R. §§ 10.616, 10.617, and 10.618.

<sup>14</sup> *Id.* at § 10.616(a); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4a (February 2024).

<sup>15</sup> *C.C.*, Docket No. 23-0684 (issued May 12, 2025); *S.N.*, Docket No. 22-1048 (issued April 3, 2023); *G.H.*, Docket No. 22-0122 (issued May 20, 2022); *E.E.*, Docket No. 20-1290 (issued July 21, 2021); *J.T.*, Docket No. 18-0664 (issued August 12, 2019); *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

<sup>16</sup> *See C.C., id.; S.N., id.; M.M.*, Docket No. 19-1171 (issued October 22, 2019); *William F. Osborne*, 46 ECAB 198 (1994).

exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.<sup>17</sup> The Board finds that the evidence of record does not establish that OWCP abused its discretion in denying appellant's request for an oral hearing before an OWCP hearing representative.<sup>18</sup>

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted December 14, 2024 employment incident. The Board further finds that OWCP properly denied his request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 17 and June 12, 2025 decisions of Office of Workers' Compensation Programs are affirmed.

Issued: September 26, 2025  
Washington, DC

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

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

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

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<sup>17</sup> *C.C., id.; T.G.*, Docket No. 19-0904 (issued November 25, 2019); see *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

<sup>18</sup> See *C.C., id.; S.N., supra* note 15; *J.G.*, Docket No. 19-0555 (issued March 14, 2019).