

ISSUE

The issue is whether appellant has met his burden of proof to establish a lumbar condition causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

This case has previously been before the Board.³ 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 May 10, 2022 appellant, then a 51-year-old postal police officer, filed an occupational disease claim (Form CA-2) alleging that he sustained lower lumbar and left leg conditions due to factors of his federal employment, including wearing heavy gear/equipment, and vibrations from driving a patrol vehicle. He first became aware of his condition on April 15, 2016, and realized its relation to factors of his federal employment on April 11, 2022.⁴

In an April 30, 2022 narrative statement, appellant recounted that in 2013 he transitioned to a police officer position from his prior 17-year position as a sales and service distribution associate. He further related that he underwent an unsuccessful lumbar surgical procedure in 2016. By 2019, appellant experienced debilitating pain after driving a patrol response vehicle and wearing duty gear.

In an undated report, Dr. Eugene Minnow, a chiropractor, reported that appellant had been a patient since January 14, 2021, that he was treated for lower back pain, and that he had a history of lumbar surgery in 2016. He opined that it was likely that carrying extra weight around the trunk caused an increased strain in the lumbar spine and contributed to further deterioration of appellant's previous lumbar condition.

In an April 11, 2022 report, Dr. Gabriel A. Smith, a Board-certified neurosurgeon, noted that appellant had undergone a prior L5-S1 laminectomy. Based on his examination and review of appellant's magnetic resonance imaging (MRI) scan, he assessed left lumbar radiculopathy. Dr. Smith offered appellant the option of an L5-S1 anterior lumbar interbody fusion.

In a development letter dated May 18, 2022, OWCP informed appellant of the deficiencies in his claim. It informed him of the type of additional factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In an undated report, Dr. Kyle J. Wear, an internist, related that he had treated appellant since February 13, 2020 for continued complaints of back pain. He indicated that appellant currently worked as a police officer and was required to wear 26 pounds of equipment/protective

³ Docket No. 23-0755 (issued October 2, 2023), Docket No. 24-0315 (issued May 7, 2024).

⁴ OWCP assigned the present claim OWCP File No. xxxxx221. The record reflects that on April 5, 2022 appellant filed a traumatic injury claim (Form CA-1), assigned OWCP File No. xxxxxx637, wherein he alleged that on March 30, 2022 he sustained an injury to his left ankle and hip when his leg gave out descending stairs. On October 10, 2025 OWCP administratively combined OWCP File No. xxxxx637 with the present claim designated as the master file.

gear daily for his job. Dr. Wear opined that the strain from the weight of that equipment had likely contributed to and exacerbated appellant's chronic low back pain.

By decision dated July 14, 2022, OWCP denied appellant's occupational disease claim, finding that he had not established a diagnosed medical condition in connection with the claimed work factors. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On August 5, 2022 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on December 8, 2022.

In a November 3, 2022 report, Dr. Wear addressed appellant's diagnosed lumbar radiculopathy based on appellant's clinical symptoms and radiologic findings. He indicated that he first examined appellant on March 1, 2019. Dr. Wear noted that appellant's work as a police officer required him to wear approximately 26 pounds of gear daily. He opined that the daily weight of this gear caused an exacerbation of appellant's radicular symptoms.

By decision dated January 9, 2023, OWCP's hearing representative modified the July 14, 2022 decision finding that appellant had established a medical diagnosis. However, the claim remained denied, as the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed medical condition and the accepted employment factors. The hearing representative noted that no additional evidence had been received.

On January 23, 2023 appellant, through counsel, requested reconsideration.

Appellant resubmitted a copy of Dr. Wear's November 3, 2022 report.

By decision dated February 1, 2023, OWCP denied appellant's request for reconsideration, of the merits of his claim, pursuant to 5 U.S.C. § 8128(a). It found Dr. Wear's November 3, 2022 report to be repetitious because it "was previously received on December 6, 2022, prior to the January 9, 2023 decision."

On May 1, 2023 appellant, through counsel, appealed to the Board. By decision dated October 2, 2023, the Board reversed OWCP's February 1, 2023 decision. The Board found that Dr. Wear's November 3, 2022 report constituted relevant and pertinent new evidence not previously considered by OWCP. The Board remanded the case to OWCP for an appropriate merit decision.⁵

By decision dated January 9, 2024, OWCP denied modification of its January 9, 2023 decision.

On February 6, 2024 appellant, through counsel, appealed to the Board. By decision dated May 7, 2024, the Board affirmed OWCP's January 9, 2024 decision, finding that appellant had not

⁵ Docket No. 23-0755 (issued October 2, 2023).

met his burden of proof to establish a lumbar condition causally related to the accepted factors of appellant's federal employment.⁶

On March 10, 2025 appellant, through counsel, requested reconsideration.

Medical progress reports from Dr. Rajiv V. Taliwai, a Board-certified orthopedic surgeon, following appellant's March 9, 2023 revision microdiscectomy left L5-S1 were received along with recent progress reports dated January 16 and 21, 2025. In the January 16, 2025 report, Dr. Taliwai noted that appellant was last seen on July 21, 2023 and that his lower back pain and symptoms had worsened over time. He provided appellant's physical examination findings and assessed lumbosacral spondylosis with radiculopathy, status post lumbar microdiscectomy left L5-S1 revision, and left foot drop.

OWCP received diagnostic testing from 2023 and 2025 pertaining to appellant's lumbar spine. An August 8, 2023 MRI scan report related an impression of surgical changes of posterior decompression at L5-S1; recurrent left paracentral/foraminal disc protrusion at L5-S1; narrowing of the left lateral recess contacting the exiting left L5 nerve root in the foraminal zone with severe left foraminal narrowing; right foraminal disc protrusion at L4-5 contacting the exiting right L4 nerve root in the foraminal zone with moderate right foraminal narrowing; and degenerative changes of the spine. A lumbar spine x-ray dated January 16, 2025 related findings of lumbosacral spondylosis with radiculopathy, status post lumbar microdiscectomy left L5-S1 revision, and left foot drop. Appellant's most recent lumbar spine MRI dated January 23, 2025 indicated a possibility of an acute to subacute Schmorl's node with associated reactive change and mild levoconvex scoliosis, and multilevel malalignment associated with multilevel stenosis at L4-5 with contact of the exiting right L4 nerve root from disc protrusion/herniation.

In a March 4, 2025 narrative report, Dr. Sami E. Moufawad, a Board-certified physiatrist, noted that appellant's back issues started in 2013 after he accepted a new position as a postal police officer and began wearing a duty belt which included gun, ammunition, a radio, and other gear, body armor, and driving a patrol car which had problems with vibration. He noted appellant's medical course, which included two microdiscectomy surgeries at L5-S1 in 2016 and 2023, and appellant's current complaints, which included a collapsed L5-S1 intervertebral disc which would likely require fusion surgery. Dr. Moufawad noted his review of the medical records provided, including 2023 and 2025 MRIs of the lumbar spine, and he provided appellant's examination findings. He diagnosed lumbar disc herniation at L5-S1, lumbar radiculitis and sacral radiculitis, which he opined were causally related to appellant's employment factors. Dr. Moufawad concluded that the work conditions of vibration and wearing 24 pounds of gear on a regular basis led to the development of a herniated disc in 2016, which required surgery and revision surgery in 2023, with continued symptoms. He related that the additional mechanical toll on the intervertebral disc had over time led to excessive wear and tear and disc herniation, which had led to radiculopathy or nerve root irritation. Dr. Moufawad further explained that when a disc bulges or herniates out of place, a part of the disc is not contained within the anatomical structure and starts irritating the nerve root, leading to radiculopathy. He concluded that this was appellant's clinical presentation, as documented by his medical history and physical examination findings of

⁶ Docket No. 24-0315 (issued May 7, 2024).

weakness with dorsiflexion and numbness in the same distribution of the pain. Based on the mechanism of injury, appellant's clinical progress, his review of the medical evidence, imaging studies, and examination findings, Dr. Moufawad concluded that the vibrations and the carrying of additional weight of 24 pounds from the gear belt appellant experienced during the performance of his federal duties had caused disc herniation at L5-S1, which resulted in lumbar and sacral radiculopathies as the disc herniation was impinging upon the nerve roots in its anatomical vicinity.

By decision dated October 10, 2025, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁷ 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,⁸ 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.⁹ 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.¹⁰

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.¹¹

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹² The opinion of the physician must be based upon a complete factual and medical background, must be one of reasonable medical certainty, and must be

⁷ *Supra* note 2.

⁸ *See F.G.*, Docket No. 25-0306 (issued March 19, 2025); *C.M.*, Docket No. 25-0252 (issued February 21, 2025); *S.F.*, Docket No. 23-0264 (issued July 5, 2023); *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).

⁹ *F.G.*, *id.*; *C.M.*, *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).

¹⁰ *F.G.*, *id.*; *C.M.*, *id.*; *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).

¹¹ *R.E.*, Docket No. 25-0179 (issued January 24, 2025).

¹² *F.G.*, *supra* note 8; *C.M.*, *supra* note 8; *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors.¹³

ANALYSIS

The Board finds that this case is not in posture for decision.

On prior appeal, the Board affirmed OWCP's January 9, 2024 decision, finding that the medical evidence did not support that appellant's lumbar conditions were causally related to the accepted factors of his federal employment.¹⁴ The Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of OWCP's January 9, 2024 decision, because the Board considered that evidence in its May 7, 2024 decision. Findings made in prior Board decisions are *res judicata* absent further review by OWCP under section 8128 of FECA.¹⁵

Following the Board's May 7, 2024 decision, OWCP received Dr. Moufawad's March 4, 2025 report. Dr. Moufawad diagnosed lumbar disc herniation at L5-S1, lumbar radiculitis and sacral radiculitis. He opined that these conditions were directly related to the vibration appellant experienced in performing his employment duties, as well as the 24 pounds of gear he wore on a regular basis. Regarding the mechanism of injury, Dr. Moufawad explained that the additional load on appellant's lumbar spine had led to additional mechanical toll on the intervertebral disc which, over time, led to excessive wear and tear, disc herniation, and radiculopathy. He further explained that when a disc bulges or herniates out of place, a part of the disc is not contained within the anatomical structure and starts irritating the nerve root, leading to radiculopathy. Dr. Moufawad concluded that this was appellant's clinical presentation and was evidenced by his medical history and physical examination findings of weakness with dorsiflexion and numbness in the same distribution of the pain.

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter.¹⁶ While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.¹⁷ The Board finds that, while Dr. Moufawad's March 4, 2025 report is not sufficiently rationalized, it does raise an uncontroverted inference between appellant's diagnosed lumbar

¹³ *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁴ *Supra* note 6.

¹⁵ *See S.V.*, Docket No. 25-0688 (issued September 5, 2025); *R.B.*, Docket No. 19-1032 (issued October 25, 2019); *L.C.*, Docket No. 18-1759 (issued June 26, 2019); *I.J.*, 59 ECAB 408 (2008); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1988).

¹⁶ *See C.F.*, Docket No. 20-1572 (issued November 10, 2021); *Vanessa Young*, 56 ECAB 575 (2004).

¹⁷ *Id.*

conditions and the accepted factors of his federal employment. Further development of appellant's claim is therefore required.¹⁸

The case shall, therefore, be remanded to OWCP for further development of the medical evidence. On remand, OWCP shall refer appellant to a physician in the appropriate field of medicine, along with the case record, and a statement of accepted facts, for an examination and a rationalized medical opinion as to whether appellant's diagnosed lumbar conditions were causally related to the accepted factors of his federal employment. If the second opinion physician disagrees with Dr. Moufawad, he or she must provide rationale explaining why the accepted employment factors were insufficient to have caused the diagnosed conditions. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

¹⁸ See *H.M.*, Docket No. 22-0097 (issued October 11, 2022); *D.V.*, Docket No. 21-0383 (issued October 4, 2021); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 280 (1978).

ORDER

IT IS HEREBY ORDERED THAT the October 10, 2025 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 17, 2026
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