

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

S.C., Appellant

and

**DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT, OFFICE OF FIELD POLICY
AND MANAGEMENT, REGION III,
Philadelphia, PA, Employer**

**Docket No. 25-0898
Issued: January 21, 2026**

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
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 September 22, 2025, appellant, through counsel, filed a timely appeal from a September 5, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ 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 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.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a lumbar spine condition causally related to the accepted October 26, 2022 employment incident.

FACTUAL HISTORY

On December 20, 2023 appellant, then a 42-year-old public affairs specialist, filed a traumatic injury claim (Form CA-1) alleging that on October 26, 2022 he sustained lower back, hip, and knee injuries when he slipped on a grate, but did not fall, while in the performance of duty. He was separated from employment on December 2, 2022.

In a December 28, 2023 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him as to the type of factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 60 days to submit the necessary evidence.

OWCP subsequently received a November 15, 2022 note from Dr. Brooks Horsley, a Board-certified radiologist, relating that appellant underwent a magnetic resonance imaging (MRI) scan of even date. In November 21 and December 8, 2022 notes, Sierra L. Greenwade, a family nurse practitioner, provided her findings on examination. Brenda Sue Bembry, a registered nurse, completed notes dated March 25, 2023.

In a January 30, 2024 report, Dr. Joseph Henry Wandass, a Board-certified internist and treating physician, described the October 26, 2022 employment incident and diagnosed disc protrusion at L5-S1 as demonstrated as “fairly recent” on a November 15, 2022 MRI scan. He performed a lumbar transforaminal epidural steroid injection at L5-S1.

In a follow-up letter dated January 31, 2024, 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 28, 2023 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.

On February 22, 2024, Dr. Wandass diagnosed low back pain, radiculopathy, lower back muscle strain, lumbar and thoracic disc degeneration, and lumbar disc displacement. He described the October 26, 2022 employment incident and opined that this incident aggravated appellant’s preexisting low back pain and lumbar disc displacement.

By decision dated March 6, 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 October 26, 2022 employment incident.

On March 7, 2024 appellant, through counsel, requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review. The oral hearing took place on June 18, 2024.

OWCP subsequently received a July 11, 2024 report from Dr. Wandass recounting the October 26, 2022 employment incident and appellant’s ongoing symptoms of constant spasms in

his lower back. Dr. Wandass opined that the accepted employment incident aggravated appellant's preexisting low back pain and lumbar disc displacement. He noted that individuals with herniated discs could experience significant muscle spasm and that any type of fall had the potential to cause aggravation of previous lumbar degenerative conditions.

By decision dated August 26, 2024, OWCP's hearing representative affirmed the March 6, 2024 decision.³

On October 29, 2024 appellant, through counsel, requested reconsideration and submitted additional evidence. In an October 2, 2024 report, Dr. Wandass opined that appellant's October 26, 2022 slip and fall aggravated his preexisting low back pain as evidenced by a newly found lumbar disc displacement on MRI scan and increased pain from his previous baseline. He related that individuals with herniated discs can experience significant muscle spasms which correlated with appellant's symptoms. Dr. Wandass determined that the employment incident was the type of fall that had the potential to cause aggravation of previous lumbar degenerative conditions, to include increased symptomology and presentation of symptoms not previously experienced.

By decision dated November 6, 2024, OWCP denied modification.⁴

On December 16, 2024 counsel requested reconsideration of the August 26, 2024 decision and resubmitted the October 2, 2024 report from Dr. Wandass.

By decision dated December 30, 2024, OWCP denied modification.

On April 7, 2025 appellant, through counsel, requested reconsideration and submitted additional evidence. In a March 27, 2025 report, Dr. Matthew D. Smith, a Board-certified orthopedic surgeon, related that prior to the October 2022 employment incident appellant had experienced a relative lack of back pain and radiculopathy in his legs. Following the accepted employment incident, his back pain and radiculopathy worsened. The MRI scan demonstrated L5-S1 posterior lateral annular fissure and disc protrusion. Dr. Smith opined that the annular fissure and disc protrusion began with the slipping incident at work. He explained that the act of suddenly losing one's footing or balance and then lurching to regain balance, by grabbing a nearby pole, does often cause a sudden and off-center compression of the discs in the spine which can increase pressure and cause an annular tear and subsequent disc bulge which impinges on the nerves leaving the spine. Dr. Smith related, "This seems the most likely explanation in this situation." He concluded, "My opinion is that the portions of the MRI findings mentioned and corresponding symptoms are likely from the work-related incident...."

³ Appellant, through counsel, appealed the August 26, 2024 decision to the Board. The Clerk of the Appellate Boards docketed the appeal as No. 24-0911. By order dated December 6, 2024, the Board dismissed the appeal in accordance with appellant's October 29, 2024 request to withdraw the appeal. *Order Dismissing Appeal*, Docket No. 24-0911 (issued December 6, 2024).

⁴ Appellant, through counsel, appealed the November 6, 2024 decision to the Board. The Clerk of the Appellate Boards docketed the appeal as No. 25-0123. By order dated December 6, 2024, the Board dismissed this appeal citing *Douglas E. Billings*, 41 ECAB 880 (1990) to find that the November 6, 2024 OWCP decision was null and void. *Order Dismissing Appeal*, Docket No. 25-0123 (issued December 6, 2024).

By decision dated April 21, 2025, OWCP denied modification.⁵

On August 21, 2025 appellant, through counsel, again requested reconsideration. In a June 9, 2025 report, Dr. Smith related appellant's slip on a grate on October 26, 2022 and opined that this incident directly aggravated his preexisting lumbar spine condition and contributed to the development of additional pathology including lumbar disc herniation, which was not present on diagnostic studies performed prior to the accepted employment incident. He further based his opinion on a marked increase in reported and clinically observed symptoms including radiculopathy and functional impairment. Dr. Smith concluded that the additional findings were not explained by the natural progression of his preexisting conditions.

By decision dated September 5, 2025, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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,⁶ that the claim was timely filed within the applicable time limitation period of FECA, 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.⁷ 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.⁸

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. There are two components involved in establishing fact of injury. The first component is that 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. The second component is whether the employment incident caused an injury.⁹

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.¹⁰ The opinion of

⁵ Appellant, through counsel, appealed the April 21, 2024 decision to the Board. The Clerk of the Appellate Boards docketed the appeal as No. 25-0541. By order dated August 20, 2025, the Board dismissed the appeal in accordance with appellant's July 15, 2025 request to withdraw the appeal. *Order Dismissing Appeal*, Docket No. 25-0541 (issued August 20, 2025).

⁶ *K.R.*, Docket No. 20-0995 (issued January 29, 2021); *A.W.*, Docket No. 19-0327 (issued July 19, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁸ *J.B.*, Docket No. 20-1566 (issued August 31, 2021); *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).

⁹ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *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).

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.¹¹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a lumbar spine condition causally related to the accepted October 26, 2022 employment incident.

In reports dated March 27 and June 9, 2025, Dr. Smith reviewed appellant's history of injury on October 26, 2022 and diagnosed L5-S1 posterior lateral annular fissure and disc protrusion with radiculopathy. He asserted that the disc herniation was not present on diagnostic studies prior to the accepted employment incident and that appellant experienced a marked increase in clinically observed radiculopathy and functional impairment. Dr. Smith opined that the diagnosed conditions began with the slipping incident at work. He related that the act of suddenly losing one's footing or balance and then lurching to regain balance, by grabbing a nearby pole, caused a sudden and off-center compression of the discs in the spine which would increase pressure and cause an annular tear and subsequent disc bulge which impinged on the nerves leaving the spine. Dr. Smith concluded, "This seems the most likely explanation in this situation." However, he did not explain with supporting medical rationale how the accepted October 26, 2022 employment incident caused or aggravated appellant's diagnosed conditions.¹² The Board has held that medical opinions couched with the term "likely" are speculative or equivocal in character and have little probative value.¹³ Thus, this evidence is insufficient to establish the claim.

Dr. Wandass, in reports dated January 20 through October 2, 2024, diagnosed low back pain, radiculopathy, lower back muscle strain, lumbar and thoracic disc degeneration, and lumbar disc displacement. He opined that the October 26, 2022 employment incident aggravated previous low back pain and contributed to lumbar disc herniation as this pathology was not present on diagnostic studies performed prior to the accepted October 26, 2022 employment incident. Dr. Wandass did not, however, provide rationale for his conclusory opinion. The Board has held that a medical report is of limited probative value if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.¹⁴ As such, this evidence is insufficient to establish appellant's claim.

OWCP also received reports signed by a family nurse practitioner and a registered nurse. Certain healthcare providers, such as nurse practitioners, and registered nurses are not considered

¹¹ *S.S.*, Docket No. 24-0674 (issued August 29, 2024); *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).

¹² *See C.B.*, (*S.B.*), Docket No. 19-1629 (issued April 7, 2020); *V.T.*, Docket No. 18-0881 (issued November 19, 2018); *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

¹³ *See B.D.*, Docket No. 25-0852 (issued December 1, 2025); *F.S.*, Docket No. 22-0070 (issued June 14, 2023); *M.L.*, Docket No. 18-0153 (issued January 22, 2020); *N.B.*, Docket No. 19-0221 (issued July 15, 2019); *Z.B.*, Docket No. 17-1336 (issued January 10, 2019); *T.M.*, *id.*

¹⁴ *Supra* note 12.

physicians as defined under FECA.¹⁵ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a lumbar spine condition causally related to the accepted October 26, 2022 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 5, 2025 is affirmed.

Issued: January 21, 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

¹⁵ Section 8101(2) of FECA provides that 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) (January 2013); *L.C.*, Docket No. 21-0161 (issued January 12, 2022) (as physical therapists, nurses, physicians, and social workers are not considered physicians under FECA, their opinions will not suffice for purposes of establishing entitlement to FECA benefits). *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (a report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician). *See also R.R.*, Docket No. 24-0624 (issued July 29, 2024) (certified family nurse practitioners are not considered physicians as defined under FECA and their reports do not constitute competent medical evidence); *B.D.*, Docket No. 22-0503 (issued September 27, 2022 (nurse practitioners are not considered physicians as defined under FECA and their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits); *L.S.*, Docket No. 19-1231 (issued March 30, 2021) (nurse practitioners are not considered physicians as defined under FECA); *P.S.*, Docket No. 17-0598 (issued June 23, 2017) (registered nurses and nurse practitioners are not considered physicians as defined under FECA).