

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

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E.C., Appellant	)	
	)	
and	)	<b>Docket No. 14-1343</b>
	)	<b>Issued: December 10, 2014</b>
<b>TRANSPORTATION SECURITY</b>	)	
<b>ADMINISTRATION, FEDERAL AIR</b>	)	
<b>MARSHAL SERVICE, Orlando, FL, Employer</b>	)	

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*Appearances:* *Case Submitted on the Record*  
Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On May 27, 2014 appellant, through counsel, filed a timely appeal from the March 28, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant 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 issues in this case.

**ISSUE**

The issue is whether appellant has met his burden of proof to establish an injury causally related to factors of his federal employment.

**FACTUAL HISTORY**

On June 17, 2013 appellant, then a 49-year-old air marshal, filed an occupational disease claim alleging that he developed degenerative arthritis in both knees due to walking and climbing

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

stairs, carrying baggage, and also employer-mandated physical, self-defense, and firearms training. He alleged that his injury began on July 10, 2009 and that he first became aware of its relation to his work on May 21, 2013. The employing establishment advised that appellant had not worked since December 2012 due to a different work injury accepted under a separate claim.<sup>2</sup>

By letters dated June 27, 2013, OWCP advised appellant and the employing establishment that additional factual and medical evidence was needed.

OWCP received medical treatment notes dating from July 10, 2009 to January 22, 2010 from Dr. James E. Carter, a surgeon, who offered diagnoses of appellant's back conditions as well as finding that he had degenerative arthritis in the knees with bilateral early medial joint collapse. In his July 10, 2009 notes, Dr. Carter indicated that x-rays of the knees revealed minimal medial joint collapse bilaterally. In an August 10, 2009 note, he advised that appellant had a military service-connected 40 percent disability because of his back. Dr. Carter also indicated that, with regard to running as part of his air marshal duties, appellant did "not qualify in this manner, and I have asked him to call the lady and talk to her and to see if we could come to a decision regarding same. Any rate, I feel little reluctant as this is a man who is 40 percent disabled because of his back, and now wants me to fill out this form. There are certain elements of this which he does not qualify for." In a January 22, 2010 treatment note, Dr. Carter advised that appellant could not perform all duties required of an air marshal as he was unable to maintain a kneeling position and would have difficulty running on tarmac or a firm surface.

In a May 10, 2013 report, Dr. Samy F. Bishai, an orthopedic surgeon, noted appellant's history and treatment. He indicated that appellant was unable to sit, stand, walk, bend, stoop, kneel, run, twist, or lift more than five pounds without experiencing burning pain in his back, buttocks and legs to his feet. Dr. Bishai noted appellant's back injury history and diagnoses, which included multiple degenerative conditions and disc herniations, as well as a preexisting condition due to military service. He opined that appellant's combined injuries interfered with his work as an air marshal such that he could not sit, stand or walk for more than a few minutes at a time, making it impossible to perform his duties. Dr. Bishai opined that the condition was permanent and he recommended disability retirement.

In a May 21, 2013 report, Dr. Anthony Lombardo, a Board-certified orthopedic surgeon, noted that appellant was seen for his left knee and lumbar compression fractures. He noted appellant's back injury history and reported findings that included decreased range of motion in both knees with medial compartment osteoarthritis of both knees. Dr. Lombardo stated that appellant had difficulty with walking and daily activities, and used a cane for ambulating. He diagnosed back pain, knee pain and thoracic compression fractures with spinal cord myopathy. Dr. Lombardo recommended that appellant retire due to his medical conditions. He opined that appellant could not work as an air marshal due to the condition of his back and knees.

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<sup>2</sup> The record indicates that appellant is in receipt of total disability compensation for a November 26, 2012 traumatic injury in claim File No. xxxxxx124, accepted for thoracic disc herniation. This other claim is not presently before the Board.

In e-mail correspondence dated June 26, 2013, appellant provided a statement describing his air marshal duties. These included being assigned to multiple airports and flying on commercial aircraft on a daily basis; walking throughout multiple airports up to several miles a day; carrying and lifting personal luggage as well as a weapons case, weighing up to 45 pounds, several times a day, five days a week for the past 10 and a half years. Appellant also noted that defensive/physical training was conducted one or two times a month and included walking, jogging, running, handcuffing techniques, use of the baton and aircraft tactical practice in commercial airplanes. In 2011, he was given a permanent waiver excluding him from running on hard surfaces or participating in activities that were strenuous to his knee condition. Appellant noted that his physicians supported that his conditions were work related. On August 20, 2013 OWCP received an undated statement from appellant that also described his air marshal duties since May 2002. Appellant first noticed that his knees began to bother him when he was assigned to a mission overseas in July 2009. Subsequently, Dr. Carter diagnosed degenerative arthritis in both knees with early medial joint collapse. Appellant reiterated the work duties and mandatory fitness training that he felt caused his condition.

In a September 20, 2013 decision, OWCP denied appellant's claim. It found that the medical evidence did not establish causal relationship.

On September 30, 2013 appellant's representative requested a telephonic hearing, which was held on February 24, 2014.

Appellant submitted an August 21, 2013 report from Dr. Bishai, who noted that appellant had complaints of pain and swelling in both knees, could not bend or squat, had clicking or popping in both knees, giving way of both knees, more severe on the left, and limited knee range of motion. Dr. Bishai diagnosed degenerative arthritis of both knees. He explained that appellant worked as an air marshal since May 2002, and during this time, his physical schedule required agility and being in excellent physical condition. Dr. Bishai opined that the job took its toll on his knees as appellant's duties included much walking, climbing, and going on escalators and ramps in airports. He opined that "the combination of these movements causes twisting movements of the knee joint while the foot is planted on the ground and this type of torque forces that are applied to the knee joints cause trauma to the medial and lateral menisci and cause erosion of the articular surface of the cartilage of the knee joint." Dr. Bishai advised that the combination of these activities, as well as sitting in an airplane seat for hours of flying a long time with having to get up frequently from his seat and walk around with a lot of twisting movements, added to the damage done to the knees. He stated that the condition took a long time to develop. Dr. Bishai explained that appellant was doing these types of activities as well as the training activities that he was required to do to be physically fit and able to endure the type of grueling schedule that he maintained in his job for about 10½ years. He opined that it "is a well-known, scientific fact that these small tears occur over a period of time in the menisci of the knee joints and articular surface cause the development of degenerative arthritis of the knee joints over a period of time. There is absolutely no question in my mind that this patient's degenerative arthritis in his knee joints has developed as a result of his work-related activities as an air marshal." Dr. Bishai stated that "[i]t is my opinion, within a reasonable degree of medical certainty, that the degenerative arthritis that the patient is suffering from now has developed as a result of his performance of his job duties working as an air marshal." He asserted that his

opinion was rationalized and explained the pathophysiological processes leading to the development of the degenerative arthritis of the knees.

OWCP received a copy of appellant's flight mission summary; his individual training report; a family medical history; nurses notes dating from July 22, 2004 to May 3, 2012; copies of appellant's physicals from 2009 to 2012; and previously submitted evidence.

An August 23, 2013 magnetic resonance imaging (MRI) scan of the right knee, read by Dr. Mark J. Timken, a Board-certified diagnostic radiologist, demonstrated particular edema with large patellofemoral fluid collection, joint effusion and chondromalacia patellae; bone bruise of the patella, and no meniscal or ligamentous tear. An August 23, 2013 MRI scan of the left knee, read by Dr. Timken revealed findings of edema, bone bruise of the patella, joint effusion, patellofemoral fluid collection and chondromalacia patellae.

By decision dated March 28, 2014, an OWCP hearing representative affirmed the September 20, 2013 OWCP decision. He noted that the medical evidence did not distinguish between preexisting conditions and factors of appellant's employment.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of establishing 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, 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>3</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>4</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the

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<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>5</sup>

### ANALYSIS

The evidence establishes that appellant has arthritis in both knees. Appellant's job responsibilities included walking and climbing stairs at airports, carrying baggage, sitting on flights, and also participating in employer-mandated physical, self-defense and firearms training in the performance of duty. However, appellant submitted insufficient medical evidence to establish that his knee condition was caused or aggravated by these or any other specific factors of his federal employment.

In an August 21, 2013 report, Dr. Bishai noted appellant's knee symptoms and diagnosed degenerative arthritis of both knees. He stated that appellant worked as a federal air marshal since May 2002 and opined that the job took its toll on appellant's knees, noting that appellant's duties included walking, climbing, and going on escalators and ramps in airports. Dr. Bishai opined that "the combination of these movements causes twisting movements of the knee joint while the foot is planted on the ground and this type of torque forces that are applied to the knee joints cause trauma to the medial and lateral menisci and cause erosion of the articular surface of the cartilage of the knee joint." He advised that these activities, as well as sitting in an airplane seat for hours and having to get up frequently and walk around with a lot of twisting movements added to the damage to the knee joints.

Dr. Bishai opined that it "is a well-known, scientific fact that these small tears occur over a period of time in the menisci of the knee joints and articular surface cause the development of degenerative arthritis of the knee joints over a period of time. There is absolutely no question in my mind that this patient's degenerative arthritis in his knee joints has developed as a result of his work-related activities as an air marshal." Dr. Bishai stated that "it is my opinion, within a reasonable degree of medical certainty, that the degenerative arthritis that the patient is suffering from now has developed as a result of his performance of his job duties working as an air marshal." He stated that his opinion was rationalized and explained the pathophysiological processes that lead to the development of the degenerative arthritis of the knee joints.

However, although Dr. Bishai asserts that he provided rationale, his report does not explain how specific work duties caused or aggravated the claimed arthritis. The need for rationale is particularly important in view of appellant's preexisting service-connected disability. Dr. Bishai did not explain how the 40 percent service-connected disability affected his claimed knee condition. As noted, part of appellant's burden of proof includes the submission of rationalized medical opinion addressing whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.

In his May 10, 2013 report, Dr. Bishai noted appellant's history, including a preexisting condition from military service. He opined that appellant's combined injuries interfered with his work as an air marshal such that he could not sit, stand or walk for more than a few minutes at a time, making it impossible to perform his duties and recommended disability retirement.

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<sup>5</sup> *Id.*

Dr. Bishai did not, however, provide a rationalized opinion to explain how these work factors caused or aggravated the claimed knee conditions. A medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.<sup>6</sup>

Appellant provided several reports from Dr. Carter dating from July 10, 2009 to January 22, 2010. However, Dr. Carter merely offered diagnoses which included back conditions and degenerative arthritis in the knees with early bilateral medial joint collapse. His July 10, 2009 notes indicated that knee x-rays revealed minimal medial joint collapse bilaterally. On August 10, 2009 Dr. Carter noted that appellant had a military service-connected 40 percent disability because of his back. He advised that he was reluctant to complete a form regarding restrictions as “there are certain elements of this which he does not qualify for.” In a January 22, 2010 treatment note, Dr. Carter advised that appellant could not perform all air marshal duties as he was unable to maintain a kneeling position and would have difficulty running on tarmac or a firm surface. The Board notes that Dr. Carter’s reports do not support that appellant’s condition is employment related. Medical evidence that does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship.<sup>7</sup>

Similarly, other medical reports of record are insufficient to establish the claim as they do not specifically address how appellant’s work activities caused or aggravated his claimed bilateral knee arthritis. For example, Dr. Lombardo’s May 21, 2013 report noted findings and recommended that appellant could not work as an air marshal due to the condition of his back and knees. However, he does not specifically address how appellant’s claimed knee condition was caused or aggravated by his employment.

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>8</sup> Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>9</sup> Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant’s responsibility to submit.

As there is no reasoned medical evidence explaining how appellant’s employment duties caused or aggravated a medical condition involving his knees, appellant has not met his burden of proof in establishing that he sustained a medical condition causally related to factors of his employment.

Appellant may submit evidence or argument with a written request for reconsideration 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.

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<sup>6</sup> *T.M.*, Docket No. 08-975 (issued February 6, 2009).

<sup>7</sup> *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

<sup>8</sup> *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

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

**CONCLUSION**

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury causally related to factors of his federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 28, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 10, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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