

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

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<b>L.C., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 17-1811</b>
	)	<b>Issued: March 23, 2018</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Milford, CT, Employer</b>	)	
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*Appearances:* *Case Submitted on the Record*  
*Benjamin Zimmermann, Esq., for the appellant*<sup>1</sup>  
*Office of Solicitor, for the Director*

**DECISION AND ORDER**

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

**JURISDICTION**

On August 18, 2017 appellant, through counsel, filed a timely appeal from a March 10, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.<sup>3</sup>

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> Appellant, through counsel, filed a timely request for oral argument before the Board. After exercising its discretion the Board, by order dated February 1, 2018, denied his request finding that his arguments could be adequately addressed in a decision based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 17-1811 (issued February 1, 2018).

## ISSUE

The issue is whether appellant met his burden of proof to establish that his bilateral hip, knee, and ankle osteoarthritis conditions were causally related to the accepted factors of his federal employment.

## FACTUAL HISTORY

On September 29, 2014 appellant, then a 65-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that, on June 20, 2014, he first became aware of the relationship between his employment and the aggravation of his preexisting bilateral hip, knees, and ankle osteoarthritis. He stopped work on August 8, 2014 and retired from the employing establishment, effective November 30, 2014.

By development letter dated October 31, 2014, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him regarding the medical and factual evidence required and afforded 30 days to provide this information.

In response to OWCP's development letter, appellant submitted additional medical evidence.

In reports dated May 2, 2013, and February 17 and April 4, 2014, Dr. Amit Lama, a treating Board-certified orthopedic surgeon, diagnosed lower leg pain joint, lower leg osteoarthrosis, and unspecified knee internal derangement. He reported that appellant had undergone a total right knee arthroplasty on September 28, 2008. Dr. Lahav noted that appellant complained of continued bilateral lower extremity discomfort. A physical examination revealed mild left knee swelling, no effusion, tenderness along medial joint line, and no hip pain with motion. Dr. Lahav reviewed x-ray interpretations which showed left knee patellofemoral compartment degenerative changes, left knee moderate narrowing of the medial compartment, and well-healed contralateral total right knee arthroplasty. Diagnoses included left knee arthralgia, left knee medial compartment arthritis degeneration, and status post right total knee arthroplasty. Dr. Lahav opined that appellant's letter carrier duties aggravated his lower extremity joints.

A March 11, 2014 magnetic resonance imaging (MRI) scan revealed severe left knee osteoarthritis with a posterior horn tear.

In reports dated April 28 and May 4, 2014, Philip Hujdic, a certified physician assistant, provided physical findings and performed an ultrasound of the left knee. He diagnosed left lower leg joint pain, left lower leg osteoarthritis, and left knee internal derangement.

Dr. Lahav, in an August 20, 2014 report, detailed this history of appellant's medical treatment from 2006 and noted in general terms the physical requirements of appellant's duties as a letter carrier. He related diagnoses of right knee arthritis, status post total right knee arthroplasty, bilateral hip arthritis, bilateral ankle arthritis/degeneration, and left knee arthritis/degeneration and arthralgia. Dr. Lahav related that appellant's examination findings were unchanged from prior reports. He described what the term arthritis entailed and contributing factors for this condition. Dr. Lahav opined that appellant's employment duties, which required constant and repetitive

walking, stooping, climbing, squatting, bending stair climbing, twisting, lifting, and carrying, caused stress, which in turn caused chronic inflammation which accelerated the loss of degradative cartilage.

On January 23, 2015 OWCP referred appellant's claim, and a statement of accepted facts (SOAF) to a district medical adviser (DMA) for an opinion as to whether his job duties aggravated his preexisting bilateral knee, hip, and ankle conditions. It provided the DMA a definition of aggravation on February 3, 2015) On March 1, 2015 the DMA, based upon a review of the medical evidence and SOAF, concluded that appellant's federal employment did not cause any aggravation of the preexisting bilateral hip, knee, and ankle conditions.

By decision dated March 26, 2015, OWCP denied appellant's claim as it found that the evidence of record failed to establish that the diagnosed conditions were caused or aggravated by the accepted factors of his federal employment.

In a letter dated April 21, 2015, counsel requested an oral hearing before an OWCP hearing representative, which was subsequently converted to a review of the written record.

In a November 23, 2015 report, Dr. Lahav again summarized appellant's medical history. In support of his opinion that appellant's work duties aggravated his preexisting bilateral knee and hip conditions, he noted the increasing intensity of appellant's complaints with his employment weight bearing activities. Dr. Lahav reported appellant's decreased range of motion from a March 13, 2009 examination to a February 13, 2014 examination, which he opined established causal relationship between appellant's left knee and his stressful letter carrier activity. Next, he reported a worsening of appellant's bilateral hips and bilateral ankles based on comparison of x-ray interpretations taken in 2006 and 2008 with an August 20, 2014 MRI scan and x-ray interpretation. Dr. Lahav explained that the activities appellant performed as a letter carrier would have aggravated his preexisting lower extremity joint arthritis, which he stated was supported by medical research and well accepted by the medical community. Thus, he opined that there was a direct causal relationship between appellant's worsening arthritic conditions and his federal job duties.

By decision dated February 8, 2016, OWCP's hearing representative affirmed the denial of appellant's claim. He noted that he only considered whether work factors from June 12, 2013 to November 30, 2014 aggravated appellant's lower extremity arthritic conditions as OWCP had previously denied a claim, which was filed on June 12, 2013, regarding the same allegation, which OWCP denied by decision dated September 17, 2013.

In a December 31, 2016 report, Dr. Lahav diagnosed bilateral hip degenerative joint disease and bilateral lower leg osteoarthritis. He indicated the reason for his report was to address the issue of causal relationship between appellant's diagnosed conditions and his federal employment. Dr. Lahav explained that, once the arthritic process commences, the process becomes increasingly rapid with aggravating types of activities. Specifically, the continuous load activities performed by appellant during his 19 years working for the employing establishment, including the months prior to his retirement, increased the stress on his bilateral lower extremity joints which in turn led to the continued articular cartilage degenerative process an result arthritic joint deterioration. Dr. Lahav noted that the progression of appellant's deterioration was supported

by x-ray interpretations. He noted that, if appellant's job had been sedentary, the bilateral lower extremity arthritis would not have advanced to its current state.

By decision dated January 17, 2017 appellant, through counsel, requested reconsideration.

By decision dated March 10, 2017, OWCP denied modification. In this decision it found that Dr. Lahav's reports were insufficient to establish appellant's claim as he did not address the natural course of his underlying condition and how the accepted employment factors altered his preexisting condition.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> 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, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific 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 on a traumatic injury or an occupational disease.<sup>6</sup>

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee 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 employment factors identified by the employee.<sup>7</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>8</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and the compensable employment factors.<sup>9</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

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>6</sup> *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>7</sup> *D.U.*, Docket No. 10-0144 (issued July 27, 2010); *R.H.*, 59 ECAB 382 (2008); *Roy L. Humphrey*, 57 ECAB 238 (2005); *Donald W. Wenzel*, 56 ECAB 390 (2005).

<sup>8</sup> *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

<sup>9</sup> *J.J.*, Docket No. 09-0027 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>10</sup>

### ANALYSIS

Appellant alleged that his preexisting bilateral hip, knees, and ankle osteoarthritis had been aggravated by his federal employment. OWCP denied his claim finding that he had not submitted sufficient medical evidence to establish causal relationship between the diagnosed medical conditions and the accepted factors of his federal employment.

The Board finds that appellant has not submitted sufficient evidence to establish that his preexisting bilateral hip, knees, and ankle osteoarthritis conditions were aggravated by his accepted federal employment factors.

In reports dated May 2, 2013, and February 17 and April 4, 2014, Dr. Lahav diagnosed left knee arthralgia, left knee medial compartment arthritis degeneration, and status post right total knee arthroplasty, which he opined had been aggravated by appellant's letter carrier duties. In an August 4, 2014 report, he noted the duties of a letter carrier and provided a description of arthritis including contributing factors. Dr. Lahav opined that the repetitive duties of stooping, walking, climbing, squatting, stair climbing, bending, twisting, lifting, and carrying all caused stress on appellant's joints which caused chronic inflammation which resulted in acceleration of degradative cartilage. In a November 23, 2015 report, he again reiterated his opinion that appellant's work duties aggravated his preexisting conditions. In support of this conclusion, Dr. Lahav explained the aggravation was established by the increased intensity of appellant's complaints with the weight bearing activities required by his job. Moreover, he compared diagnostic tests as supporting a causal relationship of aggravation by appellant's work duties. Dr. Lahav concluded that appellant's work duties aggravated appellant's preexisting arthritic condition without a complete explanation of the mechanism involved. While his reports support that appellant's preexisting arthritic conditions progressed through the years, Dr. Lahav did not provide sufficient medical rationale to explain how appellant's employment duties in fact caused aggravation of the underlying condition. Dr. Lahav listed appellant's employment activities in general terms, he did not explain any specific employment duty in detail. He did not provide a proper employment history detailing how far appellant walked each day, the weight of the mail he lifted, or how often he had to climb stairs, bend or stoop.<sup>11</sup> Without proper explanation as to how specific employment duties caused or contributed to the diagnosed condition, Dr. Lahav's opinions on causal relationship are of limited probative value.<sup>12</sup>

Dr. Lahav cited medical literature on the effect of physically demanding occupations on the development of lower extremity osteoarthritis. However, the Board has held that medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and an employee's federal employment as such materials are of

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<sup>10</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>11</sup> *See J.F.*, Docket No. 17-0458 (issued October 2, 2017).

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

general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.<sup>13</sup> This material has probative value only to the extent that it is interpreted and cited by a physician rendering an opinion on the causal relationship between a condition and specified employment injury.<sup>14</sup> Dr. Lahav cited the journal articles in support of weight bearing stress activities causing and accelerating degenerative osteoarthritis. He expressed his agreement with the research conclusions, but did not provide a complete explanation of how these mechanisms were present in appellant's case. The Board, therefore, finds that the cited literature is of limited probative value and is insufficient on its own to establish causal relationship.

The Board further finds that Dr. Lahav's reports do not provide a biomechanical explanation of how appellant's federal employment duties resulted in an aggravation of bilateral hip, knees, and ankle osteoarthritis. Without explaining how physiologically the movements involved in appellant's employment duties caused or contributed to the diagnosed conditions, Dr. Lahav's opinion on causal relationship is equivocal in nature and of limited probative value.<sup>15</sup> His reports therefore did not provide the necessary medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>16</sup> The Board has previously held that conclusory statements not fortified by medical rationale are insufficient to establish causal relationship between employment factors and diagnosed conditions.<sup>17</sup> Thus, these reports are insufficient to meet appellant's burden of proof.

Appellant also submitted reports from Mr. Hujdic, a physician assistant. The Board has held that physician assistants<sup>18</sup> are not considered physicians under FECA, and their opinions are therefore of no probative medical value.<sup>19</sup> These reports are therefore insufficient to meet appellant's burden of proof to establish causal relationship.

The record also contains a March 11, 2014 MRI scan. The Board has held that reports of diagnostic tests are of limited probative value as they fail to provide an opinion on the causal

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<sup>13</sup> *N.B.*, Docket No. 14-1702 (issued December 29, 2014); *S.A.*, Docket No. 13-1551 (issued December 17, 2013); *Gloria J. McPherson*, 51 ECAB 441 (2000); *William C. Bush*, 40 ECAB 1064, 1075 (1989).

<sup>14</sup> *C.S.*, Docket No. 12-1169 (issued November 5, 2012); *Harlan L. Soeten*, 38 ECAB 566, 567 (1987).

<sup>15</sup> *See S.C.*, Docket No. 17-0103 (issued May 2, 2017).

<sup>16</sup> *Leslie C. Moore*, 52 ECAB 132, 134 (2000).

<sup>17</sup> *N.M.*, Docket No. 10-0283 (issued August 19, 2010).

<sup>18</sup> *Allen C. Hundley*, 53 ECAB 551(2002).

<sup>19</sup> *See David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law). *See also M.J.*, Docket No. 17-1241 (October 17, 2017).

relationship between appellant's employment duties and the diagnosed conditions. For this reason, this evidence is insufficient to meet his burden of proof.<sup>20</sup>

As appellant has not submitted rationalized medical evidence to support his claim that his bilateral hip, knees, and ankle osteoarthritis conditions were aggravated by factors of his federal employment, he has not met his burden of proof.

On appeal counsel argues that it was error on the part of OWCP to reject Dr. Lahav's three reports. He further contends that OWCP substituted its opinion over Dr. Lahav's opinion on the issue of causal relationship. Lastly, counsel argues that the evidence or record is sufficient to establish appellant's claim. For the reasons set forth above, appellant has not met his burden of proof as he failed to submit rationalized medical evidence supporting his claim. Further, it is OWCP's job to weigh the medical evidence submitted to determine whether it is sufficient to establish appellant's claim as was done in this case. OWCP did not substitute its opinion on causation.

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.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that his bilateral hip, knees, and ankle osteoarthritis conditions were causally related to the accepted factors of his federal employment.

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<sup>20</sup> *S.G.*, Docket No. 17-1054 (issued September 14, 2017).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 10, 2017 is affirmed.

Issued: March 23, 2018  
Washington, DC

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

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

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