

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

C.D., Appellant	)	
	)	
and	)	<b>Docket No. 17-2011</b>
	)	<b>Issued: November 6, 2018</b>
<b>DEPARTMENT OF HOMELAND SECURITY,</b>	)	
<b>TRANSPORTATION SECURITY</b>	)	
<b>ADMINISTRATION, Newark, NJ, Employer</b>	)	
	)	

*Appearances:*  
Thomas R. Uliase, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On September 28, 2017 appellant, through counsel, filed a timely appeal from an April 4, 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 over 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> The record provided to the Board includes evidence received after OWCP issued its April 4, 2017 decision. The Board's jurisdiction is limited to the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from considering this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

## ISSUE

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

## FACTUAL HISTORY

On August 18, 2016 appellant, then a 54-year-old transportation security officer, filed an occupational disease claim (Form CA-2) alleging that she sustained an injury to her “knees, hips, ankles, feet, and lower back/radiculopathy” due to factors of her federal employment, including lifting up to 70 pounds, twisting, bending, squatting, walking, and standing. She indicated that she first became aware of her claimed conditions on March 1, 2015 and first realized that they were caused or aggravated by her employment on July 5, 2016. Appellant stopped work on July 27, 2016.

In notes dated July 27 and August 29, 2016, Dr. Mark Filippone, a Board-certified physiatrist, opined that appellant was totally disabled from work as of July 28, 2016.

On September 19, 2016 a narrative statement was submitted by appellant indicating that her federal employment duties included using an x-ray machine, bending, squatting, standing, and walking for long periods of time. She also noted that in or about 1998 she broke her left ankle and underwent three surgeries. Appellant also stated that in 2009 she injured her left shoulder at work and in June 2014 she injured her right foot at work.

An x-ray of appellant’s left hip dated December 31, 2015, revealed moderate-to-severe left hip joint osteoarthritis.

A December 31, 2015 sonogram of appellant’s abdomen demonstrated left renal cyst, cholelithiasis, and upper limits of normal diameter of the common bile duct which measured 5.7 millimeter.

X-rays of appellant’s knees dated December 31, 2015, revealed suspected joint effusion and osteoarthritis in the right knee and arthropathy most compatible with osteoarthritis in the left knee.

In an April 4, 2016 report, Dr. Filippone noted that, two years prior, appellant had twisted her right ankle when a chair fell out from under her. He noted that she had been limping off her painful right foot and she was now beginning to demonstrate left ankle pain and problems as a result of the limping. Dr. Filippone reported that appellant’s left knee was giving out and she had a sense of weakness in the ankles bilaterally. He also reported that both of her hips hurt since 2012, the left more than the right, which she felt was the result of limping off the painful ankle. Appellant also occasionally complained of numbness and tingling into both feet. Dr. Filippone diagnosed lumbosacral radiculitis, internal derangement of both hips, worse on the left, internal derangement of both knees, internal derangement of both ankles, and hypertension.

On April 26, 2016 Dr. Filippone performed electromyography (EMG) and nerve conduction velocity (NCV) studies of appellant’s lower extremities and found that the lower extremity motor and sensory NCV studies were normal. He opined that there was no electrical

suggestion of any polyneuropathy based on the NCV. Dr. Filippone found that the needle EMG examination was abnormal evincing left L5-S1 lumbosacral radiculopathy. He also found nerve conduction evidence of a left tarsal tunnel syndrome and EMG evidence of a left tarsal tunnel syndrome. Dr. Filippone opined that all of the above electrical abnormalities were totally consistent with appellant's history and physical presentation.

In a May 24, 2016 report, Dr. Filippone noted that appellant's medical history was unchanged and thus far she had three surgeries to her left ankle, but she never had low back surgery.

A June 9, 2016 x-ray of the left ankle demonstrated prominent ossification spanning the distal tibial and fibular synchondrosis, fragmented bone adjacent to the medial malleolus, suggestive of the residual of old injury, and prominent plantar calcaneal spur and small retrocalcaneal enthesophyte.

An x-ray of the lumbar spine dated June 9, 2016, revealed slight degenerative disc space narrowing at L5-S1 and bilateral facet arthropathy at L4-5 and L5-S1.

On June 22, 2016 Dr. Filippone reported that appellant's low back symptoms with radicular pain into the left lower extremity were getting worse. Appellant's hip pain was worsening, especially on the left, her knee pain was worsening, and her ankles were progressively hurting.

In an attending physician's report (Form CA-20) and note dated October 3, 2016, Dr. Filippone opined that appellant was totally disabled for work.

By development letter dated November 4, 2016, OWCP advised appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and to respond to its inquiries.

In response, counsel submitted a letter dated November 15, 2016, indicating that Dr. Filippone was out of the office due to a recent heart surgery, and, as such, requested an extension of time to respond. He later submitted an attending physician's report (Form CA-20) dated November 21, 2016, in which Dr. Filippone continued to opine that appellant was totally disabled from work and noted that he could not refer her to physical therapy or orthopedics because OWCP had not yet accepted her conditions. In a separate note dated November 21, 2016, counsel advised that she was totally disabled from work for the next 90 days.

In a November 21, 2016 report, Dr. Filippone noted that it was evident that appellant had been bending, stooping, pushing, pulling, and lifting repetitively and in the process injured her back, hips, knees, and ankles. He noted that she had some osteoarthritic conditions which "could have been aggravated by [appellant's] work duties."

By decision dated December 5, 2016, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between her medical conditions and the accepted factors of her federal employment.

On December 13, 2016 counsel requested an oral hearing by a representative of the Branch of Hearings and Review.

On October 3, 2016 Dr. Filippone noted that appellant had been under his care from April 4 to August 29, 2016. He indicated that she had worked for the employing establishment since 2006 and had no complaints referable to her low back, left knees, or ankles prior to her employment. Dr. Filippone reiterated appellant's narrative statement indicating that her federal duties included using an x-ray machine, bending, squatting, standing, and walking for long periods of time. He opined that her medical conditions were directly related to her federal employment and advised that she remained totally disabled from work.

In an attending physician's report (Form CA-20) dated December 9, 2016, Dr. Filippone continued to opine that appellant was totally disabled from work.

A video hearing was held before an OWCP hearing representative on March 1, 2017. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence.

Appellant subsequently submitted a January 19, 2017 report from Dr. Filippone who noted that her complaints were unchanged and that she remained totally disabled from work.

In a February 15, 2017 report, Dr. Filippone noted that there was magnetic resonance imaging (MRI) scan evidence of injury to appellant's left hip, knees, and low back, all of which, in his opinion, were directly and solely the result of the injuries sustained while at work with severe osteoarthritic degenerative change of the left hip with an associated effusion consistent with synovitis secondary to overworking due to her heavy work at the employing establishment.

By decision dated April 4, 2017, OWCP's hearing representative affirmed the December 5, 2016 decision.

### **LEGAL PRECEDENT**

A claimant seeking benefits under FECA<sup>4</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.<sup>5</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (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

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

<sup>5</sup> 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.<sup>6</sup>

Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue.<sup>7</sup> A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background.<sup>8</sup> Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.<sup>9</sup>

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment.

Several reports of Dr. Filippone were offered in support of appellant's claim.

In his reports, Dr. Filippone diagnosed lumbosacral radiculitis and internal derangement of the bilateral hips, knees, and ankles. He found that a needle EMG examination was abnormal and provided evidence of a left L5-S1 lumbosacral radiculopathy. Dr. Filippone also found nerve conduction evidence of a left tarsal tunnel syndrome and EMG evidence of a left tarsal tunnel syndrome. He noted that it was evident that appellant had been bending, stooping, pushing, pulling, and lifting repetitively and in the process injured her back, hips, knees, and ankles. Dr. Filippone also noted that she had some osteoarthritic conditions which "could have been aggravated by [appellant's] work duties." He opined that appellant's conditions were directly and solely the result of the injuries sustained while at work. Dr. Filippone failed to provide sufficient medical rationale explaining how her medical conditions were caused or aggravated by lifting up to 70 pounds, twisting, bending, squatting, walking, and standing at work. His opinion was based, in part, on temporal correlation. However, the Board has held that neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish

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<sup>6</sup> *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>7</sup> *See Robert G. Morris*, 48 ECAB 238 (1996).

<sup>8</sup> *Supra* note 6.

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

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

a causal relationship.<sup>11</sup> Dr. Filippone did not otherwise sufficiently explain the reasons why diagnostic testing and examination findings led him to conclude that appellant's employment factors caused or contributed to the diagnosed conditions. The need for rationale is particularly important as the record indicates that she had a preexisting condition. In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>12</sup> Thus, the Board finds that the reports from Dr. Filippone are insufficient to establish that appellant sustained an employment-related injury.

Appellant also submitted x-ray reports in support of her claim. Her December 31, 2015 x-rays demonstrated left hip joint osteoarthritis, right knee osteoarthritis, and arthropathy most compatible with osteoarthritis in the left knee. Appellant's June 9, 2016 x-rays demonstrated prominent ossification of the left ankle and slight degenerative disc space narrowing at L5-S1 and bilateral facet arthropathy at L4-5 and L5-S1. Diagnostic studies lack probative value on the issue of causal relationship as they do not address whether the employment incident caused any of the diagnosed conditions.<sup>13</sup> These reports are therefore insufficient to establish causal relationship in this claim.

As appellant has not submitted any rationalized medical evidence to support her allegation that she sustained an injury causally related to the accepted factors of her federal employment, she has not met her burden of proof to establish a claim.

Counsel argues on appeal that Dr. Filippone's opinion is sufficient to establish causal relationship. Alternatively, he argues that this evidence submitted establishes a *prima facie* case of entitlement to FECA benefits, thereby warranting a remand to OWCP for further medical development. For the reasons set forth above, the Board has found that appellant has not met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment.

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 her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment.

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<sup>11</sup> *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

<sup>12</sup> *Supra* note 10; *see also J.R.*, Docket No. 16-0327 (issued July 6, 2016).

<sup>13</sup> *See J.S.*, Docket No. 17-1039 (issued October 6, 2017).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 4, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 6, 2018  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

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

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