

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

T.M., Appellant)
and) Docket No. 25-0527
DEPARTMENT OF JUSTICE, FEDERAL)
BUREAU OF PRISONS, FEDERAL MEDICAL)
CENTER CARSWELL, Fort Worth, TX,)
Employer)
Issued: July 1, 2025
)
)

Appearances:

John L. deGeneres, Jr., Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On May 8, 2025 appellant, through counsel, filed a timely appeal from a March 10, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP).² Pursuant to the

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 Appellant, through counsel, submitted a timely oral argument request before the Board. In support of appellant's oral argument request, she asserted that oral argument should be granted because the issue presented is more than just a mundane legal issue. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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 September 14, 2022 appellant, then a 57-year-old secondary teacher, filed an occupational disease claim (Form CA-2) alleging that her preexisting right hip and foot osteoarthritis had been aggravated by factors of her federal employment, including standing and walking for most of each workday. She noted that she first became aware of her condition and realized its relationship to factors of her federal employment on August 9, 2022.⁴

In an April 30, 2022 report, Dr. Gregg A. Miller, a Board-certified radiologist, reviewed December 1, 2021 x-rays of appellant's right hip, knees, and a January 20, 2022 x-ray of her feet. He reported right hip mild-to-moderate degenerative changes; bilateral knee mild degenerative changes, which was worse on the left; right foot moderate 1st metatarsophalangeal joint degenerative changes; left foot minimal 1st metatarsophalangeal joint degenerative changes; and bilateral heel spurs, which were worse on the left.

In a report dated August 9, 2022, Dr. Robert W. Macht, a general surgeon, reviewed appellant's medical records. He diagnosed permanent aggravation of right hip osteoarthritis, and permanent aggravation of right foot osteoarthritis. Dr. Macht recounted appellant's job duties which required her to be on her feet on cement floors for nearly all of the workday, with constant standing, walking, squatting, standing, climbing, kneeling, twisting, carrying, and bending. Review of appellant's x-rays demonstrated narrowing of right femoral acetabular joint space, narrowing of first metatarsal phalangeal joint; and narrowing of left knee medial compartment. Dr. Macht explained that osteoarthritis was caused by impact loading from repeated local stresses which caused chronic inflammation, which in turn resulted in accelerated loss of articular cartilage and accelerated the progression of arthritis. He opined that appellant's federal work duties hastened the progression and development of her right hip and right foot osteoarthritis, resulting in a permanent aggravation.

OWCP, in a development letter dated September 23, 2022, informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor regarding the accuracy of appellant's statements. It afforded both parties 30 days to submit the necessary evidence.

³ 5 U.S.C. § 8101 *et seq.*

⁴ Appellant retired from the employing establishment, effective September 30, 2021.

In a follow-up letter dated November 7, 2022, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that her case would be held open for 30 days to afford her an opportunity to submit the requested information. 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.

In response, counsel asserted that appellant had established her claim and referenced Dr. Macht's August 9, 2022 report.

By decision dated December 9, 2022, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a medical condition causally related to the accepted factors of her federal employment.

On December 21, 2022, appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated May 10, 2023 OWCP's hearing representative set aside the December 9, 2022 decision. The hearing representative remanded the case for further development of the medical evidence, including referral of appellant for a second opinion evaluation.

On July 20, 2023, OWCP referred appellant, along with a statement of accepted facts (SOAF) and a copy of the medical record, to Dr. George Cole, an osteopathic physician Board-certified in orthopedic surgery, for a second opinion evaluation to determine the relationship between the claimed conditions and accepted factors of appellant's federal employment.

In a report dated August 16, 2023, Dr. Cole discussed appellant's factual and medical history and reported the findings of her physical examination. He noted that appellant complained of bilateral knee, low back, feet, and low back pain; however, her subjective complaints exceeded her objective findings. Dr. Cole diagnosed morbid obesity, hypertension, and mild osteoarthritis in multiple body parts. He attributed appellant's osteoarthritis to her morbid obesity and was not related to her work activities. Dr. Cole explained there was no evidence that the accepted employment factors caused or aggravated a diagnosed condition.

By *de novo* decision dated September 7, 2023, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a medical condition causally related to the accepted factors of her federal employment.

On September 18, 2023, appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on January 8, 2024.

By decision dated March 19, 2024, OWCP's hearing representative vacated the September 7, 2023 decision, finding that Dr. Cole failed to provide sufficient medical rationale for his opinion. The hearing representative remanded the case for OWCP to obtain a supplemental report from Dr. Cole.

In an August 9, 2024 supplemental report, Dr. Cole explained that appellant performed the normal activities of a correctional officer including walking, standing, and carrying. However, if

it was assumed that these activities contributed to the development of osteoarthritis, these conditions would be present in all correctional officers after a period of years. Dr. Cole related that osteoarthritis would develop over time, regardless of activities, in morbidly obese individuals. He reported that appellant's diagnostic studies revealed mild-to-moderate osteoarthritis and bilateral plantar fasciitis in her feet. Based on the diagnostic study findings and her morbid obesity, Dr. Cole concluded that appellant's osteoarthritis was a natural result of her body habitus and aging process. He also noted that she had not worked in three years and he related that her osteoarthritis would continue to progress due to her obesity.

By *de novo* decision dated September 13, 2024, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a medical condition causally related to the accepted factors of her federal employment.

On October 1, 2024, appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on January 7, 2025.

By decision dated March 10, 2025, OWCP's hearing representative affirmed the September 13, 2024 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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,⁶ 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 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

⁵ *Supra* note 3.

⁶ 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).

⁷ *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).

⁸ *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).

compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁹

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹⁰ 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 supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors.¹¹

In a case in which 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.¹²

Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.¹³ This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case. In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical examiner (IME) for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹⁴

ANALYSIS

The Board finds this case not in posture for a decision.

Dr. Macht, in an August 9, 2022 report, diagnosed permanent right hip osteoarthritis aggravation and permanent right foot osteoarthritis aggravation. He recounted appellant's job duties which included constant and repetitive standing, walking, squatting, standing, climbing, kneeling, twisting, carrying, and bending. Dr. Macht advised that osteoarthritis was caused by impact loading from repeated local stresses which caused chronic inflammation, which in turn resulted in accelerated loss of articular cartilage and accelerated the progression of arthritis. He

⁹ *R.E.*, Docket No. 25-0179 (issued January 24, 2025).

¹⁰ *F.G.*, *supra* note 6; *C.M.*, *supra* note 6; *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

¹¹ *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see Victor J. Woodhams*, 41 ECAB 345 (1989).

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *N.N.*, Docket No. 24-0510 (issued July 16, 2024); *J.L.*, Docket No. 20-0717 (issued October 15, 2020).

¹³ 5 U.S.C. § 8123(a). *See R.C.*, Docket No. 18-0463 (issued February 7, 2020); *see also G.B.*, Docket No. 16-0996 (issued September 14, 2016).

¹⁴ 20 C.F.R. § 10.321; *see also D.M.*, Docket No. 25-0317 (issued April 15, 2025); *J.H.*, Docket No. 22-0981 (issued October 30, 2023); *N.D.*, Docket No. 21-1134 (issued July 13, 2022); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *James P. Roberts*, 31 ECAB 1010 (1980).

concluded that appellant's federal work duties accelerated the progression and development of her right hip and right foot osteoarthritis resulting in a permanent aggravation of her osteoarthritis.

In contrast, Dr. Cole, in reports dated August 16, 2023 and August 9, 2024, reviewed the medical evidence of record and opined that appellant's osteoarthritis was caused by her morbid obesity, as well as the aging process, and was not related to her work activities. He explained there was no evidence that the accepted employment factors caused or aggravated any diagnosed condition. Based on the diagnostic study findings and her morbid obesity, Dr. Cole concluded that appellant's osteoarthritis was a natural result of her body habitus and aging process and was unrelated to her federal employment duties.

The Board, therefore, finds that a conflict in medical opinion exists regarding whether appellant developed a permanent aggravation of her right hip and foot osteoarthritis causally related to the accepted factors of her federal employment.

FECA provides that, if a conflict exists between the medical opinion of the employee's treating physicians and the medical opinion of a second-opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination.¹⁵

The case shall therefore be remanded to OWCP for referral to an IME to determine whether appellant has met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment.¹⁶ Following 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 a decision.

¹⁵ 5 U.S.C. § 8123(a); *R.R.*, Docket No. 25-0220 (issued February 10, 2025); *M.W.*, Docket No. 19-1347 (issued December 5, 2019).

¹⁶ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the March 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: July 1, 2025
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board