

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a bilateral lower extremity condition causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On July 13, 2022 appellant, then a 47-year-old correctional officer, filed an occupational disease claim (Form CA-2) alleging that he sustained permanent osteoarthritis in his bilateral knees, hips, ankles, and feet causally related to factors of his federal employment.³ He noted that he first became aware of his condition and realized its relationship to his federal employment on May 23, 2022. In a narrative statement dated November 15, 2021, appellant described his work duties, which included standing on his feet approximately seven hours per day; walking one to two miles per day while wearing a duty belt, radio, two to six sets of keys (weighing one to six pounds), pepper spray, a flashlight, handcuffs, a stab resistant vest, and boots (weighing approximately 20 pounds); ascending and descending staircases; locking and unlocking doors; carrying a food cart weighing approximately 50 pounds; bending, squatting, twisting, and kneeling hundreds if not thousands of times per day; lifting heavy laundry and commissary items; and loading and unloading trucks by hand and with a forklift. He also noted that he had not returned to work since July 21, 2020 due to a concussion injury sustained at work.

In an October 23, 2021 diagnostic report, Dr. Justin W. Kung, a Board-certified diagnostic radiologist, noted his review of x-rays of appellant's knees, hips, ankles, and feet performed on October 7, 2021. He found mild degenerative changes of the right knee medial compartment, left medial and lateral compartments, left femoroacetabular joint, and both tiobiotalar joints.

On May 23, 2022 Dr. Suzanne Miller, a Board-certified orthopedic surgeon, evaluated appellant. She related appellant's employment history, reviewed Dr. Kung's x-ray report, and provided physical examination findings. Dr. Miller diagnosed osteoarthritis of the hips, knees, ankles, and feet. She opined that the diagnosed conditions were not directly caused by appellant's federal corrections officer position, but found that they were permanently aggravated and accelerated by his repetitive impact-loading work duties, which included walking, squatting, kneeling, stooping, climbing, bending, lifting, carrying, climbing stairs, and twisting. Dr. Miller explained that his genetics and weight also contributed to his diagnosed conditions. She further explained that appellant's condition was permanent because any damage to articular cartilage or any stress across the joints was irreversible.

³ OWCP assigned the present claim OWCP File No. xxxxxx418. Appellant has prior claims before OWCP. Under OWCP File No. xxxxxx992, appellant filed a traumatic injury claim (Form CA-1) for March 19, 2019 right elbow and forearm injuries, which OWCP accepted for lateral epicondylitis, right elbow; strain of trapezius muscle, right; and lesion on ulnar nerve, right upper limb. Under OWCP File No. xxxxxx454, he filed a Form CA-1 for July 21, 2020 contusion, head, and left shoulder and elbow injuries, which OWCP accepted for contusion and strain of left shoulder; concussion with loss of consciousness; post-concussion syndrome; expressive language disorder; developmental disorders of speech and language; chronic post-traumatic headache; headache, unspecified; and diffuse traumatic brain injury with loss of consciousness of unspecified duration.

Additionally, appellant submitted a copy of his official position description as a correctional officer and documents describing self-defense movements and physical requirements for law enforcement positions at the employing establishment.

In a development letter dated August 2, 2022, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and provided a questionnaire for his completion. In a separate development letter of even date, OWCP requested additional information from the employing establishment, including comments from a knowledgeable supervisor. It afforded both parties 30 days to respond.

In an August 15, 2022 response, the employing establishment noted that appellant worked as a compound officer prior to his March 2019 employment injury and following that injury, he returned to limited- light-duty work on April 30, 2019. It also submitted appellant's official position descriptions.

On August 16, 2022 appellant, through counsel, responded to OWCP's development questionnaire by referencing Dr. Miller's May 23, 2022 report.

By decision dated September 26, 2022, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed bilateral lower extremity osteoarthritis and the accepted factors of his federal employment.

On September 27, 2022 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Based upon a preliminary review dated December 20, 2022, the hearing representative vacated OWCP's September 26, 2022 decision and remanded the claim for further development.

On February 8, 2023 OWCP referred appellant, along with a statement of accepted facts (SOAF), the medical record, and a series of questions to Dr. Bernard E. Brady, a Board-certified orthopedic surgeon, for a second opinion examination.

In a March 8, 2023 report, Dr. Brady reviewed the SOAF, the medical record, and position descriptions for correctional officer and materials handler supervisor. He noted that appellant recounted his work duties as a correctional officer. Dr. Brady related appellant's physical examination findings and diagnosed bilateral hip, knee, and ankle pain; mild degenerative arthritis of the hip, knee, ankle; and status post injuries to the right upper extremity. He opined that appellant had no bilateral hip, knee, or ankle osteoarthritis or resultant disability causally related to his accepted employment factors. Dr. Brady noted that although the October 7, 2021 x-ray reports noted some mild degenerative changes in all these joints, Dr. Kung's interpretation of these x-rays indicated that there was still significant cartilage measuring three to four millimeters (mm) in thickness in all these joints. Thus, he found that Dr. Kung's report did not establish radiographic or clinical significant osteoarthritis in the hips, knees, or ankle joints. Dr. Brady found no evidence of any injury or cumulative activity performed by appellant that caused this degree of incapacity in the lower extremity joints. Therefore, he concluded that there was no causally related condition or disability regarding

appellant's hips, knees, or ankles. Dr. Brady further concluded that he had normal age-related changes in these various joints as described by his radiologist and there was nothing to suggest that any particular work activity had aggravated or caused the noted mild degenerative changes. In a March 8, 2023 work capacity evaluation (Form OWCP-5c), Dr. Brady advised that appellant could perform his usual job without restriction.

By *de novo* decision dated March 27, 2023, OWCP again denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish causal relationship between appellant's bilateral lower extremity osteoarthritis and the accepted factors of his federal employment.

On March 31, 2023 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 July 14, 2023, OWCP's hearing representative set aside OWCP's March 27, 2023 decision and remanded the case for OWCP to obtain the actual October 7, 2021 x-ray films which were reviewed by Dr. Kung in his October 23, 2021 report. The hearing representative further ordered OWCP to request that Dr. Brady review this evidence and provide a supplemental report addressing whether appellant had osteoarthritis of his bilateral hips, knees, ankles, and feet causally related to the accepted employment factors, to be followed by a *de novo* decision.

On August 4, 2023 OWCP requested that Dr. Brady review the enclosed October 7, 2021 x-ray films and provide a supplemental report addressing the concerns raised in the OWCP hearing representative's July 14, 2023 decision.

In a January 11, 2024 addendum report, Dr. Brady noted his review of the October 7, 2021 x-ray films. He indicated that the x-rays revealed some mild degenerative changes in all the reported joints, but there was still significant cartilage measuring three to four mm in thickness in all these joints. Therefore, Dr. Brady reiterated his prior opinions that appellant did not have radiographic or clinical findings of significant osteoarthritis in the hip, knee, or ankle joints, and there was no evidence that there was any injury or cumulative work activity that caused this degree of incapacity in these lower extremity joints. He again concluded that there was no evidence of causal relationship between appellant's bilateral lower extremity conditions and his federal employment.

On February 5, 2024 OWCP determined that a conflict in the medical evidence existed between appellant's physician, Dr. Miller, and OWCP's second opinion examiner, Dr. Brady, regarding causal relationship. On February 21, 2024 it referred appellant, along with a SOAF, the medical record, and a series of questions to Dr. John P. Herzog, a Board-certified orthopedic surgeon, to serve as an impartial medical examiner (IME) to resolve the conflict.

In an April 1, 2024 report, Dr. Herzog reviewed the history of appellant's employment injuries and his subsequent medical treatment. He discussed appellant's complaints of constant pain and stiffness in his hips, knees, and ankles, but noted that on physical examination appellant's pain was all subjective. Dr. Herzog advised that appellant's complaint of some wear and tear, which he blamed on working on concrete, was not a sufficient reason to have

osteoarthritis of the hips, knees, and ankles. He reviewed x-rays which showed adequate joint space preservation and thickness of articular cartilage to the hips, knees, and ankles. Dr. Herzog further advised that appellant had no injury that would aggravate his condition. He indicated that appellant's current pain was due to normal wear and tear from everyday life. Dr. Herzog opined that appellant could not return to his correctional officer position, however, he could perform light-duty work with restrictions.

By *de novo* decision dated May 7, 2024, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that the diagnosed osteoarthritis of the bilateral lower extremities was causally related to the accepted employment factors. It accorded the special weight of the medical evidence to the April 1, 2024 opinion of Dr. Herzog, as the IME.

On May 15, 2024 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP subsequently received a July 11, 2023 report, wherein Dr. Miller referenced medical literature in explaining that repetitive impact-loading work activities contributed to the development and progression of osteoarthritis in the lower extremities.

Following a preliminary review, by decision dated July 2, 2024, OWCP's hearing representative set aside the May 7, 2024 decision. The hearing representative found that OWCP prematurely referred appellant for an impartial medical examination as Dr. Brady's second opinion on causal relationship was of diminished probative value because it was based on an incomplete SOAF that did not clearly and specifically identify appellant's physical job requirements as a correctional officer. Dr. Brady further failed to provide sufficient rationale in support of his opinion that appellant's bilateral lower extremity osteoarthritis was not causally related to the accepted employment factors. Likewise, the hearing representative further found that Dr. Herzog's impartial medical opinion was also of diminished probative value for the same reasons. As such, the hearing representative remanded the case for OWCP to prepare an updated SOAF to include a detailed description of appellant's claimed mechanism of injury and refer the medical record, together with an updated SOAF, to a new second opinion physician for a rationalized opinion on causal relationship.

On July 26, 2024 OWCP referred appellant, along with an updated SOAF, the medical record, and a series of questions to Dr. Hyman Glick, a Board-certified orthopedic surgeon, for a second opinion evaluation.

In a September 30, 2024 report, Dr. Glick reviewed the updated SOAF and reviewed the medical record, including x-ray films, in extensive detail. He reported appellant's physical examination findings. Dr. Glick opined that appellant did not have clinically significant osteoarthritis of his bilateral hips, knees, ankles, and feet causally related to the accepted employment factors. He classified appellant's pain as arthralgias. Dr. Glick noted that the October 7, 2021 x-rays were not diagnostic of osteoarthritis. He further noted that these x-rays were performed 15 months after appellant stopped work. Additionally, Dr. Glick noted that appellant's current subjective symptoms were out of proportion to objective findings. He advised that there was a nonorganic component to appellant's pain complaints that could relate to

mental health issues secondary to his concussion. Dr. Glick advised that appellant had occupational limitations related to his prior accepted claims for March 19, 2019 and July 21, 2020 employment injuries.

By *de novo* decision dated October 21, 2024, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that appellant's osteoarthritis of his hips, knees, ankles, and feet was causally related to the accepted employment factors. It accorded the weight of the medical evidence to Dr. Glick, the second opinion physician.

On October 25, 2024 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was later converted to a review of the written record at then-counsel's request.

By decision dated February 5, 2025, an OWCP hearing representative set aside the October 21, 2024 decision, and remanded the case for further medical development. The hearing representative found that Dr. Glick failed to provide a rationalized opinion as to whether appellant sustained employment-related osteoarthritis of his bilateral lower extremities. The hearing representative remanded the case to OWCP to obtain a rationalized medical opinion as to whether appellant's bilateral lower extremities condition was causally related to the accepted employment factors, and administratively combine the present claim, OWCP File No. xxxxxx418 with OWCP File Nos. xxxxxx992 and xxxxxx454 and issue a *de novo* decision.

On February 20, 2025 OWCP administratively combined appellant's claims under OWCP File Nos. xxxxxx418, xxxxxx992, and xxxxxx454, with the latter serving as the master file.

It then referred the case record to Dr. Glick for a supplemental opinion addressing the concerns raised in OWCP's hearing representative's February 5, 2025 decision.

In a February 28, 2025 report, Dr. Glick again noted his review of the updated SOAF, particularly appellant's work duties as a correctional officer which could involve heavy work activities. He referenced the findings set forth in his September 30, 2024 report. Dr. Glick explained that the only time appellant had any apparent evaluation for diffuse lower extremity arthralgias was in October 2021 and it took another year until he submitted his claim. He noted that at the time he filed his claim, he had been out of work since July 2020, after sustaining a closed head injury and prior to his accepted March 2019 right elbow injury. Dr. Glick also noted that from March 2019 through the present, it did not appear that appellant had engaged in any significant occupational activities that would have overloaded the hip, knee, and ankle joints. He related that his prior opinion that appellant had no clinically significant osteoarthritis of his bilateral hips, knees, and ankles causally related to the accepted employment factors remained unchanged. Dr. Glick reiterated his prior diagnosis of arthralgias and rationale that the diagnosed condition with subjective symptoms was considerably out of proportion to objective findings. He explained that appellant's complaints had a significant component of a nonorganic pain syndrome (psychological) not necessarily voluntary contributing to his expressed impairment. Additionally, Dr. Glick noted the findings of Drs. Kung, Miller, Brady, and Herzog. Regarding Dr. Kung's report, he noted that it focused on the width of the joint spaces for the hip,

knee, ankle, and feet joints. Dr. Glick opined that basing a diagnosis of osteoarthritis on a finding of three to four mm width joint spaces was inappropriate. He maintained that responses to routine examination maneuvers were vastly out of proportion to the width of the joint spaces. Regarding Dr. Miller's report, Dr. Glick noted that although she suggested that appellant had diffuse residual impairments to his hips, knees, and ankles, much of this was based on her range of motion measurements, which he found in large measure associated with appellant's unverifiable pain for routine simple physical examination maneuvers. He opined that this was a gross overestimate of verifiable work-related osteoarthritis of these joints. Dr. Glick noted Dr. Brady's March 2023 opinion and Dr. Herzog's April 2024 opinion that, appellant had no osteoarthritis of his bilateral hips, knees, and ankles and resultant disability causally related to his accepted employment factors.

In a *de novo* decision dated June 16, 2025, OWCP denied appellant's occupational disease claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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,⁵ 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.⁶ 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.⁷

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 compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁸

⁴ *Supra* note 2.

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *P.L.*, Docket No. 19-1750 (issued March 26, 2020); *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett, id.*

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁹ 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.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a bilateral lower extremity condition causally related to the accepted factors of his federal employment.

OWCP referred appellant to Dr. Glick for a second opinion evaluation regarding his occupational disease claim. In a September 30, 2024 report, Dr. Glick reviewed the updated SOAF and medical record. He provided physical examination findings and diagnosed arthralgias. Dr. Glick opined that appellant did not have clinically significant osteoarthritis of his bilateral hips, knees, ankles, and feet causally related to the accepted employment factors. He classified appellant's pain as arthralgias. Dr. Glick explained that appellant's October 7, 2021 x-rays were not diagnostic of osteoarthritis. He further noted that these x-rays were performed 15 months after appellant stopped work. Additionally, Dr. Glick noted that appellant's current subjective symptoms were out of proportion to objective findings. He advised that there was a nonorganic component to his pain complaints that could relate to mental health issues secondary to his concussion. In a February 28, 2025 supplemental report, Dr. Glick discussed appellant's work duties and noted that they involved heavy work. He reiterated his prior opinion that appellant's arthralgias of his bilateral hips, knees, ankles, and feet were not causally related to his accepted employment factors. Dr. Glick explained that the only time appellant had any apparent evaluation for diffuse lower extremity arthralgias was in October 2021 and it took another year until he submitted his claim. He noted in Dr. Brady's March 2023 opinion and Dr. Herzog's April 2024 opinion that appellant had no osteoarthritis of his bilateral hips, knees, and ankles and resultant disability causally related to his accepted employment factors and concurred with their opinions. The Board has reviewed Dr. Glick's reports and finds that he provided a thorough factual and medical history and accurately summarized the relevant medical evidence.¹¹ Dr. Glick further provided medical rationale for his opinion. As the reports from Dr. Glick are detailed, well rationalized, and based on a proper factual background, his opinions represent the weight of the medical evidence.¹²

Appellant submitted reports from Dr. Miller dated May 23, 2022 and July 11, 2023. Dr. Miller reviewed Dr. Kung's October 23, 2021 x-ray report, noted appellant's physical

⁹ *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018).

¹¹ *G.V.*, Docket No. 22-1257 (issued March 14, 2024); *V.B.*, Docket No. 22-0799 (issued October 25, 2022); *J.W.*, Docket No. 18-0670 (issued September 11, 2018).

¹² *T.M.*, Docket No. 21-0677 (issued March 31, 2023); *V.S.*, Docket No. 19-1679 (issued July 8, 2020); *T.F.*, Docket No. 19-157 (issued April 21, 2020).

examination findings and diagnosed osteoarthritis of the bilateral hips, knees, ankles, and feet. She opined that the diagnosed condition was not caused by, but was permanently aggravated and accelerated by his repetitive work duties. While Dr. Miller provided an opinion supporting causal relationship, she did not provide a medically-sound explanation of how the specific work factors physiologically caused the injury.¹³ Dr. Miller only reviewed one set of x-ray reports, which were taken some 18 months after appellant stopped work, and she did not explain how these x-rays and her examination supported a finding that appellant's work activities had aggravated/accelerated his preexisting osteoarthritis. The Board has held that medical opinion evidence must offer a medically-sound explanation of how the specific employment incident physiologically caused injury.¹⁴ Dr. Miller did not explain how appellant's repetitive work duties permanently aggravated and accelerated osteoarthritis of his bilateral lower extremities. Moreover, Dr. Miller referenced medical literature in support of her opinion that repetitive impact-loading work activities contributed to the development and progression of osteoarthritis in the lower extremities. The Board has held, however, that reliance on medical literature is of diminished probative value in resolving medical questions unless a physician shows the applicability of the general medical principles discussed in the articles to the specific factual situation at issue in the case.¹⁵ For these reasons, Dr. Miller's reports are insufficient to establish appellant's claim.

In support of appellant's claim, OWCP also received Dr. Kung's October 23, 2021 report. The Board has held that diagnostic tests, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion on causal relationship.¹⁶ Thus, this evidence is insufficient to establish appellant's burden of proof.

As the medical evidence of record is insufficient to establish a bilateral lower extremity condition causally related to the accepted employment factors, the Board finds that appellant has not met his burden of proof.

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.

¹³ *J.S.*, Docket No. 25-0231 (issued March 7, 2025); *G.V.*, *supra* note 11; *A.D.*, Docket No. 21-0415 (issued June 8, 2023); *L.R.*, Docket No. 16-0736 (issued September 2, 2016).

¹⁴ *J.S.*, *id.*; *K.J.*, Docket No. 21-0020 (issued October 22, 2021); *L.R.*, Docket No. 16-0736 (issued September 2, 2016); *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

¹⁵ *J.S.*, Docket No. 22-0883 (issued December 7, 2023); *L.S.*, Docket No. 22-0023 (issued March 1, 2023); *S.J.*, Docket No. 20-0896 (issued January 11, 2021); *R.G.*, Docket No. 18-0917 (issued March 9, 2020); *T.S.*, Docket No. 18-1518 (issued April 17, 2019); *K.U.*, Docket No. 15-1771 (issued August 26, 2016); *Roger D. Payne*, 55 ECAB 535 (2004).

¹⁶ *P.G.*, Docket No. 24-0511 (issued June 26, 2024); *C.F.*, Docket No. 18-1156 (issued January 22, 2019); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a bilateral lower extremity condition causally related to the accepted factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the June 16, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 21, 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