

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

D.S., Appellant)	
)	
and)	Docket No. 26-0112
)	Issued: April 29, 2026
DEPARTMENT OF HOMELAND SECURITY,)	
U.S. CUSTOMS AND BORDER PROTECTION,)	
U.S. BORDER PATROL, El Paso, TX, Employer)	
)	

Appearances: *Case Submitted on the Record*
John L. DeGeneres, Jr., Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 20, 2025 appellant, through counsel, filed a timely appeal from a July 22, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.

Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

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 January 28, 2025 appellant, then a 49-year-old customs patrol officer, filed an occupational disease claim (Form CA-2) alleging that she developed osteoarthritis of both hips due to factors of her federal employment. She noted that she first became aware of her condition on August 24, 2024, and realized its relation to her federal employment on August 27, 2024. Appellant did not stop work.

In an accompanying narrative statement, appellant reported that she had worked for the employing establishment since 2001 for over 22 years and began experiencing pain in her lower extremities in 2015. She described her employment duties which required her to work in the field while wearing her tactical gear, including a bulletproof vest and a duty belt weighing 25 pounds. While wearing this gear, appellant would walk her morning patrol through rough terrain on dirt paths, amounting to three to four miles, and climb through mountains and railyards. She further described working in the bike patrol unit, and participating in "force training and firearms training." Appellant asserted that, over the course of 22 years, repetitively standing on her feet and walking while carrying heavy gear, getting in and out of her vehicle, and engaging in bending, stooping, twisting, squatting, kneeling, lifting, carrying, and bike riding contributed to the development of permanent osteoarthritis of her hips.

In support of her claim, appellant submitted an official position description.

In medical reports dated January 2, 2002 through October 21, 2003, Dr. Richard S. Westbrook, a Board-certified orthopedic surgeon, documented appellant's treatment for a right leg adductor tear, sprain of hip and thigh, and leg thrombophlebitis. He reported that she continued to have discomfort in the right leg. Dr. Westbrook also noted that appellant was experiencing pain in her hips, which was most likely secondary to a change in activities because of the adductor problems she had been having. He reported that his physical examination revealed that she continued to have loss of musculature of the adductors in the area of the tear. Dr. Westbrook also

² 5 U.S.C. § 8101 *et seq.*

³ Appellant, through counsel, submitted a timely request for oral argument before the Board. 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). In support of the oral argument request, counsel requested that oral argument be granted so that he could further explain his contentions concerning the evaluation of the medical evidence. The Board, in exercising its discretion, denies appellant's request for oral argument because this matter requires an evaluation of the evidence of record. As such, the issues on appeal can be adequately addressed in a decision based on a review of the case record and legal arguments. Oral argument in this appeal would not serve a useful purpose. Therefore, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

reported pain in appellant's hips with flexion and extension, discomfort with compression, pain with palpation, and limited range of motion.

In a March 23, 2023 report, Dr. Gregg Miller, a Board-certified internist, noted his review of bilateral hip, foot, and knee x-rays obtained on January 20, 2023. He reported no evidence of joint space narrowing in either the left or right knee, or left or right foot. Dr. Miller indicated that the right hip revealed a joint space of 3.3 millimeters (mm) at its narrowest portion, while the left hip revealed a joint space of 3.6 mm.

In an April 9, 2024 report, Dr. Dwayne Friday, a Board-certified internist, reported that appellant presented for her annual wellness visit and noted various ongoing conditions, including ankylosing spondylitis of the lumbar region, bilateral primary osteoarthritis of the hip, bilateral hip/knee/foot pain, chronic obesity hyperlipidemia, and chronic fatigue. He indicated that the bilateral primary osteoarthritis of her hips was mild and based on clinical judgment. Dr. Friday further reported that appellant's bilateral hip pain was uncontrolled and that January 20, 2023 x-rays revealed mild degenerative joint disease (DJD).

In an August 27, 2024 report, Dr. Robert Macht, a Board-certified internist, reported interviewing appellant to obtain an oral history of her conditions and employment as a border patrol agent over the course of 22 years as well as reviewing her prior medical reports and diagnostic studies to obtain a medical history and opinion on the cause of her conditions. He described her employment duties as a border patrol agent which required her to be on her feet performing physical labor for approximately two thirds of her workday while wearing gear weighing 35 pounds as she walked for three to four miles on rough terrain. Dr. Macht further noted that appellant's employment duties entailed climbing over railcars and through tunnels, and required running, stooping, bending, and riding a bicycle. He diagnosed permanent aggravation of right hip osteoarthritis and permanent aggravation of left hip osteoarthritis, and opined that the factors of her federal employment contributed to the development and progression of her bilateral hip osteoarthritis.

Dr. Macht explained that appellant's employment duties as a border patrol agent hastened the development and progression of her lower extremity osteoarthritis. He indicated that arthritis was a failure and loss of articular cartilage surface, and explained that impact loading resulting from repeated local stresses caused and accelerated the progression of arthritis through a process of chronic inflammation. Dr. Macht discussed the constant impact loading activities from appellant's employment, which required repetitive walking, standing, squatting, stooping, climbing, kneeling, bending, lifting and twisting, and opined that these activities caused repeated local stresses to her hips. He further described the biological/chemical process through which excessive impact loading and repeated local stresses caused mechanical stresses on the cartilage surface, resulting in chronic inflammation, which in turn resulted in an accelerated loss of articular cartilage in the affected areas. Dr. Macht opined that this process occurred in appellant's hips. He discussed the physiological process as inflammation resulting in chemical changes within the cartilage, most significantly the loss of proteoglycans where inflammation activated degradative enzymes that caused the loss of the proteoglycans. Dr. Macht indicated that this process was significant because, among other reasons, proteoglycans were responsible for cartilage resilience and water content, and he noted that less resilient and lubricated cartilage from the inflammation caused by the impact loading activities resulted in accelerated deterioration of the articular

cartilage, *i.e.*, accelerated arthritis. He further reported that appellant's medical records contained objective support for causal relationship between her heavy labor work activities and her bilateral hip osteoarthritis, noting that during the time period that she was engaged in high impact loading activities her bilateral hip arthritis presented and progressed substantially. Dr. Macht discussed the mechanism of injury explaining that excessive impact loading and repeated local stresses caused mechanical stresses on the cartilage surface, causing chronic inflammation that resulted in precipitation, aggravation, and acceleration of the loss of articular cartilage. He opined that the factors of appellant's federal employment contributed to her bilateral hip osteoarthritis.

In a February 6, 2025 letter, the employing establishment controverted appellant's claim. It provided a February 3, 2025 report, wherein Dr. Sterling Roaf, Jr., an employing establishment physician Board-certified in occupational medicine, determined that the case record contained insufficient information to establish that appellant's employment activities either caused, aggravated, accelerated, or precipitated her diagnosed bilateral hip conditions. Dr. Roaf reported that appellant's claim contained multiple nonwork-related factors including morbid obesity, a history of heavy smoking, and preexisting ankylosing spondylitis. He indicated that the medical literature revealed that all of the aforementioned hazards could independently cause osteoarthritis. Dr. Roaf further asserted that there was no evidence in the medical record that appellant's heavy labor activities accelerated her osteoarthritis. He noted that her treating physician explained how acceleration of her osteoarthritis was possible, but asserted that he did not identify evidence demonstrating that this process actually happened to her. Dr. Roaf further asserted that appellant's treating physician did not indicate how the medical record demonstrated that her duties as a border patrol agent altered or materially affected her osteoarthritis.

In a February 7, 2025 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her as to the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 60 days to submit the necessary evidence. In a separate development letter of even date, it requested that the employing establishment provide additional information regarding appellant's occupational disease claim, including comments from a knowledgeable supervisor. OWCP afforded the employing establishment 30 days to respond.

In a letter received on March 4, 2025, the employing establishment again challenged the claim asserting that there were multiple nonwork-related factors attributed to appellant's condition which were not addressed by Dr. Macht.

In a follow-up letter dated March 28, 2025, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the February 7, 2025 letter to submit the necessary evidence. 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. No additional evidence was received.

By decision dated April 15, 2025, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish causal relationship between a medical condition and the accepted factors of her federal employment.

On April 21, 2025 appellant, through counsel, requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated July 22, 2025, OWCP's hearing representative affirmed the April 15, 2025 decision.

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, an employee must submit the following: (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

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁹ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.¹⁰ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical

⁴ *Supra* note 2.

⁵ *E.K.*, Docket No. 22-1130 (issued December 30, 2022); *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 *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *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 *E.H.*, Docket No. 22-0401 (issued June 29, 2022); *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 *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *see also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ *S.M.*, Docket No. 22-0075 (issued May 6, 2022); *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).¹¹

ANALYSIS

The Board finds that this case is not in posture for decision.

In his August 27, 2024 report, Dr. Macht discussed appellant's medical history, reviewed diagnostic reports, and provided findings on physical examination. He opined that her work-related duties over time caused her bilateral hip osteoarthritis. Dr. Macht explained that appellant's employment duties as a border patrol agent hastened the development and progression of her lower extremity osteoarthritis, noting that arthritis was a failure and loss of articular cartilage surface and that impact loading resulting from repeated local stresses caused and accelerated the progression of arthritis through a process of chronic inflammation. He discussed the constant impact loading activities from appellant's employment, which required repetitive walking, standing, squatting, stooping, climbing, kneeling, bending, lifting and twisting, and opined that these activities caused repeated local stresses to her hips. Dr. Macht explained the physiological process as inflammation resulting in chemical changes within the cartilage, most significantly the loss of proteoglycans where inflammation activated degradative enzymes that caused the loss of the proteoglycans. He indicated that this process was significant because, among other reasons, proteoglycans were responsible for cartilage resilience and water content and noted that less resilient and lubricated cartilage from the inflammation caused by the impact loading activities resulted in accelerated deterioration of the articular cartilage, *i.e.*, accelerated arthritis.

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility for the development of the evidence.¹² OWCP has an obligation to see that justice is done.¹³ While Dr. Macht's opinion is not fully rationalized, it is sufficient to require further development of the medical evidence.¹⁴

The case must therefore be remanded for further development. On remand, OWCP shall refer appellant to a specialist in the appropriate field of medicine, along with the case record, and a statement of accepted facts, for an examination and a rationalized medical opinion as to whether the accepted factors of federal employment either caused or aggravated a medical condition.¹⁵ If the second opinion physician disagrees with the opinion of Dr. Macht, he or she must provide a

¹¹ *J.D.*, Docket No. 22-0935 (issued December 16, 2022); *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, *supra* note 8.

¹² *See id.*; *see also A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy Hammons*, 51 ECAB 219, 223 (1999).

¹³ *See B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁴ *Id.*; *see also C.A.*, Docket No. 22-0067 (issued October 26, 2023); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

¹⁵ *See L.L.*, Docket No. 26-0085 (issued March 17, 2026); *C.C.*, Docket No. 19-1631 (issued February 12, 2020).

fully-rationalized explanation as to why the accepted employment factors were insufficient to have caused or aggravated appellant's medical condition. Following this and such other further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the July 22, 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: April 29, 2026
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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