United States Department of Labor
Employees' Compensation Appeals Board

G.R., Appellant	)	
and	)	**Docket No. 26-0464**
	)	**Issued: August 5, 2026**
DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF PRISONS, FEDERAL CORRECTIONAL INSTITUTION LEAVENWORTH, Leavenworth, KS, Employer	)	

Appearances:
John L. DeGeneres, Esq., for the appellant[1]
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 April 24, 2026 appellant, through counsel, filed a timely appeal from a December 1, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[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] 5 U.S.C. § 8101 *et seq.*

ISSUE

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

FACTUAL HISTORY

On April 25, 2024 appellant, then a 58-year-old former correctional officer, filed an occupational disease claim (Form CA-2) alleging that he sustained injuries to his hips and knees due to factors of his federal employment.[3] He noted that he first became aware of his claimed conditions and realized their relationship to his federal employment on November 29, 2023. In an accompanying narrative statement dated October 26, 2023, appellant recounted his work history at the employing establishment since 1996, including the physical requirements of his job.[4]

In support of his claim, appellant submitted medical evidence. In a November 25, 2022 report, Dr. Justin W. Kung, a Board-certified diagnostic radiologist, reviewed x-rays taken on September 21, 2022 and noted mild degenerative change of the medial compartment of both knees and mild degenerative change of both femoroacetabular joints.

In a November 29, 2023 medical report, Dr. Robert W. Macht, a general surgeon, noted that he had conducted a telephone interview and reviewed appellant's medical records. He diagnosed permanent aggravation of bilateral hip and knee osteoarthritis. Dr. Macht opined that appellant's work duties led to and hastened the progression of his diagnosed bilateral hip and knee condition. He described the nature of arthritis and noted that appellant's job, which required constant and repetitive walking, standing, squatting, stooping, climbing stairs, kneeling, bending, and carrying and twisting activities, exerted repeated local stresses to his bilateral hips and knees. Dr. Macht related that there was a well-described biological/chemical process that occurred by which excessive impact loading and repeated local stresses caused mechanical stresses on the cartilage surface, resulting in chronic inflammation, which resulted in an accelerated loss of articular cartilage in the affected areas, the bilateral hips and knees. He noted that inflammation resulted in chemical change within the cartilage, most significantly the loss of proteoglycans. Dr. Macht explained that inflammation activates degradative enzymes that cause the loss of the proteoglycans. The loss of proteoglycans was significant because, among other reasons, proteoglycans are responsible for cartilage resilience and water content. Less resilient and less lubricated cartilage from the inflammation caused by the impact-loading activities results in accelerated deterioration of the articular cartilage, *i.e.*, accelerated arthritis. He referenced medical literature supporting that impact-loading activities contributed to the progression of lower extremity arthritis and concluded that the high impact-loading work activities appellant performed for 26 years at the employing establishment contributed to the progression of his bilateral hip and knee osteoarthritis. Dr. Macht maintained that his conclusion was supported by appellant's

[3] OWCP assigned the present claim OWCP File No. xxxxxx858. Appellant has a prior claim for an August 5, 2020 traumatic injury (Form CA-1) under OWCP File No. xxxxxx767, in which he asserted that he sustained a left knee injury while walking into the employing establishment.

[4] A November 19, 2022 notification of personnel action form (Standard Form (SF) 50) indicated that appellant voluntarily retired from federal employment effective that day.

medical records, medical examination findings, and medical history as they show the progression of his impairing arthritis in both hips during the performance of his impact-loading work activities.

In a February 8, 2024 note, Dr. Gaylen Seymour, a Board-certified family medicine specialist, reported that recent x-rays of appellant's knees and hips revealed mild degenerative changes of medial compartments; and mild degenerative arthritis of femoroacetabular joints.

Dr. Macht, in a March 15, 2024 note, noted his review of Dr. Seymour's February 8, 2024 note and recent x-rays of appellant's hips and knees. He agreed that the x-rays showed mild degenerative changes of both knees, medial compartment; and mild degenerative changes of both femoral acetabular joints (hips).

In a development letter dated May 2, 2024, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 60 days to respond.

In response, appellant, through his then-counsel, resubmitted Dr. Macht's November 29, 2023 report.

OWCP, in a follow-up letter dated June 6, 2024, advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted that she had 60 days from the May 2, 2024 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.

By decision dated July 16, 2024, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish a medical condition causally related to the accepted factors of his federal employment.

On August 14, 2024 appellant had an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated September 27, 2024, OWCP's hearing representative set aside the July 16, 2024 decision. The hearing representative remanded the case for OWCP to administratively combine appellant's claim for an August 5, 2020 left knee injury under OWCP File No. xxxxxx767 with the instant claim under OWCP File No. xxxxxx858. The hearing representative also instructed OWCP to amend the SOAF to include the August 5, 2020 injury. OWCP was to then refer appellant, along with the updated SOAF and the medical record, to a specialist in the appropriate field of medicine for a fully-rationalized second opinion regarding whether appellant's medical conditions are causally related to his accepted employment factors, followed by a *de novo* decision.[5]

[5] OWCP has administratively combined OWCP File Nos. xxxxxx767 and xxxxxx858, with the latter serving as the master file.

On October 23, 2024 OWCP referred appellant, along with a statement of accepted facts, the case record, and a series of questions, to Dr. Cody Harlan, a Board-certified orthopedic surgeon, for a second-opinion evaluation to determine whether appellant sustained an employment-related injury.

In an October 28, 2024 report, Dr. Harlan related appellant's history of injury and noted his review of the SOAF and medical record. He discussed his findings on physical examination. Dr. Harlan opined that appellant did not suffer from the diagnosis of osteoarthritis of either his hips or knees on either side. He explained that the September 2022 bilateral hip and knee x-rays did not reveal any significant loss of joint space or significant arthritic changes. Dr. Harlan, related, that at best there were very mild arthritic changes. He further related that clinically, appellant did not exhibit the typical symptoms and physical examination findings that one would find in the setting of osteoarthritis. Dr. Harlan noted that typically with osteoarthritis of the hip there was a profound loss of internal rotation and pain with any attempt at internal rotation. Appellant had no loss of internal rotation or discomfort with any attempts at passive internal rotation, either seated or supine. He had very mild bursitis of both hips clinically, which was a very common condition that can be effectively treated with conservative measures. Dr. Harlan indicated that the same findings were true for both knees. Typically, a patient with significant osteoarthritis on physical examination would exhibit signs and symptoms of significant discomfort with palpation of the involved femoral condyles. Also, typically there is an effusion and crepitus present in the setting osteoarthritis, and visible deformity of the extremity either in a valgus or varus alignment. Appellant had essentially a normal examination of his right and left knees. He had full range of motion, no discomfort with palpation or crepitus, and normal alignment without deformity. Therefore, Dr. Harlan concluded that appellant did not suffer from any significant level of arthritic change to his left or right hip or left or right knees. He further concluded that appellant's claimed conditions were not causally related to his work duties based on his clinical findings. Additionally, Dr. Harlan concluded that the claimed work injury did not aggravate any underlying preexisting condition. He reviewed appellant's position description and advised that appellant could perform the duties of his date-of-injury correctional officer position but, also advised that appellant may be unable to perform such duties due to his advanced age. In a work capacity evaluation (Form OWCP-5c) dated October 28, 2024, Dr. Harlan reiterated his opinion regarding appellant's work capacity.

By *de novo* decision dated December 6, 2024, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish a medical condition or injury causally related to the accepted factors of his federal employment. It accorded the weight of the medical evidence to Dr. Harlan, the second opinion physician.

On January 3, 2025 appellant, through his-then counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. Subsequently, appellant, through his then-counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review in lieu of a review of the written record.

By decision dated January 24, 2025, OWCP's hearing representative set aside the December 6, 2024 decision and remanded the case for additional development of the medical evidence. The hearing representative noted that the SOAF reviewed by Dr. Harlan noted the date of injury as November 29, 2023, while appellant did not claim an injury due to a specific work

incident, but rather due to the work duties he performed for 26 years. The hearing representative also noted that Dr. Harlan did not provide medical rationale to support his opinion that appellant did not sustain bilateral hip and knee conditions causally related to the accepted factors of his federal employment. The hearing representative instructed OWCP to correct the SOAF regarding appellant's date of injury and then request a rationalized supplemental opinion from Dr. Harlan, followed by a *de novo* decision.

In an April 9, 2025 supplemental report, Dr. Harlan noted that he was not provided with an updated SOAF. However, he maintained that he did not refer to a single work incident and had considered the duties performed by appellant until his retirement in 2022 and any other work-related bilateral hip and knee injuries or conditions. Dr. Harlan further maintained that he provided medical rationale explaining his opinion that appellant did not suffer from any significant, objective, hip or knee condition that resulted from his federal employment. Dr. Harlan reiterated his opinion that, at best, appellant suffered from minimal degenerative changes in his bilateral hips and knees based on his normal examination findings.

On June 9, 2025 appellant, through his-then counsel, submitted a June 6, 2025 supplemental report, wherein Dr. Macht reviewed Dr. Harlan's April 9, 2025 supplemental report and disagreed with his opinion that appellant did not sustain a bilateral hip and knee condition causally related to the accepted factors of his employment.

On October 8, 2025 OWCP requested that Dr. Harlan review Dr. Macht's June 6, 2025 report and provide a supplemental opinion.

Dr. Harlan, in an October 25, 2025 supplemental report, noted his review of Dr. Macht's June 6, 2025 report. He continued to opine that appellant did not have bilateral hip and knee arthritis of any clinical significance.

By *de novo* decision dated December 1, 2025, OWCP again 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 his federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA[6] 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,[7] 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

[6] *Id.*

[7] *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).

employment injury.[8] 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.[9]

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.[10]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[11] 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.[12]

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.[13]

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.[14] 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

[8] *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).

[9] *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).

[10] *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.*

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

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

[13] *M.D.,* Docket No. 25-0122 (issued January 2, 2025); *M.S.*, Docket No. 21-0855 (issued February 3, 2023); *A.O.*, Docket No. 20-0038 (issued August 26, 2020); *B.H.*, Docket No. 18-1693 (issued July 20, 2020); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (May 2023).

[14] 5 U.S.C. § 8123(a); *see M.D., id.*; *C.C.*, Docket No. 20-0151 (issued July 30, 2020); *M.G.*, Docket No. 19-1627 (issued April 17, 2020); *R.C.*, Docket No. 12-0437 (issued October 23, 2012); *see also G.B.*, Docket No. 16-0996 (issued September 14, 2016).

(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.[15]

ANALYSIS

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

Dr. Macht, appellant's treating physician, in reports dated November 29, 2023, March 15, 2024, and June 6, 2025 provided medical rationale in support of causal relationship between appellant's diagnosed bilateral hip and knee conditions and the accepted factors of his employment. He opined that appellant's diagnosis of bilateral knee and hip osteoarthritis was causally related to his work duties, which included constant and repetitive walking, standing, squatting, stooping, climbing stairs, kneeling, bending, and carrying and twisting activities, exerted repeated local stresses to his bilateral hips and knees. Dr. Macht explained that biomechanically when appellant performed excessive impact-loading activities and repeated local stresses, mechanical stresses on the cartilage surface resulted in chronic inflammation and accelerated loss of articular cartilage in the affected areas in the bilateral knees and hips. He noted that x-rays of the bilateral hips and knees confirmed his diagnosis of bilateral hip and knee osteoarthritis.

Dr. Harlan, an OWCP second opinion physician, opined in reports dated October 28, 2024 and April 9 and October 25, 2025, that there was no evidence that appellant sustained a work-related injury. He explained that his examination revealed no evidence of bilateral knee and hip osteoarthritis. Dr. Harlan reviewed appellant's correctional officer position description and further explained that the claimed condition was not causally related to his work duties based on his clinical findings. Additionally, he concluded that the claimed work injury did not aggravate any underlying preexisting condition.

The Board finds that a conflict in medical opinion has been created between appellant's treating physician, Dr. Macht, and that of Dr. Harlan, the second opinion physician, regarding whether appellant sustained a work-related bilateral knee and hip condition.[16] Section 8123 of FECA provides that, if there is a disagreement between the physician making the examination for the United States and the employee's physician, OWCP shall appoint a third physician who shall make an examination.[17]

As a conflict in medical opinion exists regarding whether appellant has a medical condition causally related to the accepted employment factors, the case must be remanded to OWCP for referral of appellant to a specialist in the appropriate field of medicine to obtain an impartial

[15] 20 C.F.R. § 10.321; *see also S.L.*, Docket No. 24-0220 (issued May 15, 2024); *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).

[16] *See J.L.,* Docket No. 22-0964 (issued November 15, 2022); *D.S.*, Docket No. 21-1388 (issued May 12, 2022); *S.M.*, Docket No. 19-0397 (issued August 7, 2019).

[17] *Id.*

medical opinion on the issue of causal relationship. 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 decision.

ORDER

IT IS HEREBY ORDERED THAT the December 1, 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: August 5, 2026
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