United States Department of Labor
Employees' Compensation Appeals Board

J.W., Appellant	)	
and	)	**Docket No. 26-0502**
	)	**Issued: September 2, 2026**
DEPARTMENT OF THE ARMY, ABERDEEN PROVING GROUND FIRE & EMERGENCY SERVICES, Aberdeen, MD, Employer	)	

Appearances:
John L. DeGeneres, Jr., Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On May 7, 2026 appellant, through counsel, filed a timely appeal from an April 28, 2026 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. 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 appellant's oral argument request, counsel asserted that oral argument should be granted as the issues in the current case also appear in multiple other cases; therefore, a clear and definitive ruling by the Board is required. 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 Act[3] (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 his burden of proof to establish a medical condition causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On August 19, 2022 appellant, then a 51-year-old firefighter, alleged that he developed permanent bilateral hip, knee, and ankle osteoarthritis due to factors of his federal employment. He noted that he first became aware of his condition and realized its relationship to his federal employment on July 18, 2022.[4] On the reverse side of the claim form, the employing establishment noted that appellant was last exposed to the implicated employment factors on June 30, 2022.[5]

In a narrative statement, appellant described the physical requirements of his firefighter duties over 24 years, including walking with heavy weights, carrying heavy weights up and down stairs, lifting, stooping, carrying, kneeling, bending, squatting, and twisting.

In a January 22, 2022 report, Dr. Justin W. Kung, a Board-certified radiologist, reviewed appellant's bilateral knee and hip x-ray interpretations and diagnosed bilateral femoroacetabular joint moderate degenerative changes.

In a report dated July 19, 2022, Dr. Robert W. Macht, a general surgeon, noted appellant's employment history, reported appellant's pain complaints, and reviewed medical records. He related appellant's physical examination findings and diagnosed aggravation of osteoarthritis of the hips, knees, ankles and great toes.

On September 14, 2022 OWCP referred appellant, along with the medical record, statement of accepted facts (SOAF), and to series of questions, to Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine whether appellant sustained a medical condition caused or aggravated by the accepted factors of his federal employment.

In a report dated October 17, 2022, Dr. Hanley reviewed appellant's medical record and the SOAF. He provided appellant's physical examination findings and noted that he did not have x-rays to review. Dr. Hanley concluded that appellant had relatively minimal age-related arthritis

[3] 5 U.S.C. § 8101 *et seq*.

[4] Appellant retired from the employing establishment effective June 30, 2022.

[5] OWCP assigned the present claim OWCP File No. xxxxxx726. Under OWCP File No. xxxxxx790, appellant filed an occupational disease claim (Form CA-2) on April 6, 2020 alleging that he developed Hanglunds deformity retrocalcaneal bursitis due to factors of his federal employment, including wearing rigid back shoe/boots. OWCP denied his claim.

that was not related to his work and that there was no evidence that he suffered from any condition causally related to work exposure.

By decision dated November 18, 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 employment factors. It accorded the weight of the medical evidence to Dr. Hanley's opinion.

On November 23, 2022 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on May 10, 2023.

By decision dated June 15, 2023, OWCP's hearing representative set aside the November 18, 2022 decision, finding that further development of the evidence was required. The hearing representative also instructed OWCP to administratively combine OWCP File No. xxxxxx790 with the current claim.[6]

In an August 8, 2023 addendum report, Dr. Hanley reviewed the SOAF and noted that no additional records from Dr. Macht had been provided for his review. Thus, based on the information provided, Dr. Hanley advised that his opinion was unchanged.

By *de novo* decision dated April 29, 2024, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed conditions and the accepted employment factors.

On May 10, 2024 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated July 8, 2024, OWCP's hearing representative set aside the April 29, 2024 decision, finding that Dr. Hanley had provided limited rationale in support of his conclusion. The hearing representative remanded the case for OWCP to further develop the medical evidence, including referral for another second opinion.

On July 29, 2024 OWCP referred appellant, along with the medical record, the SOAF, and a series of questions, to Dr. Gary W. Pushkin, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine whether appellant sustained a medical condition caused or aggravated by his federal employment.

In a report dated August 22, 2024, Dr. Pushkin reviewed the SOAF and the medical evidence of record. He related appellant's physical examination findings noted that appellant did not bring any x-ray interpretations with him. Dr. Pushkin diagnosed bilateral hip and knee osteoarthritis and opined that the diagnosed osteoarthritis was unrelated to the accepted employment factors. In support of this conclusion, he noted that the risk factors for developing arthritis were age, family history, obesity, and previous trauma. Dr. Pushkin explained that

[6] OWCP administratively combined OWCP File Nos. xxxxxx790 and xxxxxx726, with the latter serving as the master file.

appellant lacked any history of previous trauma. He opined that the evidence was insufficient to support development of osteoarthritis by walking, standing, and jumping.

In an October 14, 2024 addendum report, Dr. Pushkin reviewed appellant's November 29, 2021 x-ray interpretations of the knees and hips and advised that his opinion remained unchanged. He concluded that appellant had preexisting hip and knee disease.

Dr. Pushkin, in a November 26, 2024 addendum report, explained that his opinion was based on the lack of any actual history of injury and on medical literature finding little evidence supporting the conclusion that appellant's employment activities would have aggravated his preexisting osteoarthritis.

By *de novo* decision dated December 20, 2024, OWCP denied appellant's claim, finding that appellant had not met his burden of proof to establish that he sustained a medical condition causally related to the accepted factors of his federal employment. It found that Dr. Pushkin's opinions represented the weight of the medical opinion evidence.

On December 30, 2024 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 February 20, 2025, OWCP's hearing representative set aside the December 20, 2024 decision as Dr. Pushkin failed to offer any explanation or rationale supporting his opinion ruling out causal relationship. The hearing representative remanded the case for referral to another second opinion and further development of the medical evidence.

On June 10, 2025 OWCP referred appellant, along with the medical record, SOAF, and a series of questions, to Dr. David Lumsden, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine whether appellant sustained a medical condition causally related to the accepted factors of his federal employment.

In a report dated July 25, 2025, Dr. Lumsden recounted appellant's history of injury and medical course. He reviewed the medical record and SOAF. Dr. Lumsden reported appellant's physical examination findings and noted that review of appellant's November 29, 2021 bilateral knee x-rays indicated four millimeters of medial compartment narrowing and five millimeters of lateral compartment narrowing. Review of bilateral hip and pelvis x-rays showed bilateral joint space of 2.2 millimeters with moderate degenerative changes in the femoroacetabular joints. Dr. Lumsden also reviewed a February 27, 2020 ankle x-ray and reported no arthritis. He opined that appellant's preexisting osteoarthritis had not been aggravated by the accepted employment factors, noting the lack of direct trauma history. Dr. Lumsden explained that the primary and greatest risk factors for developing osteoarthritis were obesity, genetics, family history, age, and prior trauma. Additionally, he found insufficient evidentiary support that the accepted employment factors of walking, standing, jumping, kneeling, squatting, and climbing would lead to a progression to arthritis or to a significant degree of osteoarthritis.

By *de novo* decision dated August 20, 2025, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record did not establish that appellant sustained

an injury and/or a medical condition causally related to the accepted factors of his federal employment.

On August 29, 2025 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on February 11, 2026.

On February 11, 2026 counsel submitted a July 22, 2022 report from Dr. Macht who recounted appellant's job duties including a typical workweek of 72 hours where he spent most of his time walking, standing, and running. A typical workday included washing, and inspecting trucks, equipment, and cleaning the station which required repetitive twisting, kneeling, bending, stooping, and squatting. Appellant estimated walking an average of four to six miles per day and climbing 100 steps per day. Dr. Macht related that review of appellant's x-rays demonstrated narrowing of bilateral femoral acetabular joint space, narrowing of both knee medial and lateral joints, bilateral knee medical compartment spurring, narrowing of bilateral tibiotalar joints, and narrowing of bilateral metatarsophalangeal joints. He diagnosed permanent aggravation of bilateral hip, ankle, knee, and great toe osteoarthritis. 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 his bilateral hip, ankles, knees, and great toes osteoarthritis.

By decision dated April 28, 2026, OWCP's hearing representative affirmed the August 20, 2025 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[7] 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,[8] 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.[9] 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.[10]

[7] *Supra* note 3.

[8] *See T.M.*, Docket No. 25-0527 (issued July 1, 2025); *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).

[9] *T.M.*, *id.*; *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).

[10] *T.M.*, *id.*; *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).

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 casually related to the identified employment factors.[11]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[12] 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.[13]

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.[14]

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.[15] 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.[16]

ANALYSIS

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

Dr. Macht, in a July 22, 2022 report, diagnosed bilateral hip, knee, ankle, and great toe osteoarthritis. He recounted appellant's job duties which included constant and repetitive standing,

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

[12] *T.M.*, *supra* note 8; *F.G., supra* note 8; *C.M., supra* note 8; *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

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

[14] 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).

[15] 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).

[16] 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).

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 concluded that appellant's federal work duties accelerated the progression and development of osteoarthritis of his hips, ankles, knees, and great toes, resulting in a permanent aggravation of that condition.

In contrast, Dr. Lumsden, in a July 25, 2025 report, reviewed the medical evidence of record and opined that appellant's osteoarthritis was caused by the aging process, genetics, and was not related to his work activities. He explained there was no evidence that the accepted employment factors caused or aggravated any diagnosed condition. Dr. Lumsden concluded that appellant's osteoarthritis was a natural result of the aging process and was unrelated to his federal employment duties.

The Board finds that a conflict in medical opinion exists regarding whether appellant developed osteoarthritis of the hips, knees, ankles and great toes causally related to the accepted factors of his federal employment.

FECA provides that, if a conflict exists between the medical opinion of the employee's treating physician and the medical opinion of a second-opinion physician, OWCP shall appoint a third physician to make an examination.[17] The case shall therefore be remanded to OWCP for referral to an IME to determine whether appellant has met his burden of proof to establish a medical condition causally related to the accepted factors of his federal employment.[18] 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.

[17] 5 U.S.C. § 8123(a); *T.M.*, *supra* note 8; *R.R.*, Docket No. 25-0220 (issued February 10, 2025); *M.W.*, Docket No. 19-1347 (issued December 5, 2019).

[18] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the April 28, 2026 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: September 2, 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