

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CAROLYN O'NEAL and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION LOS ANGELES REGIONAL OFFICE,  
Los Angeles, CA

*Docket No. 03-2064; Submitted on the Record;  
Issued December 16, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty on February 21, 2001.

Appellant, then a 58-year-old finance clerk, filed a notice of traumatic injury on February 21, 2001 alleging that on that date she injured herself, when “[she] went to sit down and the chair moved.” Appellant alleged that she fell and injured her left knee, left thigh and lower back. A witness noted that no one saw appellant fall, but heard her crutch hit the floor and her call for help.

In a form report dated March 16, 2001, Dr. Rama E. Chandran, a Board-certified orthopedic surgeon, indicated that he first examined appellant on February 28, 2001 for an injury occurring on February 22, 2001. He stated: “While sitting in a chair fell backward and injured her left knee and lower back. [Appellant] also states due to [the] accident her blood pressure elevated.” Dr. Chandran diagnosed sprain left knee, osteoarthritis left knee and lumbar spine strain. In a narrative report of the same date, he again noted that appellant was sitting on a chair and fell backwards resulting in pain in her left knee and lower back and repeated his diagnoses.

In a letter dated April 5, 2001, the Office of Workers' Compensation Programs requested additional factual and medical evidence from appellant. On March 14, 2001 Dr. Chun Chieh Chiu, a physician, noted examining appellant on February 21, 2001 and related, “[appellant] states: ‘I went to sit down and the chair moved, [I] fell down and injured [my] left knee, left thigh and low back.’” Dr. Chiu stated that appellant had a history of left knee arthroscopy and found that she was temporarily totally disabled. He diagnosed back and left knee strains and indicated that his findings and diagnoses were consistent with appellant's account of injury.

In a report dated February 21, 2001, Dr. Aqdas S. Kuraishi, a Board-certified family practitioner, described appellant's employment injury. He stated: “[Appellant] was trying to sit down in her chair at work, where she works as a clerk. She ended up missing the chair or the

chair moved and she ended up landing on her knees and at the same time felt some back pain.” Dr. Kuraishi found perivertebral spasms with back muscles and diagnosed left knee and back pain. He stated that his findings were consistent with appellant’s injury.

Appellant responded to the Office’s request for information on April 24, 2001. She stated that she was sitting down at work when her new chair rolled backwards. Appellant stated that she tried to grab hold of her desk, but fell on the floor injuring her left knee, ankle and thigh as well as her back and shoulder. She stated that due to her accident her blood pressure elevated.

By decision dated June 22, 2001, the Office denied appellant’s claim finding that there was no factual evidence establishing that the traumatic event occurred as alleged. The Office stated that the medical evidence supported that appellant’s fall was due to a personal and nonoccupational pathology such as her preexisting knee condition or her history of high blood pressure.

Appellant requested an oral hearing. By decision dated September 12, 2001, the Branch of Hearings and Review denied her request as untimely. She requested a review of this decision by the Board. In a decision and order dated July 3, 2002,<sup>1</sup> the Board found that the Office had improperly denied appellant’s request for an oral hearing as untimely and remanded appellant’s claim for an oral hearing.

Appellant testified at the hearing on January 30, 2003. She stated that, on the date in question, she went to her desk and sat down and the chair moved backwards. Appellant stated that the incident occurred in an instant and that she tried to hold on, but fell on her left side. By decision dated April 30, 2003, the hearing representative affirmed the Office’s June 22, 2001 decision, finding that appellant had not established an injury in the performance of duty due to factual inconsistencies in the description of her alleged employment incident.

The Board finds that appellant met her burden of proof in establishing that she sustained an injury in the performance of duty on February 21, 2001.

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>2</sup> In some traumatic injury cases, this component can be established by an employee’s uncontroverted statement on the claim form.<sup>3</sup> An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee’s statement must be consistent with the surrounding facts and circumstances and her subsequent course of action.<sup>4</sup> A consistent history of the injury as

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<sup>1</sup> Docket No. 02-198 (issued July 3, 2002).

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>4</sup> *Rex A Lenk*, 35 ECAB 253, 255 (1983).

reported on medical reports to the claimant's supervisor and on the notice of injury, can also be evidence of the occurrence of the incident.<sup>5</sup>

In this case, the Office found that appellant had not established that the employment incident occurred as alleged. The hearing representative found that the testimony and evidence contained inconsistencies regarding how appellant fell. The hearing representative stated that there were inconsistencies in the factual evidence and a lack of specificity in the medical history, such that there was serious doubt that the injury occurred as alleged.

Appellant stated on her claim form that she went to sit down and the chair moved. She alleged that she fell and injured her left knee, left thigh and lower back. A witness noted that no one saw appellant fall, but heard her crutch hit the floor and her call for help. In her response to the Office's request for information, appellant stated that she was sitting down at work when her new chair rolled backwards. She stated that she tried to grab hold of her desk, but fell on the floor injuring her left knee, ankle and thigh as well as her back and shoulder. At the oral hearing, appellant testified that on the date in question she went to her desk and sat down and the chair moved backwards. She stated that the incident occurred in an instant and that she tried to hold on, but fell on her left side.

Dr. Kuraishi, a Board-certified family practitioner, described appellant's employment injury on February 21, 2001. He stated: "[Appellant] was trying to sit down in her chair at work, where she works as a clerk. She ended up missing the chair or the chair moved and she ended up landing on her knees and at the same time felt some back pain. On March 14, 2001 Dr. Chiu, a physician, noted examining appellant on February 21, 2001 and related: "[Appellant] states, '[I] went to sit down and the chair moved, [I] fell down and injured [my] left knee, left thigh and low back.'"

These statements by appellant and the history provided to her physicians are consistent and provide evidence that she attempted to sit in her desk chair at work, that the chair moved and that she fell on her left side.

In a report dated March 16, 2001, Dr. Chandran, a Board-certified orthopedic surgeon, indicated that he first examined appellant on February 28, 2001 for an injury occurring on February 22, 2001. He stated: "While sitting in a chair [at work appellant] fell backward and injured her left knee and lower back. [Appellant] also states [that], due to [the] accident[,] her blood pressure elevated." Dr. Chandran completed his report several weeks after examining appellant and his reports contain several typographical errors including the date of the report. The Board finds that his report, noting that appellant's employment injury occurred on February 22, 2001, is insufficient to cast doubt on the occurrence of the employment incident as alleged. The other more contemporaneous medical and factual evidence in the record, is conclusive that the alleged employment incident occurred on February 21, 2001. The Board also finds that Dr. Chandran's description of appellant's employment incident is insufficiently divergent from the other reports explaining how the injury occurred to cast doubt on appellant's statements that she tried to sit in her desk chair and fell as a result. Appellant repeatedly stated that she fell while attempting to sit in her desk chair and that she landed on her left side.

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<sup>5</sup> *Id.* at 255-56.

The Office and the hearing representative also gave attention to the evidence in the record that appellant experienced hypertension and a preexisting left knee condition prior to her fall on February 21, 2001. It is a well-settled principle of workers' compensation law and the Board has so held, that an injury resulting from an idiopathic fall -- where a personal, nonoccupational pathology causes an employee to collapse and suffer injury upon striking the immediate supporting surface and there is no intervention or contribution by any hazard or special condition of employment, -- is not within the coverage of the Federal Employees' Compensation Act.<sup>6</sup> Such an injury does not arise out of a risk connected with or in the course of employment and it, therefore, is not compensable.<sup>7</sup> But when the fall is unexplained and, therefore, attributable neither to the employment nor to the claimant personally, the risk is neutral and an injury arising in the course of employment from neutral risk is compensable.<sup>8</sup> The question of causal relationship is a medical one and must be resolved by probative medical evidence.<sup>9</sup>

The employing establishment nursing notes dated February 21, 2001, stated that appellant reportedly fell from her chair and reinjured her right knee. Paramedics found that her blood pressure was 180/100 at 7:15 a.m. Appellant remained in a wheelchair until her ride to the hospital arrived. Her blood pressure increased to 184/100 by 7:35 a.m. Appellant denied headache, shortness of breath or chest pain. A nurse is not a physician as defined by the Act and, thus, cannot render a medical opinion on the causal relationship between appellant's fall and either her knee or her elevated blood pressure.<sup>10</sup> There is no medical evidence in the record from a competent physician suggesting that appellant's fall from her chair on February 21, 2001 was due to elevated blood pressure or collapse of her knee due to a preexisting condition. Without some medical opinion evidence discussing an alternate cause for appellant's fall on February 21, 2001 the mention of preexisting conditions is not sufficient to cast doubt on her repeated statements that she fell because her chair moved while she was attempting to sit at her desk.

As the weight of the medical and factual evidence supports that appellant fell in the performance of duty on February 21, 2001 when her desk chair moved away from her and landed on her left side, the Board finds that appellant has established that the employment incident occurred as alleged.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>11</sup> In regard to the issue of an injury arising from the employment incident, appellant sought treatment on February 21, 2001 from Dr. Chiu, a physician. He stated, "[appellant] is a 56-year-old female who came here due to fall. Left knee and back pain. [Appellant] with history of arthroscopy. Left knee." Dr. Chiu

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<sup>6</sup> 5 U.S.C. §§ 8101-8193.

<sup>7</sup> *Martha G. List*, 26 ECAB 200 (1974); *Gertrude E. Evans*, 26 ECAB 195 (1974); *Rebecca C. Daily*, 9 ECAB 255 (1956); see also *Larson, The Law of Workers' Compensation* §§ 9, 9.01 (2000).

<sup>8</sup> *Margreat Lublin*, 44 ECAB 945, 958 (1993).

<sup>9</sup> *Robert J. Choate*, 39 ECAB 103 (1987); *John D. Williams*, 37 ECAB 238 (1985).

<sup>10</sup> 5 U.S.C. § 8191(2). *Vicky L. Hannis*, 48 ECAB 538, 540 (1997).

<sup>11</sup> See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

provided findings on physical examination including back tenderness in the lower lumbar area and slight range of motion pain. He stated that appellant's lumbar spine x-rays were negative and that appellant did not want a knee x-ray. Dr. Chiu also found that appellant's left knee demonstrated slight tenderness in the anterior aspect with good strength, he diagnosed back and left knee strains and concluded that appellant was temporarily totally disabled for the remainder of the day of February 21, 2001.

Appellant's attending physician Dr. Chandran, a Board-certified orthopedic surgeon, first examined appellant following her employment injury on February 28, 2001. He noted appellant's history of injury and, on physical examination, found that appellant had tenderness in the lumbar spine with equal reflexes as well as swelling with tenderness in the left knee. Dr. Chandran listed his findings on physical examination as left knee swelling with tenderness, no ligament laxity no effusion. He also stated that appellant demonstrated lumbar spine tenderness in L3 through S1 with equal reflexes. Dr. Chandran diagnosed sprain left knee, osteoarthritis left knee and lumbar spine strain. He indicated with a checkmark "yes" that appellant's findings and diagnoses were consistent with appellant's account of the injury and recommended physical therapy.

The Board finds that the incident occurred as alleged, appellant sought immediate medical treatment and a diagnosis of back and left knee strains was made. The contemporaneous medical reports from Drs. Chiu and Chandran are sufficient to establish that appellant sustained an injury in the performance of duty and was totally disabled for the remainder of the day of February 21, 2001. Therefore, the Office's April 30, 2003 decision denying appellant's claim must be reversed and remanded for the Office to further development as to the extent of the injuries sustained in the fall and for any additional period or periods of disability causally related to this injury. After this and such other development as the Office deems necessary, the Office should issue an appropriate decision.

The April 30, 2003 decision of the Office of Workers' Compensation Programs is hereby reversed and remanded for further development consistent with this decision of the Board.

Dated, Washington, DC  
December 16, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member