

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

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**S.B., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Richmond, VA, Employer**

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**Docket No. 08-2494  
Issued: July 17, 2009**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On September 19, 2008 appellant filed a timely appeal from the September 3, 2008 merit decision of the Office of Workers' Compensation Programs, which denied her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

**ISSUE**

The issue is whether appellant sustained an injury in the performance of duty.

**FACTUAL HISTORY**

On April 9, 2008 appellant, then a 54-year-old supervisor, filed a claim alleging that she sustained an injury in the performance of duty on February 22, 2007 when she fell during working hours: "I was walking from DIOSS #62 toward the 030 unit when I fell backward hitting the work room floor near the weight scale." She stated that the employees told her she fell, hitting her head and back on the floor: "The only thing I remember is somebody was talking to me then the paramedics [were] taking me to the hospital."

Appellant was hospitalized from February 23 to 26, 2007. She was put on an antiseizure medication. On December 20, 2007 Dr. Joseph Kim Harris, a consulting neurologist, diagnosed “intracranial injury of other and unspecified nature, without mention of open intracranial wound.” He reported the history of illness as “Trauma with stroke [?] and brain bleed.” Dr. J. Kenneth Zelenak, appellant’s Board-certified family physician, noted on April 2, 2008 that it was unclear if appellant ever had a seizure. In May 2008 he diagnosed appellant’s February 22, 2007 injury as syncope with intracranial hemorrhage “due to unknown medical issue.”

On May 19, 2008 Juanita Winston, supervisor of distribution operations, wrote that she heard a loud thump while standing at the front of the 030 unit. “As I turned around to see what happened, an employee came running towards me and stated [appellant] had fallen. I immediately ran over to see what had happened and I found [her] on her back on the floor.” Ms. Winston added:

“An employee, Mr. Jose Rodriquez, came to me and stated he saw what happened. He stated [appellant] was walking across the floor and he noticed that she started to stagger. [Mr. Rodriquez] tried to reach her but she was too far away from him. He stated that [appellant] tried to reach an APC [all-purpose container] to keep from falling, but when she reached, she immediately fell backwards flat to the floor.”

On May 31, 2008 Zeb L. Bennett, manager of distribution operations, stated that, when he arrived on the scene, a craft employee, C. Jervey, informed him that appellant fell, striking her head on the hard tile floor. Other employees informed him they heard a very loud thump as appellant struck her head on the floor.

In a decision dated June 11, 2008, the Office denied appellant’s claim on the grounds that the evidence failed to establish that a specific event, incident or exposure occurred at the time, place and in the manner alleged. Further, there was no medical evidence providing a diagnosis that could be connected to the claimed event.

Appellant requested reconsideration and submitted additional evidence. On June 1, 2008 Leslie Hamlett, shop steward, stated the following:

“On [February 22, 2007] at approximately 20:50 while performing my duties as a mail handler, I observed [appellant] fall and hit her head in the process. [Appellant] hit her head with so much force her glasses [slid] at least fifteen yards across the floor stopping at my feet. I can [no]t explain with any degree of certainty as to what caused the accident; however I would be remiss if I failed to put the context of accident in perspective.”

Mr. Hamlett noted that appellant fell in an area designated for working and staging mail, a byproduct of which was debris on the floor. “Finally, the floor was so congested with equipment on that particular date, [appellant] struck her head on a transport truck before she hit the floor. I rushed to her side, at which time she was unresponsive to questions and her eyes appeared to be rolled back out of sight.”

On September 3, 2008 the Office reviewed the merits of appellant's claim and modified its prior decision. It found that appellant did not sustain her injury in the performance of duty because the limited medical evidence indicated that she suffered a syncope/collapse and stroke on February 22, 2007, and no physician provided a reasoned opinion on whether the syncope and fall were caused by the stroke, another medical condition or whether it was unexplained. Further, the Office found that appellant did not trip or slip on any work hazard or that she struck anything but the workroom floor when she fell.

### **LEGAL PRECEDENT**

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>1</sup> It is a general rule of workers' compensation that an injury occurring on the industrial premises during working hours is compensable unless the injury is established to be within an exception to the general rule.<sup>2</sup> One exception applies to falls in the workplace: When a personal, nonoccupational pathology causes an employee to collapse and to suffer injury upon striking the immediate supporting surface, and there is no intervention or contribution by any hazard or special condition of the employment, the injury is not a personal injury "in the performance of duty" as it does not arise out of a risk connected with the employment.<sup>3</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 a neutral risk is compensable.<sup>4</sup>

### **ANALYSIS**

Because appellant's injury occurred on the industrial premises during working hours, it is compensable as a general rule unless the injury is established to fall within an exception. The Office denied appellant's claim for compensation on the grounds that her injury fell within an exception. It found a personal, nonoccupational pathology when it stated that the medical evidence indicated a syncope/collapse and stroke on February 22, 2007. The Board has reviewed the medical information and can find little if any evidence that appellant suffered a stroke. There is no mention of a stroke in any medical documents contemporaneous to the fall. In a December 20, 2007 report, Dr. Harris, the neurologist, reported trauma with questionable stroke and brain bleed. He did not then include stroke in his diagnosis, which was a diagnostic code for "intracranial injury of other and unspecified nature, without mention of open intracranial wound." Further, Dr. Zelenak, appellant's family physician, diagnosed appellant's February 22, 2007 injury as syncope with intracranial hemorrhage "due to unknown medical issue." This diagnosis came well after Dr. Harris' December 20, 2007 consultation report.

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<sup>1</sup> 5 U.S.C. § 8102(a).

<sup>2</sup> *Martha G. List*, 26 ECAB 200 (1974).

<sup>3</sup> *Edward V. Juare*, 41 ECAB 126 (1989).

<sup>4</sup> *Supra* note 2.

The other basis for the Office's denial of compensation was that there was no indication appellant struck anything but the workroom floor when she fell. Mr. Hamlett, the shop steward, stated that he observed appellant's fall. He explained that the floor was so congested with equipment; appellant "struck her head on a transport truck before she hit the floor." No other evidence, including indirect evidence from another possible eyewitness, mentions the transport truck. According to Ms. Winston, supervisor of distribution operations, Mr. Rodriguez also saw what happened, and his account to her had appellant staggering and unsuccessfully reaching out before immediately falling backward flat to the floor. It remains unclear whether Craft Employee Jervey saw appellant fall and strike her head on the hard tile floor or simply informed Mr. Bennett, manager of distribution operations, what was thought or heard to have happened.

The Board finds that further development of medical evidence is warranted on the cause of appellant's collapse on February 22, 2007, whether it was due to a personal, nonoccupational pathology such as a stroke or whether it is unexplained. The Office should seek clarification particularly from Dr. Harris. If the cause is unexplained, the risk is considered neutral and it may proceed to a final decision on appellant's entitlement. If a personal, nonoccupational pathology is to blame, the Office must further develop whether there was any intervention or contribution by any hazard or special condition of the employment, such as a transport truck. Statements from Mr. Rodriguez and the Craft Employee Jervey, as well as a supplemental statement from Mr. Hamlet, could clarify this issue. The Board will set aside the Office's September 3, 2008 decision and remand the case for such further development as may be necessary and for an appropriate final decision on appellant's claim for compensation.

### **CONCLUSION**

The Board finds that this case is not in posture for decision. Further development of the evidence is warranted.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 3, 2008 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: July 17, 2009  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board