United States Department of Labor
Employees' Compensation Appeals Board

R.M., Appellant	)	
and	)	**Docket No. 09-259**
	)	**Issued: September 24, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Fayetteville, AR, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 4, 2008 appellant filed a timely appeal from an October 15, 2008 merit decision of the Office of Workers' Compensation Programs denying his claim for fact of injury. Pursuant to 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 established that he sustained an injury on September 17, 2007 in the performance of duty as alleged. On appeal, appellant contends that there is no definitive proof that his medication caused him to fall and, thus, the cause of his fall remains unexplained. Further, he claims that the Office did not make the medical inquiries directed by the Office hearing representative in the May 14, 2008 decision.

FACTUAL HISTORY

On September 18, 2007 appellant, then a 50-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 17, 2007 he tripped due to clumsiness and

sustained an elbow abrasion on his left arm and a possible chip. The employing establishment controverted the claim and alleged that appellant fell as a result of medication he was taking for nonemployment-related anxiety and that there was no work hazard related to the fall.

In a September 18, 2007 statement, appellant's station manager stated that appellant claimed that he fell on September 17, 2007 while on his route and cut his elbow. Appellant alleged that he was taking medication for his anxiety and the side effect was clumsiness. He also stated that he was voluntarily stopping his anxiety medication because it made him clumsy and caused him to fall.

By letter dated December 20, 2007, the Office requested that appellant provide additional information.

On September 18, 2007 Dr. James Slezak, a Board-certified surgeon, diagnosed contusion of both wrists and traumatic bursitis of the left elbow. Radiology results showed mild, soft tissue swelling without fracture. Appellant's history was reported as "fall, injury and pain." In a Form CA-17, Dr. Slezak stated that he fell on his left elbow, wrists and chest. He diagnosed swelling of the left elbow and indicated that appellant could return to work on September 24, 2007.

In an undated statement, appellant alleged that on September 17, 2007 he lost his balance while making a right turn out of a business establishment on his route. There were no witnesses to the fall. Appellant claimed that he had no history of fainting spells, hearing condition or epilepsy and that he was only taking medication related to his cholesterol problem.

On January 14, 2008 appellant was referred to another physician for a contusion of the elbow or olecranon process bursitis.

By decision dated January 24, 2008, the Office denied appellant's claim on the grounds that his fall was due to a personal, nonoccupational pathology and did not occur in the performance of duty.

In a January 25, 2008 memorandum, Jennifer Holland, a nurse, stated that she spoke to appellant on September 24, 2007 over the telephone regarding his fall. Appellant stated that he tripped over his own feet and attributed the fall to clumsiness, which was a side effect of Clonazepam, an anti-anxiety medication he was taking for a nonwork-related condition.

On March 6, 2008 appellant filed a request for a telephonic hearing before an Office hearing representative. He alleged that he was released to work by his doctor with no restrictions while taking the anti-anxiety medication. Appellant further stated that the Office decision did not take into consideration the fact that he had a seven percent work-related permanent disability in both his feet and that he was prescribed to wear Chukka Boots, which were both potential factors in the fall. Finally, he claimed that, at the location of the fall, there were large poles that required him to make a quick turn when exiting the building. Although appellant did not hit the poles when falling, he did make a spinning motion when he circled the poles and then his foot nicked the other foot, causing him to stumble and fall.

On February 29, 2008 appellant's treating physician certified that appellant experienced right wrist and elbow pain on September 17, 2007 and that the duration of his condition was contingent on March 23, 2008 arthrogram results.

By decision dated May 14, 2008, an Office hearing representative found that the case was not in posture for decision because there was no medical evidence suggesting that appellant fell as the result of the effects of medication. She further stated that, on remand, appellant should provide the Office with the name and dosage of the medication he was taking at the time of the fall and the prescribing doctor so that the Office could make any necessary medical inquiries regarding whether he fell as the result of the effects of his medication.

On May 21, 2008 the Office requested that appellant provide additional factual information pursuant to the May 14, 2008 decision.

In an undated statement, appellant alleged that he first thought that his new medication could have caused his fall. He researched the drug that evening, finding that one of the possible side effects was clumsiness. Appellant informed his supervisor and Ms. Holland that the medication could have been a contributing factor, but also reported his seven percent disability to both feet and that he was prescribed boots that could be cumbersome. His statement regarding the side effects of the medication was meant to be suggestive and not an agreement as to the actual cause of his falls. Appellant also contended that in the location of the fall were several 10-inch steel pole barriers running vertically, connected to several poles running parallel along the ground, which he was required to negotiate around when entering and leaving the building to deliver mail. He further stated that he took one milligram of Clonazepam at bedtime from September 4 through 17, 2007 and provided the name, address and telephone number of the prescribing physician.

By decision dated October 15, 2008, the Office denied appellant's claim on the grounds that his fall was most likely due to his medication and was not the result of his employment. It noted that appellant initially seemed fairly certain that the medication was a contributing factor and did not allege that his boots caused the fall or that he tripped over large poles.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden to establish the essential elements of his claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed, 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.[2]

It is a general rule of workers' compensation law that an injury occurring on the industrial premises during working hours is compensable unless it falls within an exception to

[1] 5 U.S.C. §§ 8101-8193.

[2] *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

the general rule.[3] One exception to the general rule applies to falls in the workplace. Where 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 while in the performance of duty as it does not arise out of a risk connected with the employment.[4] This is referred to as an idiopathic fall.[5] On the other hand, if the cause of the fall cannot be determined or the reason it occurred cannot be explained, then it is an unexplained fall that comes within the general rule that an injury occurring on the industrial premises during working hours is compensable.[6]

ANALYSIS

The issue is whether appellant's fall on September 17, 2007 arose in the performance of duty. The Board finds this case is not in posture for a decision.

Appellant filed a traumatic injury claim alleging that he tripped on September 17, 2007 due to clumsiness resulting in a left elbow abrasion and possible chip. He later stated that he lost his balance while making a right turn out of a business establishment on his route. Appellant's manager and Ms. Holland, a nurse hired by the employing establishment, claimed that appellant stated that he was taking anti-anxiety medication for a nonwork-related condition with a side effect of clumsiness. Appellant subsequently responded that he did not relate his fall solely to the side effect of his medication and offered other causes for the fall, including a work-related seven percent permanent impairment to his feet, cumbersome medically-prescribed boots and large poles located in the area of the fall.

By decision dated May 14, 2008, an Office hearing representative remanded the case for further development finding that there was no medical evidence establishing that medication caused appellant's fall. She directed the Office to make necessary medical inquiries after appellant provided information regarding the prescription of anti-anxiety medication. Appellant provided the requested information. However, the Office did not further develop the evidence and subsequently found that his fall was idiopathic and thereby not compensable.

The Board finds this case is not in posture for a decision. The Office has the burden to present medical evidence showing the existence of a personal, nonoccupational pathology if it chooses to make a finding that a given fall is idiopathic in nature.[7] The issue of causation is medical in nature and must be resolved by probative medical evidence.[8] In the instant case, the

[3] *Martha G. List*, 26 ECAB 200 (1974).

[4] *John R. Black*, 49 ECAB 624 (1998).

[5] *See Karen K. Levene*, 54 ECAB 671 (2003).

[6] *John R. Black*, *supra* note 4.

[7] *Jennifer Atkerson*, 55 ECAB 317 (2004). *See also Deborah A. Perry*, Docket No. 02-2225 (issued June 19, 2003).

[8] *Steven S. Saleh*, *supra* note 2.

medical evidence of record is scant and does not address the cause of the September 17, 2007 fall. Further, there is no medical evidence relating to appellant's prescribed anti-anxiety medications or the side effects, thereof. The only evidence suggesting his fall was related to this medication is factual statements from the employing establishment and a nurse hired by the employing establishment. Appellant stated that he initially considered that his medication could be the cause of the fall, but also offered other potential causes, including his permanent foot impairment, medically prescribed work boots and impediments in the fall location.

The hearing representative directed the Office to make any necessary medical inquiries regarding the influence of the anti-anxiety medication's side effects on appellant's fall. However, the Office never requested any medical evidence and solely relied on the factual statements of the employing establishment in finding that appellant's fall was idiopathic. It is well established that proceedings under the Act are not adversarial in nature and while appellant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[9] The Board, therefore, finds that the case must be remanded for further development of the medical evidence. On remand, the Office should make medical inquiries in order to determine whether appellant's fall was related to the side effects of his anti-anxiety medication and conduct any necessary further development. In the absence of rationalized medical opinion attributing appellant's fall to an outside pathology, the Office should find that the cause of the fall is unexplained and, thus, compensable as an on-premises injury.[10]

CONCLUSION

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

[9] *Betty J. Smith*, 54 ECAB 174 (2002).

[10] *See Dora J. Ward*, 43 ECAB 767 (1992); *Fay Leiter*, 35 ECAB 176 (1983); *Martha G. List*, *supra* note 3.

ORDER

IT IS HEREBY ORDERED THAT the October 15, 2008 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this opinion.

Issued: September 24, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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