United States Department of Labor
Employees' Compensation Appeals Board

G.B., Appellant	)	
and	)	**Docket No. 10-2155**
	)	**Issued: June 1, 2011**
DEPARTMENT OF AGRICULTURE, INSPECTION OPERATIONS PROGRAM, Ripon, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 26, 2010 appellant filed a timely appeal from an August 13, 2010 decision of the Office of Workers' Compensation Programs that denied her claim. Pursuant to the Federal Employees' Compensation Act[1] 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 sustained an injury in the performance of duty on April 1, 2010.

On appeal, appellant generally asserts that she sustained an employment-related injury.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On April 3, 2010 appellant, then a 63-year-old egg products inspector, filed a traumatic injury claim alleging that on April 1, 2010 she injured her left elbow, both legs and hips, when her legs gave out while walking down a hallway at work. She stopped work on April 2, 2010. Appellant submitted an April 7, 2010 lower extremity electromyography (EMG) study that demonstrated no evidence of lumbosacral radiculopathy involving either lower extremity. In reports dated April 7 to 26, 2010, Dr. Marie Jean Macarubbo, Board-certified in internal medicine, advised that appellant called her office on April 1, 2010 and was first seen on April 6, 2010 due to a fall at work on April 1, 2010. She advised that the EMG and x-rays were negative and that a magnetic resonance imaging (MRI) scan was scheduled for May 1, 2010. Dr. Macarubbo stated that appellant could return to work without restriction on April 19, 2010.

In reports dated June 14, 2010, Dr. Martin F. Pricco, a Board-certified internist, noted appellant's account that her legs gave out at work causing her to fall to the floor, landing on her buttocks and that in the process she scraped her left elbow and twisted her right knee. He recorded her complaint of knee pain and noted that she walked with a slight limp. Right knee examination demonstrated tenderness with no obvious effusion, discoloration or swelling. Knee extension was full and flexion slightly limited due to pain. The collateral ligaments demonstrated no laxity, the drawer sign negative and distal lower extremities were neurologically normal. X-ray demonstrated slight effusion and mild degenerative changes with no evidence of acute trauma. Dr. Pricco diagnosed right knee sprain and advised that there was no specific work-related causation to appellant's fall, stating that unrelated medical problems could have contributed to her fall at work. He advised that she could return to modified duty with no prolonged walking.

In reports dated June 28, 2010, Dr. Alexis Dasig, who practices occupational medicine, reported the history of injury as described by appellant and her report that the pain in her right knee had lessened following a cortisone injection. He advised that she could walk fairly well without significant limping or pain. On examination, the right knee seemed to be slightly prominent, such as seen in osteoarthritis. There was tenderness over the medial and lateral joint line and mild pain on flexion and extension. Dr. Dasig diagnosed right knee sprain, not work related and advised that appellant should remain off work until released by her personal physician. Appellant also submitted a June 24, 2010 report from Mark Madsen, a physician's assistant.

By letter dated June 29, 2010, the employing establishment controverted the claim, noting that appellant had been off work for six days from April 9 through 16, 2010. Due to her medical restrictions, appellant was again off work beginning June 7, 2010. In a July 8, 2010 letter, the Office informed her that her claim was originally received as a simple, uncontroverted case expected to result in minimal loss from work, but that the merits had not been formally adjudicated. It informed appellant that the medical reports submitted were insufficient to establish that she experienced the claimed incident and that a physician had not provided an opinion as to how the claimed incident resulted in a diagnosed condition. She was given 30 days to provide additional supportive information.

Appellant submitted a May 15, 2010 open MRI scan of the lumbar spine that demonstrated spinal stenosis at L2-3, L3-4 and L4-5. The radiologist recommended a closed MRI scan to rule out the possibility of disc herniations. Dr. Macarubbo submitted additional treatment notes. On April 6, 2010 she noted appellant's report of the fall at work. A lumbosacral spine x-ray on April 7, 2010 demonstrated progression to marked disc narrowing and spurring at the L2-3 level when compared with films from March 10, 2004 and marked disc narrowing throughout the remainder of the lumbar and lower thoracic disc levels with moderate, diffuse bilateral degenerative facet changes in the lower lumbar spine. In reports dated April 13 and 16, 2010, Dr. Macarubbo diagnosed low back pain syndrome, essential hypertension and benign skin neoplasm. On June 7, 2010 she noted appellant's complaint of continuing back and right knee pain that began one week previously. Dr. Macarubbo provided physical examination findings, noting popping in the right knee and advised that a June 7, 2010 right knee x-ray, when compared with previous films done on February 25, 2010, showed a slight increase in suprapatellar recess effusion and no other significant change and no acute fracture or gross malalignment. She diagnosed low back pain syndrome and left leg joint pain. Appellant also submitted treatment notes from Mr. Madsen dated June 11 to July 12, 2010.

By decision dated August 13, 2010, the Office denied the claim on the grounds that appellant failed to establish fact of injury.

LEGAL PRECEDENT

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or her 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 within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[2]

Office regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.[3] To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[4]

[2] *Gary J. Watling*, 52 ECAB 278 (2001).

[3] 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

[4] *Gary J. Watling, supra* note 2.

It is a well-settled principle of workers' compensation law that an injury resulting from an idiopathic fall -- 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 employment -- is not within coverage of the Act. Such an injury does not arise out of a risk connected with the employment and is, therefore, not compensable. However, the fact that the cause of a particular fall cannot be ascertained or that the reason it occurred cannot be explained, does not establish that it was due to an idiopathic condition. If the record does not establish that the particular fall was due to an idiopathic condition, it must be considered as merely an unexplained fall, one which is distinguishable from a fall in which it is definitely proved that a physical condition preexisted and caused the fall.[5] To properly apply the idiopathic fall exception to the premises rule, there must be two elements present: a fall resulting from a personal, nonoccupational pathology and no contribution from the employment.[6] This follows from the general rule that an injury occurring on the industrial premises during working hours is compensable unless the injury is established to be within an exception to such general rule.[7]

ANALYSIS

The Board finds that appellant's fall on April 1, 2010 occurred in the performance of duty. As noted, an injury resulting from an idiopathic fall, due to a personal nonoccupational pathology is not compensable. But if the cause of a particular fall cannot be ascertained, the fall is then considered an unexplained fall. Appellant stated on her claim form that her legs gave out and she fell. The medical evidence does not establish that her fall was idiopathic. There is evidence of record to suggest that appellant had preexisting medical conditions as evidence by comparing the April 7, 2010 lumbosacral spine x-ray with that of March 10, 2004 and the right knee x-ray of June 7, 2010 with one taken on February 25, 2010, before the April 1, 2010 fall. There is, however, no medical evidence to establish that any preexisting condition caused her fall. Dr. Macarubbo and Dr. Dasig did not provide any opinion as to the cause of the April 1, 2010 fall at work. Dr. Pricco merely advised that there was no work-related cause and the unrelated medical problems could have contributed to appellant's fall at work. He did not specifically identify the "unrelated medical problems" or indicate how they caused the fall. Based on the medical evidence of record, the Board finds that appellant's fall on April 1, 2010 was an unexplained fall. It occurred in the performance of duty.[8]

The Board, however, finds that the medical evidence does not establish that appellant sustained an injury or medical condition as a result of the fall. Dr. Macarubbo examined appellant several days after the April 1, 2010 fall at work. She diagnosed low back pain syndrome and left leg joint pain. The Board has generally held that pain is a symptom, not a firm medical diagnosis.[9] While Dr. Pricco diagnosed right knee sprain, he advised that there was

[5] *M.M.*, Docket No. 08-1510 (issued November 25, 2008).

[6] *N.P.*, Docket No. 08-1202 (issued May 8, 2009).

[7] *Steven S. Saleh*, 55 ECAB 169 (2003).

[8] *Id*.

[9] *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

no work-related causation. Dr. Dasig also diagnosed right knee sprain, but advised that the condition was not work related.

As to the reports from Mr. Madsen, section 8101(2) of the Act defines the term "physician" to include surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law.[10] Thus, a physician's assistant is not a physician as defined under the statute and, therefore, any report from such individual does not constitute competent medical evidence which can only be given by a qualified physician.[11]

The opinion of a physician needed to establish causal relationship must be of reasonable medical certainty and must be supported by medical rationale explaining causal relationship.[12] Appellant submitted no medical evidence in this case that linked her diagnosed conditions to the April 1, 2010 fall. She, therefore, failed to establish that she sustained a traumatic injury causally related to the April 1, 2010 fall.[13]

CONCLUSION

The Board finds that appellant failed to establish that she sustained an injury causally related to the April 1, 2010 fall at work.

[10] 5 U.S.C. § 8101(2).

[11] *George H. Clark*, 56 ECAB 162 (2004).

[12] *K.W.*, 59 ECAB 271 (2007).

[13] *Gary J. Watling*, *supra* note 2.

ORDER

IT IS HEREBY ORDERED THAT the August 13, 2010 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: June 1, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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