United States Department of Labor
Employees' Compensation Appeals Board

D.L., Appellant	)	
and	)	**Docket No. 16-0466**
	)	**Issued: July 18, 2016**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Kansas City, MO, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 13, 2016 appellant, through counsel, filed a timely appeal from a September 4, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[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] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish an injury in the performance of duty.

FACTUAL HISTORY

On July 1, 2015 a traumatic injury claim was filed on appellant's behalf. The employing establishment indicated that on June 24, 2015 appellant, then a 47-year-old clerk, fell in the parking garage and broke her hip as she was walking into the building. It controverted her claim because it attributed her fall to her history of dizziness related to high and low blood sugar. The employing establishment also indicated that security footage showed that appellant braced her fall with her arm on a doorway and that the incident was unlikely to have caused a traumatic injury unless an underlying medical condition existed. It noted that the health unit nurse indicated that appellant collapsed in the parking garage with possible heat exhaustion. The employing establishment advised that she was coming into the building from the garage when she collapsed "into the doorway on G1 center wing." Appellant stopped work that day.

By letter dated July 29, 2015, OWCP notified appellant of the evidence needed to establish the claim. It noted that the employing establishment was challenging the claim as she had a history of dizziness to high or low blood sugar. OWCP asked appellant to provide a detailed description of where she was and what she was doing when she fell. That same date OWCP requested information from the employing establishment regarding the ownership of the parking garage. No statement was received from either appellant or the employing establishment.

In a June 25, 2015 report, Dr. John Bleazard, a Board-certified osteopath specializing in orthopedic surgery, advised that appellant fell on June 24, 2015 after a syncopal episode. He noted that appellant was hyperglycemic when she reported to the emergency department and that she had a history of diabetes mellitus. Dr. Bleazard indicated that she related that she was experiencing pain in the left lateral hip and groin. An x-ray revealed a minimally displaced intertrochanteric hip fracture. Dr. Bleazard diagnosed left intertrochanteric hip fracture. In a separate June 25, 2015 operative report, he noted performing a cephalomedullary nail fixation to treat the left intertrochanteric hip fracture.

In a July 8, 2015 report, Dr. Bleazard advised that appellant was two weeks postsurgery and that she was doing well. On examination he noted a nicely healing incision, no signs of infection, intact light touch sensation, grossly normal muscle tone, and normal strength without atrophy. Dr. Bleazard noted that a left hip x-ray revealed that alignment was acceptable.

An August 4, 2015 physical therapy report was submitted. The physical therapist advised that appellant became overheated in the garage at the employing establishment, that she had not been paying attention, and that the garage door came up and hit her on the hip.

In an August 5, 2015 report, Dr. Bleazard advised that appellant was six weeks post left gamma nail surgery and that she was doing remarkably well, only experiencing intermittent pain at the end of the day. Examination revealed a healed incision, no erythema or signs of infection, intact sensation, grossly normal muscle tone, and normal strength without atrophy. Dr. Bleazard

noted that alignment was acceptable and healing was evident. He recommended that appellant continue physical therapy and weight bearing as tolerated. In an August 5, 2015 disability status report, Dr. Bleazard advised that appellant was only able to work a sitting job.

By decision dated September 4, 2015, OWCP denied appellant's traumatic injury claim because the evidence was insufficient to establish that her injury arose during the course of employment and within the scope of compensable work factors. It noted that her injury was caused by an idiopathic incident noting that the evidence indicated that she had a syncope episode and was hyperglycemic.

LEGAL PRECEDENT

FECA provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[3] The phrase sustained while in the performance of duty is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, arising out of and in the course of employment.[4] In the course of employment relates to the elements of time, place, and work activity. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in her master's business, at a place when he or she may reasonably be expected to be in connection with his or her employment and while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto. As to the phrase in the course of employment, the Board has accepted the general rule of workers' compensation law that, as to employees having fixed hours and places of work, injuries occurring on the premises of the employing establishment, while the employees are going to or from work, before or after working hours or at lunch time, are compensable.[5]

This alone is not sufficient to establish entitlement to benefits for compensability. The concomitant requirement of an injury "arising out of the employment" must be shown, and this encompasses not only the work setting but also a causal concept. The facts of the case must show some substantial employer benefit is derived or an employment requirement gave rise to the injury.[6]

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 to suffer injury upon striking the immediate supporting surface, and there is no intervention or contribution by any hazard or special condition of

[3] *Id*. at § 8102(a).

[4] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

[5] *Narbik A. Karamian*, 40 ECAB 617, 618 (1989). With regard to what constitutes the premises, the Board has stated that the term "premises" as it is generally used in workers' compensation law, is not synonymous with property. The former does not depend on ownership, nor is it necessarily coextensive with the latter. In some cases premises may include all the property owned by the employing establishment; in other cases even though it does not have ownership and control of the place where the injury occurred the place is nevertheless considered part of the premises. *Wilmar Lewis Prescott*, 22 ECAB 318, 321 (1971).

[6] *See Eugene G. Chin*, 39 ECAB 598, 602 (1988).

employment -- is not within coverage of FECA.[7] Such an injury does not arise out of a risk connected with the employment and is, therefore, not compensable. The Board has made equally clear, 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. 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.[8] 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.[9]

To properly apply the idiopathic fall doctrine, there must be two elements present: a fall resulting from a personal, nonoccupational pathology, and no contribution from the employment.[10] If the record does not establish the fall was due to an idiopathic condition, it must be considered as merely an unexplained fall, which is covered under FECA.

ANALYSIS

The issue is whether appellant's fall on June 24, 2015 arose in the performance of duty. The Board finds that the case is not in posture for a decision.

As a preliminary matter, the Board finds that the case must be further developed with regard to whether appellant's fall occurred on the employing establishment's premises. As noted, the Board has held that injuries occurring on the premises of the employing establishment, while the employees are going to or from work, before or after working hours or at lunch time, are compensable.[11] The employing establishment advised that appellant was coming into the building from the garage when she collapsed "into the doorway on G1 center wing." It noted that security footage revealed a fall where appellant used her arm to brace herself on a doorway. An August 4, 2015 physical therapy report, however, advised that appellant related that she became overheated in the garage at the employing establishment and that a garage door came up and hit her on the hip. OWCP did not make a specific finding on the point and the Board has insufficient evidence to determine whether appellant's fall occurred in the performance of duty.[12] The Board finds that OWCP did not adequately develop the question of whether appellant's June 24, 2015 accident occurred in the performance of duty and will remand the case for further development on that aspect of the claim.

Furthermore, the Board finds that OWCP has failed to meet its burden of proof to establish the existence of a prior pathology which caused the fall.

[7] *See Carol A. Lyles*, 57 ECAB 265 (2005).

[8] *Dora J. Ward*, 43 ECAB 767, 769 (1992); *Fay Leiter*, 35 ECAB 176, 182 (1983).

[9] *John R. Black*, 49 ECAB 624 (1998); *Judy Bryant*, 40 ECAB 207 (1988); *Martha G. List*, 26 ECAB 200 (1974).

[10] *E.C.*, Docket No. 15-0823 (issued February 2, 2016).

[11] *See supra* note 4.

[12] *See M.C.*, Docket No. 09-1718 (issued March 5, 2010) (regarding factors to consider if a parking facility may be considered part of the employment premises).

To properly apply the idiopathic fall exception to the general compensability created under the premises rule, two elements must be present: first, the fall must be caused by a personal, nonoccupational pathology, and second, there must be no contribution from the employment.[13] OWCP has the burden of proof to establish existence of a personal, nonoccupational pathology. If the record does not establish the fall was due to an idiopathic condition, it must be considered as merely an unexplained fall, which is covered under FECA.[14]

In his June 25, 2015 report, Dr. Bleazard described appellant's fall as a syncopal episode. He noted that appellant was hyperglycemic when she reported to the emergency department and noted that she had a history of diabetes mellitus. Although Dr. Bleazard described the incident as syncopal, he noted that appellant was hyperglecemic, and indicated that she had a history of diabetes mellitus, he failed to provide an opinion regarding the cause of the fall. Furthermore, there is no evidence of a history of falling due to diabetes or a history of uncontrolled diabetes. The record also fails to establish a history of dizziness due to high and low blood sugar, as reported by the employing establishment in the Form CA-1. The mere fact that an employee has a preexisting medical condition, without supporting medical rationale, is not sufficient to establish that a fall is idiopathic.[15] If the cause of the fall cannot be determined or the reason it occurred cannot be explained, then it is an unexplained fall and any resulting injury would be compensable.[16] The Board finds that the evidence of record is not sufficient to meet OWCP's burden of proof to establish the fall as idiopathic.

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden to establish her claim, OWCP shares responsibility in the development of the evidence to see that justice is done.[17] Accordingly, the case will be remanded to further develop the evidence and make appropriate fact findings with regards to the location, time, and circumstances surrounding appellant's fall on June 24, 2015. If appellant's fall is found to have occurred on the employment premises, OWCP should further develop the medical evidence with regard to whether the June 24, 2015 incident caused an injury. Following this and such further development as is deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

[13] *Id*.

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

[15] *L.R.*, Docket No. 15-255 (issued April 1, 2015).

[16] *Id*.

[17] *See K.C.*, Docket No. 08-2355 (issued May 15, 2009).

ORDER

IT IS HEREBY ORDERED THAT the September 4, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this opinion.

Issued: July 18, 2016
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board