United States Department of Labor
Employees' Compensation Appeals Board

P.P., Appellant	)	
and	)	**Docket No. 15-0522**
	)	**Issued: June 1, 2016**
DEPARTMENT OF THE ARMY, ARMY CORPS OF ENGINEERS, Sacramento, CA, Employer	)	

Appearances:
Daniel M. Goodkin, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 20, 2015 appellant, through counsel, filed a timely appeal from a December 23, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) 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 met his burden of proof to establish an employment-related traumatic injury on October 4, 2013.

On appeal counsel asserts that appellant's fall on October 4, 2013 was not idiopathic and occurred in the performance of duty. He specifically asserted that appellant's fatigue caused by working prolonged hours on the day of injury contributed to the fall because it aggravated his Parkinson's condition, that a "wet floor" sign constituted a hazard, that there was no rationalized

[1] 5 U.S.C. § 8101 *et seq.*

medical evidence that established that his fall was idiopathic, and even if his work or a work hazard did not contribute to the fall, it was an unexplained fall and therefore compensable.

FACTUAL HISTORY

On February 14, 2014 appellant, then a 58-year-old environmental engineer, filed a traumatic injury claim alleging that at 9:45 p.m. on October 4, 2013 he fractured his right hip when he fell on his right side while entering the restroom. He noted that he was working late because he received a notice of furlough that was to begin on October 7, 2013.

In letters dated February 26, 2014, OWCP informed appellant of the type of evidence needed to support his claim and requested that the employing establishment respond.

In a submission dated March 18, 2014, appellant stated that he was working late on October 4, 2013 because he had received a notice of furlough, to begin October 7, 2013, and he wanted to complete work before the furlough. He advised that he was working overtime with the permission of his supervisor, Richard Meagher. Appellant indicated that he had taken his shoes off for comfort while working late because his Parkinson's medication caused his feet to swell and that, upon completing work, he went to the restroom. He stated that a "Caution: Wet Floor" sign was in front of the restroom and that he checked the floor, which appeared dry. Appellant stated, "I stepped past the sign, evidently lost balance while entering the restroom and could not recover before falling on my right side." He noted that within minutes, female cleaning staff entered the restroom and saw him, then left and immediately returned with two men. Appellant was asked if he wanted them to call 911, but he responded at that time that he was waiting to see if he could stand. He indicated that, after waiting approximately about one-half hour, he determined that he could not stand and called 911 on his cellphone, and told cleaning staff to let the emergency personnel into the building. Appellant was then transported to the nearest hospital, where a right hip fracture was confirmed. He attached an October 4, 2013 notice of furlough, an x-ray photograph, and a timeline of events from October 4, 2013 to March 13, 2014 regarding his claim.

An October 4, 2013 Sacramento Fire Department report completed by emergency technician Michelle Brown, indicated that appellant, who was wearing socks, was seen lying supine on the floor in a doorway at the employing establishment at approximately 10:40 p.m. She reported that he had a history of Parkinson's and reported weakness, more so at night and before he took his medication. Ms. Brown stated that appellant had not taken his medication. Appellant was working late, was supposed to drive home to Truckee, California, but tripped and fell, causing injury to his right hip. He was transported to Sutter Medical Center, arriving at 11:05 p.m.

Sutter Medical Center emergency department reports indicated that appellant had a mechanical fall. Dr. Sabrina Gunion, Board-certified in emergency medicine, provided a history that he injured his right hip just prior to his arrival at the hospital. She stated that appellant reported that he could have slipped and fallen, but that he could not rule out feeling dizzy prior to falling. Dr. Gunion noted a past history of Parkinson's disease and x-ray findings of a closed right femoral neck fracture. Appellant was admitted to the medical surgical unit. On October 5, 2013 Dr. Maria R. Cisneros, Board-certified in family medicine, noted that appellant related

having gait difficulties due to his Parkinson's and the previous night "[appellant] simply tripped, lost his balance, and ended up falling." She diagnosed closed right femoral neck fracture and Parkinson's with dysautonomia[2] and advised that appellant would have a preoperative work up. Appellant was seen in consultation by Dr. George J. Lian, a Board-certified orthopedic surgeon, and on October 5, 2013 Dr. Patrick McGahan, an orthopedic surgeon, performed open reduction internal fixation of the femoral neck fracture. He was discharged to a rehabilitation facility on October 8, 2013.

On November 1, 2013 appellant was seen by Dr. Christopher K. Skaff, a Board-certified family physician, in the emergency department of Tahoe Forest Hospital with a history of chest pain. He was admitted to the hospital, and Dr. J. Timothy Lombard, Board-certified in internal medicine and cardiovascular disease, noted a history that appellant fell as a complication of his gait disturbance from Parkinsonism and fractured his right hip. Appellant was discharged on November 3, 2013. Discharge diagnoses included: chest pain probably due to a small pulmonary embolism; a recent left femoral deep vein thrombosis on October 24, 2013; Parkinson's disease; and treated hypothyroidism.

In a November 13, 2013 report, Dr. Reini Jensen, Board-certified in family medicine, advised that appellant could not return to work until at least early January 2014 due to his hip fracture and surgery. In reports dated February 28, 2014, she advised that he had a fall with right hip fracture. Dr. Jensen checked a form box "yes," indicating that appellant had a preexisting history of Parkinson's disease, and a box "no," indicating that the condition was not employment related. She found that appellant could return to limited part-time work on January 20, 2014, but needed continued therapy and could not drive. Dr. Jensen recommended that appellant work from home.

The employing establishment controverted the claim. Margarita Perdomo, an employee of SBM Management Services, provided a December 11, 2013 statement describing the events of October 4, 2013. She stated that at approximately 9:20 p.m. she began cleaning the men's restroom on the 12th floor and put up the "wet floor" sign when she was done, at approximately 9:40 p.m. Ms. Perdomo stated that she then went to clean the 11th floor and when she was done, at approximately 10:15 p.m., she returned to the 12th floor to pick up the signs and found a male building employee, appellant, lying just past the "wet floor" sign on the floor of the men's restroom, without shoes on. Appellant told her not to help, that he had fallen because he had a "cramp," and would stay there awhile. Ms. Perdomo left and returned at 10:45 p.m. with a coworker. At that time appellant told her that he had called paramedics, who arrived at approximately 11:00 p.m., took his things from a cubicle, and transported him.

By decision dated April 9, 2014, OWCP denied the claim. It found that, while appellant was in the performance of duty when he fell on October 4, 2013, the case was denied because the fall was idiopathic, noting that no employment object intervened with the fall. OWCP noted that Dr. Jensen had opined that the fall was not employment related and Dr. Lombard had indicated that appellant fell as a complication of his gait disturbance due to Parkinson's. In a second April 9, 2014 decision, it determined that appellant was not entitled to continuation of pay for

[2] Dysautonomia is defined as malfunction of the autonomic nervous system. *Dorland's Illustrated Medical Dictionary*, (29th ed. 2000).

any absence due to the October 4, 2013 fall because the injury was not reported to OWCP within 30 days of the injury.

Appellant timely requested a hearing from both decisions. He submitted evidence from his rehabilitation facility where he was admitted on October 8, 2013 and discharged on October 25, 2013. Dr. Adora L. Matthews, Board-certified in physical medicine and rehabilitation, reported a history significant for Parkinson's disease with dysautonomia and gait disturbance. She reported that appellant had a mechanical fall and corrective surgery and was transferred for rehabilitation where he met his rehabilitation goals. On October 24, 2013 appellant was found to have a lower extremity deep vein thrombosis, was placed on medication, and was discharged in stable condition.

In reports dated April 18, 2014, Dr. Jensen checked a form box "yes," indicating that appellant's right hip fracture caused by a fall was employment related. She referred to an attached statement by Dr. Nicklesh Thakur, a Board-certified neurologist. Dr. Jensen advised that appellant could not perform the physical demands of his position, but could return to part-time work with no driving. She provided restrictions to his physical activity and advised that he should be reevaluated in six months. On October 20, 2014 Dr. Jensen advised that appellant's four hours of extra work on October 4, 2013, especially occurring at the end of the workweek, was sufficient to exacerbate his gait and balance difficulties by causing mental and physical fatigue. She further indicated that having to step around the "wet floor" sign in an awkward manner also contributed to the fall.

In an April 23, 2014 report, Dr. Thakur advised that appellant suffered from a progressive neurologic condition and that prolonged work hours would exacerbate his condition that would worsen his gait and balance. On September 2, 2014 he advised that appellant's 12-hour workday on October 4, 2013 was sufficient to exacerbate his neurologic condition with increased gait, and balance difficulties, stating "excessive work hours [are] known to exacerbate [appellant's] underlying condition due to excessive stress to the mind and body."

John J. Baum, acting chief, environmental engineering section of the employing establishment, provided a November 18, 2013 report in which he described the events before and after appellant's fall on October 4, 2014. He explained that appellant was given authorization to work an extra four hours that day to close things down in preparation for the upcoming furlough on October 7, 2013.[3] Mr. Baum stated that he received a telephone call from appellant and his wife on October 7, 2013 stating that he had fallen on the evening of October 4, 2013, but was unaware at that time that the fall occurred at work. He maintained weekly communication with appellant and it was not until November 14, 2013 that he was made aware that the fall was work related, noting that an e-mail communication confirmed that appellant was at work at 9:28 p.m. on October 4, 2013.[4]

[3] As noted by Mr. Baum, the employing establishment was required to go on furlough, but was not informed of this until Monday, October 7, 2013.

[4] Appellant also submitted medical evidence previously of record.

In an August 4, 2014 pleading, counsel asserted that fatigue working long hours and the "wet floor" sign contributed to the October 4, 2013 fall. He further asserted that there was no rationalized medical evidence that establishes an idiopathic fall and thus the fall was an unexplained fall, rendering it compensable.

At the November 12, 2014 hearing, appellant testified that he had returned to part-time work, six hours a day, and worked mostly from home. He described the events of October 4, 2013, stating that he arrived at work at 7:00 a.m. and was working late due to the planned furlough. Appellant testified that at 9:45 p.m., when he went to the restroom, a "wet floor" sign was in the middle of the doorway, but that the tile bathroom floor did not appear to be wet. He stated that he stepped over and to the left of the sign, lost his balance, and fell to the floor, landing mostly on his side. Appellant indicated that he unsuccessfully tried to break his fall. He lay there until cleaning personnel arrived. Appellant related that he had called 911, and emergency personnel transported him to the hospital where he had surgery, followed by rehabilitation at another facility. He reported that he had a blood clot while in rehabilitation and returned to a hospital shortly after his discharge. Appellant stated that since the fall he needed a walker whereas, prior to the fall, he only needed a cane to ambulate. Counsel reiterated his arguments that the fall was an unexplained fall and therefore compensable.

In a December 23, 2014 decision, an OWCP hearing representative found that appellant's fall on October 4, 2013 was idiopathic and affirmed the April 9, 2014 decision.[5]

LEGAL PRECEDENT

It is a general rule that where an injury arises in the course of employment, occurs within the period of employment, at a place where the employee reasonably may be and takes place while the employee is fulfilling his or her duties or is engaged in doing something incidental thereto, the injury is compensable unless it is established to be within an exception to the general rule. One of the exceptions to the general rule is an idiopathic fall.[6]

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 FECA. 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.[7] To properly apply the idiopathic fall exception to the premises rule, there

[5] At the time of the current appeal OWCP had scheduled a hearing regarding the continuation of pay issue, and final decision had not been issued.

[6] *Roger Williams*, 52 ECAB 468 (2001).

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

must be two elements present: a fall resulting from a personal, nonoccupational pathology, and no contribution from the employment.[8] OWCP has the burden of proof to submit 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. The fact that the cause of a particular fall cannot be determined does not establish that it was due to an idiopathic condition and if the record does not establish a particular fall was due to an idiopathic condition, it must be considered as merely an unexplained fall, which is covered under FECA.[9]

ANALYSIS

The record in this case supports that appellant's fall on October 4, 2013 occurred at a place where he was reasonably expected to be and took place while he was fulfilling his duties or was engaged in doing something incidental thereto.[10] The injury would therefore be compensable unless it was established to be within an exception to the general rule, such as an idiopathic fall.[11] The Board finds that appellant's fall on October 4, 2013 was unexplained and therefore occurred in the performance of duty. Thus, the case is not in posture for decision.

OWCP bears the burden of proof to establish an idiopathic fall.[12] Appellant was on the employing establishment premises when the fall occurred at approximately 9:45 p.m. He had permission to work an extra four hours that day. Appellant was ministering to personal comfort at the time he fell.[13] It is not disputed that he had preexisting Parkinson's disease with a gait disturbance. The record, however, is not clear regarding the circumstances of appellant's fall on October 4, 2013. No one actually witnessed the fall. From appellant's own statements, it does not appear that he tripped over a "wet floor" sign or that the floor was actually wet.[14]

While Dr. Jensen reported on February 28, 2014 that appellant's fall was not employment related by checking a form box "no," indicating that, the fall was due to his Parkinsonism, she later in an April 18, 2014 report checked a box marked 'yes' that appellant's right hip fracture was employment related. On October 20, 2014 she explained that his four hours of extra work on October 4, 2013 especially occurring at the end of the workweek, was sufficient to exacerbate his gait and balance difficulties by causing mental and physical fatigue. In reports dated April 23 and September 2, 2014, Dr. Thakur advised that appellant's prolonged 12-hour workday on October 4, 2013 was sufficient to exacerbate his neurologic condition with increased gait and balance difficulties.

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

[9] *Jennifer Atkerson*, 55 ECAB 317 (2004).

[10] *Supra* note 6.

[11] *Id*.

[12] *Supra* note 9.

[13] *V.O.*, 59 ECAB 500 (2008) (the personal comfort doctrine evolved to provide coverage to employees while injured on the employing establishment premises when ministering to their personal comfort).

[14] *Supra* note 7.

If the record does not establish that a 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.[15] The Board finds that OWCP has failed to meet its burden of proof to establish the fall at issue to be of an idiopathic nature with no contribution or intervention from employment factors.[16] The mere fact that an employee has a preexisting medical condition, as in this case, without supporting medical rationale to establish that it was the cause of the employment incident, is not sufficient to establish that a fall is idiopathic.[17]

Accordingly, the case will be remanded for OWCP to determine the nature and extent of any injury or disability that resulted from the October 4, 2013 fall. Following this and such further developed deemed necessary, OWCP shall issue an appropriate *de novo* decision.

CONCLUSION

The Board finds that appellant's fall on October 4, 2013 was an unexplained fall that occurred in the performance of duty. The case is not in posture for decision regarding the nature and extent of any injury or disability that resulted from the fall.

[15] *Supra* note 7.

[16] *R.D.*, Docket No. 13-1854 (issued December 23, 2014).

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

ORDER

IT IS HEREBY ORDERED THAT the December 23, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for proceedings consistent with this opinion of the Board.[18]

Issued: June 1, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

[18] James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.