United States Department of Labor
Employees' Compensation Appeals Board

J.W., Appellant	)	
and	)	**Docket No. 20-0598**
	)	**Issued: December 2, 2020**
U.S. POSTAL SERVICE, KANSAS CITY MARTIN POST OFFICE, 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:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On January 23, 2020 appellant, through counsel, filed a timely appeal from a September 13, 2019 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 his burden of proof to establish an injury in the performance of duty on February 5, 2018, as alleged.

FACTUAL HISTORY

On March 5, 2018 appellant, then a 41-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that, on February 5, 2018, he fell while casing his route in the performance of duty. He indicated that he lost consciousness, fell, and hit his head on the cement workroom floor and sustaining an open head wound. Appellant stopped work on February 5, 2018. On the claim form, the employing establishment indicated that appellant's injury was not sustained in the performance of duty because his injury was caused by a prior illness, for which he had been hospitalized for approximately one month prior to his return to work on February 5, 2018. It also noted that appellant had bragged about the amount of beer he had consumed during the Super Bowl.

With his claim, appellant submitted a March 2, 2018 statement in which he described falling on February 5, 2018 and striking his head on the cement floor. He also submitted a March 1, 2018 work release from Dr. Benjamin J. Saylor, a family practitioner.[3]

The record reflects that on February 5, 2018 appellant was transported to the hospital by ambulance. In a February 5, 2018 emergency department report, Dr. Eric R. Macrae, a Board-certified emergency medicine practitioner, noted that appellant had trouble recalling past medical history, but noted that he had been recently hospitalized (reason unknown) and had a past history of being "knocked unconscious after being hit in head, staples placed." He indicated that appellant had a sudden onset of a syncopal episode while at work putting mailboxes up above him. Appellant denied taking any medications regularly, denied any history of seizures, denied family history of cardiac dysrhythmias or sudden cardiac death. A computerized tomography (CT) scan[4] was performed of appellant's head along with a physical examination. Dr. Macrae provided an impression of syncope with altered mental status. Appellant was transferred to another facility for further evaluation and a magnetic resonance imaging (MRI) scan.

In a February 5, 2018 report, Dr. Varsha Pawate, a family medical specialist, noted that appellant had a history of anxiety, depression, and chronic lower back pain with radiculopathy and presented status post syncope episode at work. Appellant was noted to have some bleeding from the site of his fall on the left occipital lobe. Dr. Pawate reviewed the CT scan and indicated that this possibly represented subtle calcification or petechial hemorrhage. She provided an impression of status post syncope with no preceding symptoms. Dr. Vijay Parthiban, a Board-certified internist, cosigned the report.

[3] The work release indicated that appellant was released to part-time, light-duty work on March 6, 2018 with increasing work hours until a return to full duty on March 17, 2018.

[4] The CT scan of appellant's head showed focal hypodensity within inferior right frontal lobe cortex and subtle hyperdensities within the adjacent right frontal cortex which may be subtle calcification or petechial hemorrhage.

In a development letter dated March 29, 2018, OWCP advised appellant that additional evidence was needed to establish his claim. It informed him of the type of factual and medical evidence necessary and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

On April 5, 2018 appellant completed OWCP's development questionnaire. He denied striking any object on his way down to the floor. Appellant also denied having a history of fainting or other medical condition which may have contributed to his injury.

In a February 8, 2018 hospital discharge report, Dr. Pawate indicated that appellant was admitted for syncope and discharged with small right frontal subdural hemorrhage, anxiety and depression. The hospital course indicated that CT head showed possible petechial hemorrhages and magnetic resonance imaging (MRI) brain scan showed minimal linear subdural hemorrhage over anterior right frontal lobe. The electroencephalogram (EEG), electrocardiogram (EKG), and echocardiogram were normal and did not show a cardiac reason for his syncopal episode. Repeat CT head scan did not show a worsening bleed. A copy of a February 6, 2018 brain MRI scan was provided.[5]

In a March 28, 2018 report, Dr. Cynthia L. Costa, a Board-certified neurologist, indicated that appellant presented for a history of a head injury. She noted that in 2011 appellant was hit on the back of the head and lost consciousness. Appellant reported that he was in an induced coma for three days and suffered some cognitive difficulties thereafter. In January 2018, he was hospitalized for rhabdomyolysis. In February 2018, appellant had a syncopal episode at work and fell straight back, striking his head and losing consciousness. Dr. Costa noted that since the injury appellant has had difficulty with headaches, memory (more immediate than long term), focus, insomnia, fatigue, and mood. Appellant also had some disequilibrium that has improved. Dr. Costa noted that the cause of the syncope was unknown and that the EEG and vascular imaging were negative. She provided an assessment of post-concussive syndrome.

In an April 5, 2018 report, Dr. Saylor diagnosed post-concussive syndrome and asymptomatic microscopic hematurla. He indicated that other medical conditions appellant had included adenoma of right adrenal gland and transaminitis.

In an April 30, 2018 note, Dr. Costa advised that the reason for appellant's episode of loss of consciousness was unknown, as all the hospital testing was negative.

By decision dated April 30, 2018, OWCP denied the claim. It found that the medical evidence of record was insufficient to establish that appellant's diagnosed abrasion, post-concussive syndrome, and subdural hemorrhage were caused, aggravated, accelerated, or precipitated by the accepted employment incident.

[5] The February 6, 2018 brain MRI scan indicated encephalomalacia and gliosis with evidence of prior hemorrhage and anterior inferior lateral right frontal lobe compatible with old trauma, and minimal linear subdural hemorrhage over anterior right frontal lobe which appeared subacute.

On May 30, 2018 appellant, through counsel, requested an oral hearing before an OWCP hearing representative. A telephonic hearing was held on November 15, 2018.

By decision dated January 30, 2019, an OWCP hearing representative vacated OWCP's April 30, 2018 decision and remanded the case to determine whether appellant's injury occurred in the performance of duty. The hearing representative noted that appellant had been hospitalized prior to the claimed injury, but had been released for at least 48 hours. Also appellant had testified that he consumed beer in moderation on the day of the Super Bowl. The hearing representative noted that the evidence of record made reference to several other factors which may have been contributory to the February 5, 2018 event, including the 2011 head injury, the February 7, 2018 MRI scan findings indicative of old trauma, the hospitalization immediately preceding the work event, appellant's medications, and any effects of the right adrenal gland adenoma and transaminitis. The hearing representative determined that OWCP must initiate further development with Dr. Costa as to whether any of those items could be considered contributory to the cause of the February 5, 2018 syncope and to address how those factors were ruled out as the cause of appellant's syncope.

In a January 31, 2019 letter, OWCP requested that Dr. Costa review the statement of accepted facts (SOAF) and a list of questions and to provide a comprehensive narrative medical report with a rationalized medical opinion on the cause of appellant's syncope. Dr. Costa was afforded 30 days to respond. The letter included a note to appellant that he should follow up with Dr. Costa to insure that a response was received. Both appellant and appellant's counsel were provided a copy of the letter. No further response was received from Dr. Costa.

By decision dated March 7, 2019, OWCP denied the claim, finding that the evidence of record was insufficient to establish that appellant's injury occurred in the performance of duty was not established. It advised that Dr. Costa had not provided a comprehensive narrative medical report as requested to explain that appellant's injury was not caused by the outside factors identified in hearing representative's decision.

On March 12, 2019 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative. A telephonic hearing was held on July 10, 2019. The hearing representative noted that she needed appellant's 2011 hospital records regarding appellant's coma with cognitive difficulties and the hospital records for the time period immediately preceding the February 5, 2018 incident. Appellant testified that he had not seen Dr. Costa for some time, but he could make an appointment with her office. He also testified that he was hospitalized in February 2018, prior to the work incident. The hearing representative left the record open for 30 days. OWCP received duplicative evidence.

By decision dated September 13, 2019, an OWCP hearing representative affirmed OWCP's March 7, 2019 decision, finding that that appellant had not met his burden of proof to establish that he sustained an injury in the performance of duty.

LEGAL PRECEDENT

An employee seeking benefits under FECA[6] has the burden of proof to establish 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 FECA, that the claim was timely filed within the applicable time limitation of FECA,[7] 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.[8] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[9]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.[10] Fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.[11] Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[12]

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 employment -- is not within coverage of FECA.[13] Such an injury does not arise out of a risk connected with the employment and is, therefore, not compensable. However, as 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.[14]

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[6] *Id.*

[7] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[8] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[9] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[10] *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[11] *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[12] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

[13] *A.B.*, Docket No. 17-1689 (issued December 4, 2018); *L.G.*, Docket No. 13-0927 (issued August 27, 2013); *Carol A. Lyles*, 57 ECAB 265 (2005).

[14] *A.B., id.*; *M.M.*, Docket No. 08-1510 (issued November 25, 2008).

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.[15] 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.[16] 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 proven that a physical condition preexisted and caused the fall.[17]

ANALYSIS

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

In determining whether appellant's injury occurred in the performance of duty, the Board must first consider factors to determine whether the February 5, 2018 incident was caused by an idiopathic fall. Factors to be considered include whether there is evidence of a preexisting condition that caused appellant to collapse, whether there were any intervening circumstances or conditions that contributed to his fall, and whether appellant struck any part of his body against a wall, piece of equipment, furniture, or similar object as he fell.[18] In *L.J.*,[19] the Board found that OWCP failed to establish that a fall was idiopathic in nature because the medical evidence of record failed to establish that the employee's fall was solely the result of a nonoccupational orthostatic hypotension condition. The Board has also previously explained in *A.B.*,[20] that "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 was preexisting and caused the fall."

Similarly, herein, the Board finds that the medical evidence of record fails to establish that appellant's fall was solely the result of a personal, nonoccupational pathology.[21] The medical evidence noted that appellant was standing casing/putting mail in boxes up above him when he fell. Appellant denied striking any object on his way down to the floor. The medical evidence related to his hospitalization on February 5, 2018 was submitted to the record and did not establish

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

[16] *A.B.*, *supra* note 13; *P.P.*, Docket No. 15-0522 (issued June 1, 2016).

[17] *See D.T.*, Docket No. 19-1486 (issued January 17, 2020); *P.N.*, Docket No. 17-1283 (issued April 5, 2018); *John R. Black*, 49 ECAB 624 (1998); *Judy Bryant*, 40 ECAB 207 (1988); *Martha G. List*, 26 ECAB 200 (1974).

[18] *See D.T.*, Docket No. 19-1486 (issued January 17, 2020); *A.B.*, *supra* note 13; *P.P.*, Docket No. 15-0522 (issued June 1, 2016); *see also Jennifer Atkerson*, 55 ECAB 317 (2004).

[19] Docket No. 08-1415 (issued December 22, 2008).

[20] *Supra* note 13.

[21] *See D.M.*, Docket No. 18-1552 (issued June 2, 2020).

any cause for appellant's fall. Dr. Costa reported in an April 30, 2018 note that the reason for appellant's episode of loss of consciousness was unknown, as all the hospital testing was negative.

Because appellant denied any intervention or contribution by some hazard or special condition of the employment, OWCP undertook further development to address whether his fall at work on February 5, 2018 was idiopathic or unexplained. It requested his medical records regarding his hospitalization immediately prior to his return to duty on February 5, 2018 as well as comprehensive medical report from Dr. Costa which explained whether any of appellant's past circumstances (*i.e.*, 2011 head injury and induced coma, February 2018 MRI scan findings indicative of old trauma, appellant's hospitalization immediately preceding the work incident, potential side effects of appellant's medications, and any effects of the right adrenal gland adenoma and transaminitis) contributed to his fall on February 5, 2018. However, despite OWCP's requests, the record remains devoid of this information. The mere fact that an employee has a preexisting medical condition, without supporting medical rationale to establish that it was the cause of the employment incident, is insufficient to establish that a fall is idiopathic.[22] The record at hand does not establish that the February 5, 2018 fall was due to an idiopathic condition; thus, 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.[23] The Board finds that OWCP has failed to meet its burden to establish that appellant's fall while standing and casing at work was of an idiopathic nature with no contribution or intervention from employment factors.[24] The evidence of record is sufficient to require OWCP to further develop the medical evidence and the case record.[25]

Accordingly, the case will be remanded for OWCP to determine whether appellant sustained an injury causally related to the February 5, 2018 employment incident, and if so, to also determine the nature and extent of disability, if any.

CONCLUSION

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

[22] *D.M., id.*; *A.B., supra* note 13.

[23] *H.B.*, Docket No. 18-0278 (issued June 20, 2018).

[24] *A.B., supra* note 13; *R.D.*, Docket No. 13-1854 (issued December 23, 2014).

[25] *A.B., supra* note 13; *see Robert A. Redmond*, 40 ECAB 796, 801 (1989).

ORDER

IT IS HEREBY ORDERED THAT the September 13, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: December 2, 2020
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board