U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VICKIE PLOTT and DEPARTMENT OF VETERANS AFFAIRS
VETERANS ADMINISTRATION MEDICAL CENTER, Salisbury, NC

Docket No. 99-2311; Submitted on the Record;
Issued January 10, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty on July 23, 1997 as alleged.

On July 28, 1997 appellant, then a 41-year-old telephone operator, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that, on July 23, 1997, she fell to the floor while experiencing a headache and struck the right side of her head, her left arm and her nose.[1] She stopped work on July 23, 1997.

In a July 23, 1997 emergency room note, a physician, whose name is illegible, indicated that appellant's chief complaint was migraine headache.

In an unsigned employing establishment progress note dated July 23, 1997, it was reported that appellant had a persistent headache, minor sequelae, pain in the left arm and nose and a work-related annotation was made.[2] In a July 23, 1997 treatment report, an employing establishment doctor noted that appellant was released from duty due to illness.

In a July 23, 1997 report of contact, Barbara West, appellant's supervisor indicated that she was notified at approximately 1:45 a.m. via telephone that appellant was ill with a migraine headache and needed relief from duty. Ms. West indicated that she arrived at 2:10 a.m. to find appellant on the floor with a chair overturned. She noted that appellant was not responsive when she spoke to her. Ms. West immediately notified the appropriate authorities and appellant was placed on a stretcher and removed.

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[1] Appellant stated that she was initially seen by the AOD around 12:30 a.m. on July 23, 1997 with a headache. The employing establishment physician prescribed medication and released her from work. She could not leave her job until someone relieved her from duty. Appellant spoke to her supervisor at 1:45 a.m. and stated she felt sick.

[2] The record reflects an unsigned form dated July 23, 1997 and the sections for nonwork-related injury and first visit are checked.

In a July 24, 1997 treatment note, Dr. Franklin Tolbert, a Board-certified family practitioner, stated that appellant needed to be out of work from July 24 through August 4, 1997.

Appellant provided a July 28, 1997 statement describing what followed her incident. She stated that she was sent to Rowan Regional Medical Center by ambulance, checked by Dr. Kribbs, given bloodwork and a shot.

In a July 30, 1997 memorandum, the employing establishment noted that appellant had come to work with a migraine headache.

In an August 22, 1997 treatment note, Dr. F. Edward Pollack, Jr., an orthopedist, noted that appellant passed out about a month ago while at work and was found on the floor. Dr. Pollack stated that she was thought to have a contusion to her head and some discomfort over her shoulder. He noted that appellant saw Dr. Tolbert, who felt that she had a slight separation of her acromioclavicular joint. Since then, Dr. Pollack reported that appellant had marked increased discomfort. He diagnosed impingement syndrome of the left shoulder.

By letter dated September 24, 1997, the Office of Workers' Compensation Programs requested that appellant submit a rationalized medical opinion establishing a causal relationship between her treated condition and her "reported injury." The Office also requested factual information regarding the manner in which the injury occurred and as to whether appellant had any similar conditions or disability before the injury.

In an August 4, 1997 disability certificate, Dr. Franklin Tolbert, a family practitioner, indicated that appellant could return to work on August 7, 1997.

In a report dated August 5, 1997, Dr. Tolbert noted:

> "[Appellant] was seen by me on July 24, 1997 for a work[-]related injury, she suffered a syncopal while on the job. Apparently as she fell, she struck her nose, the posterior occiput and her left shoulder."

On examination, Dr. Tolbert noted tenderness in the left shoulder and acromioclavicular joint. He noted that she was also tender along the bridge of the nose, the right posterior scalp in the postauricular area, and in the right side of her neck into the right shoulder. Dr. Tolbert also noted that her ear examination showed no hemotypanum and her skull x-rays were negative. He noted that the left shoulder x-rays showed no fractures but the radiologist felt she might have an anterior crucial (AC) separation. Dr. Tolbert stated that she was allowed to return to work on August 7, 1997 on a limited basis and stated, "these injuries are clearly work related."

In a statement received by the Office on August 5, 1997, Angie Miller, an employing establishment nurse, noted that, on July 23, 1997, she entered the area where appellant was found on the floor on her stomach.

In a statement received by the Office on August 5, 1997, Glenn M. Riddle, an employee of the employing establishment, noted that, on July 23, 1997, appellant called him to the office. Mr. Riddle indicated that, when he arrived, appellant was wearing sunglasses and complaining of a severe headache. He stated that appellant informed him that she could not leave the telephone

office but needed to see the manager on duty. Mr. Riddle indicated that he returned to the evaluation center and contacted nurse Sherrill who then tried to reach the manager on duty. He indicated that at 2:10 a.m., Ms. West called him on the radio and informed him that appellant was on the floor. Mr. Riddle noted that, when he arrived, "appellant was found face down on the floor after apparently falling out of the chair she had been sitting in. She was facing the door and at first was unresponsive, she still had on her sunglasses and had an imprint of them on her right temple and forehead."

In an August 13, 1997 statement, appellant noted that she was found face down by Ms. West, when she came in to relieve appellant. Her glasses were on at the time of the incident.

In an October 2, 1997 disability certificate, Dr. Pollack indicated that appellant could return to work on October 13, 1997 with limitations that included no use of the left arm, including typing.

In an October 6, 1997 statement, Ms. West noted that no witnesses were present at the time of appellant's fall. She stated: "to her knowledge, appellant arrived for a 12 to 8 a.m. tour and had a migraine headache. By 12:30 a.m., [appellant] was calling for a coworker to relieve her." Ms. West indicated that she returned home from the Charlotte Presbyterian Hospital with her husband and received the notice on her answering machine to call work. She noted that she spoke with appellant at approximately 1:45 a.m. and arrived at the location around 2:10 a.m. to find appellant lying face down on the floor beside a table with a chair overturned. Ms. West also indicated that she was not present when the accident took place.

In a memorandum dated October 17, 1997, the employing establishment noted that there were no witnesses at the time of appellant's fall and that appellant arrived at work with a migraine headache.

In an October 27, 1997 decision, the Office denied appellant's claim as she did not establish that she sustained an injury in the performance of duty.

In a letter received by the Office on November 25, 1997, appellant requested an oral hearing which was held on August 10, 1998. When the hearing representative inquired as to whether appellant had any conditions that would cause appellant to black out such as epilepsy, appellant responded, "no, no."

In a December 2, 1998 decision, the Office hearing representative affirmed the Office decision of October 27, 1997. The hearing representative stated that appellant did not provide evidence factual or medical to establish that her injuries were caused by striking any object other than the floor.

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

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.[3] One of the exceptions to the general rule is an idiopathic fall which the Board has defined as "where a personal, nonoccupational pathology caused 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."[4] An idiopathic fall is not compensable because it did not arise out of a risk connected with the employment.[5] The question of causal relationship in such cases is a medical one and must be resolved by medical evidence.[6] However, the fact that 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, it must be considered as merely an unexplained fall, that is one which is distinguishable from a fall in which it is definitely established that a physical condition preexisted the fall and caused the fall.[7]

The medical evidence in this case does not establish that appellant's fall was due to a personal nonoccupational pathology without employment contribution. Appellant supplied numerous reports from various practitioners; however, none of the doctors addressed the etiology of appellant's fall. In his August 4, 1997 disability certificate, Dr. Tolbert provided a diagnosis of impingement syndrome of the left shoulder but did not offer an explanation as to the etiology of appellant's fall. Dr. Pollack, in his August 27, 1997 treatment note, described what happened to appellant while she was at work, but he did not provide an explanation as to what caused appellant to pass out while she was at work. None of the reports addressed the cause of appellant's fall. The fall remains an unexplained fall, which occurred while appellant was engaged in activities incidental to her employment and thus the incident is within the performance of duty.

The Board will reverse the Office's December 2, 1998 decision denying compensability of the incident and will remand the case for further appropriate medical development and final decision on whether appellant sustained a compensable injury as a result of the July 23, 1997 employment incident.

[3] *Daniel F. McGettigan,* 43 ECAB 502 (1992).

[4] *Gertrude E. Evans (Wesley W. Evans),* 26 ECAB 200 (1974).

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

[6] *Lowell D. Meisinger,* 43 ECAB 992 (1992).

[7] *See Martha G. List (Joseph G. List), supra* note 5.

The decision of the Office of Workers' Compensation Programs dated December 2, 1998 is hereby reversed and the case remanded for further action consistent with this opinion.

Dated, Washington, DC
January 10, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member