

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD J. LOPEZ and U.S. POSTAL SERVICE, DOMINICK V.
DANIELS PROCESSING & DISTRIBUTION CENTER, Kearny, NJ

*Docket No. 00-576; Submitted on the Record;
Issued March 1, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury in the performance of duty on January 26, 1998, as alleged.

On January 26, 1998 appellant, then a 53-year-old custodian/laborer, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that on that date, while walking down the stairs at his place of employment, his right knee "buckled up" and he fell to the ground. The employing establishment, in its form entitled, "authorization for medical attention," noted that on January 26, 1998 appellant's leg gave out, and a suggestion was made for modified duty due to leg pain.

By letter dated February 13, 1998, the Office of Workers' Compensation Programs requested that appellant submit further information. No timely response was received.

In a decision dated March 19, 1998, the Office denied appellant's claim for compensation, finding that the evidence was not sufficient to meet the guidelines for establishing that he sustained an injury on January 26, 1998.

By undated letter received by the Office on April 14, 1998, appellant requested an oral hearing.

In support of his claim, appellant submitted the ambulance report of January 26, 1998. He also submitted hospital records from West Hudson Hospital, which indicates that appellant was seen by Dr. Jamie Moya, a specialist in emergency medicine, on January 26, 1998. Dr. Moya opined that there was minimal spur formation at the margins of the joint space with no recent fracture demonstrated and no osteonecrosis or bone destruction was seen. However, Dr. Moya opined that if the clinical symptomatology persisted, an orthopedic evaluation was suggested.

In a February 4, 1998 medical report, Dr. Richard J. Scott, a Board-certified orthopedic surgeon, found that the quadriceps tendon did not appear to be well attached to the proximal pole of the patella. Dr. Scott was concerned that appellant ruptured his quadriceps tendon and recommended a magnetic resonance imaging (MRI) scan to confirm this.

In a February 19, 1998 medical report, Dr. Andrew S. Levy, a Board-certified orthopedic surgeon, noted that he saw appellant on February 5, 1998, that on evaluation of his knee there was a palpable defect up above the patella, and that he was unable to straight leg raise. Dr. Levy reviewed x-rays and noted that they showed a small amount of patella infera. He concluded that appellant clearly had a quadriceps tear that was “nine days out” and opined that surgery was necessary. On February 9, 1998 Dr. Levy performed a right open quadriceps repair.

A hearing was held on October 20, 1998. At that time, appellant testified that, while on his way to a “smoke break,” he fell down some steps at the employing establishment. He stated that he was uncertain what happened, that he did not know if his knees buckled or if his foot got caught on the lip of the stairs. Appellant noted that the steps were in bad shape. He further testified that it was his right knee that buckled, and that he never had any prior problems with his knees. When appellant was asked whether his knee buckled or there was a problem with the step that caused him to fall, he said that he really could not answer that. He stated that he could not move his knee at all when he fell. Appellant stated that Joseph Burus and Durinda Person were with him when he fell. He also noted that, on March 16, 1998 and again on March 22, 1998, he had experiences of dizziness, and that he was subsequently hospitalized from March 22 to 31, 1998. Appellant submitted medical documentation indicating that he underwent diagnostic testing and his condition was diagnosed as multiple pulmonary emboli secondary to his deep venous thrombosis of the right leg secondary to the right knee surgery he underwent on February 9, 1998.

In further support of his claim, appellant submitted a medical report dated November 3, 1998, in which Dr. Levy, after reviewing appellant’s medical history with him, opined:

“Overall [appellant] has done very well from his quadriceps repair. The question has arisen as to what could have caused the tear. Usually when these tears happen they happen when the quadriceps fire suddenly, such as if someone catches their foot or twists a little bit on the knee and the quadriceps fires very suddenly. This usually happens in people at approximately 45 [to] 60 age range and are often accompanied by a fall to the ground after the quadriceps actually tears. It is the sudden sharp pulling of the quadriceps that causes the tear and the fall happens subsequently to it. Consequently not every patient who tears the quadriceps has a full fall. In [appellant’s] case I am unsure as to whether he had a fall following the tear. Consequently, a small stumble such as catching the foot on an uneven surface which causes the quadriceps to fire suddenly could cause the tear. Overall it is felt that these tears are the result of changes which happen inside the tendon with general aging process which are then in some people subjective to undue stress and massive quad loads when they stumble.

“Although I do not have the full details of [appellant’s] initial presentation to his primary care doctor, I do feel that given the nature of his job and his description

of the injury, there is a high likelihood that this did happen at work when he caught his foot and stumbled and the quadriceps fired. This is a very likely mechanism of injury. One should recall the issue of President Clinton tearing his quadriceps when he caught his foot on the edge of a rug. It is important to realize that the fall happens after the tear.”

In a decision dated December 7, 1998, the Office determined that appellant had failed to meet his burden of establishing that the injury to his right knee was sustained in the performance of duty.

By letter dated April 26, 1999, appellant requested reconsideration of his case. In support, he included material already submitted plus statements by two union representatives stating that the steps at the time of appellant’s injury were in need of repair because the metal stripping was loose.

By decision dated July 27, 1999, the Office denied appellant’s request for reconsideration as it found that the evidence submitted in support thereof was repetitious, immaterial and not sufficient to warrant review of the prior decision.

The Board finds that appellant sustained an injury in the performance of duty on January 26, 1998, as alleged.

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of establishing the essential elements of her claim.² When a claim for compensation is based on a traumatic injury, the employee must establish the fact of injury by proof of an accident or fortuitous event having relative definiteness with respect to time, place and circumstances and having occurred in the performance of duty, and by proof that such accident or fortuitous event caused an “injury” as defined in the Act and its regulations.³

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 the Act. 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. 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.⁴ If the record does not establish that the particular fall was due to an

¹ 5 U.S.C. §§ 8101-8193.

² *Shirley A. Temple*, 48 ECAB 404, 406 (1997).

³ *Linda S. Christian*, 46 ECAB 598, 600 (1995).

⁴ *John R. Black*, 49 ECAB 624, 626 (1998); *Dora J. Ward*, 43 ECAB 767 (1992); *Fay Leiter*, 35 ECAB 176 (1983).

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 the fall and caused the fall.⁵

In the case at hand, the medical evidence does not establish that appellant's fall was due to a personal, nonoccupational pathology. In fact, Dr. Levy opined that there was a high likelihood that appellant caught his foot on the steps at work and then his quadriceps fired. As the cause of the fall is unexplained, and it has been established that the fall occurred on the industrial premises during working hours, it is compensable unless there is an exception to the general rule. The Board notes that no such exception occurs in this case, and accordingly, the fall is an unexplained, compensable fall.

The Board further notes that to establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast serious doubt on claimant's statements.⁶ The employee has not met her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim. However, an employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁷

Appellant's claim is consistent with the facts of the case and his subsequent course of action. His account of the incident stands uncontroverted in the record. Appellant reported his injury immediately, and stated on his Form CA-1 that his knee buckled when he was walking down the steps. An ambulance was called at that time and there are hospital records, which support that he was seen on the date of the injury, January 26, 1998, and that he suffered a sprain to his right knee. After the injury, appellant continued seeking medical care, which resulted in his surgery to his right knee on February 9, 1998. Although there are some minor inconsistencies in appellant's testimony, *i.e.*, whether appellant tripped on a defective step or his knee buckled, he basically always stated that he was not sure what caused his fall, but that the fall occurred on the steps of the employing establishment. Accordingly, appellant's testimony lends further support to the compensability of the injury. As appellant's statement that he sustained an injury in the performance of duty on January 26, 1998 is not refuted by strong or persuasive evidence in this case, and is therefore entitled to great probative weight. Because his claim is consistent with the factual circumstances of the case and his subsequent course of action and there are no discrepancies, inconsistencies or contradictions in the evidence to cast serious doubt that he sustained an injury in the performance of duty on January 26, 1998, the Board finds that appellant has met his burden of proof to establish fact of injury.

⁵ *John R. Black*, *supra* note 4; *Judy Bryant*, 40 ECAB 207 (1988); *Martha G. List*, 26 ECAB 200 (1974).

⁶ *Linda S. Christian*, *supra* note 3.

⁷ *Id.*

The decisions of the Office of Workers' Compensation Programs dated July 27, 1999 and December 7, 1998 are reversed, and the case is remanded for payment of appropriate benefits.

Dated, Washington, DC
March 1, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member