U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAREN K. LEVENE and DEPARTMENT OF THE TREASURY, CUSTOMS SERVICE, Dallas, TX

Docket No. 02-25; Submitted on the Record;
Issued July 2, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO, MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof to establish an injury in the performance of duty on May 5, 2000.

On May 18, 2000 appellant, then a 35-year-old customs technician, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1). Appellant indicated that on May 5, 2000 she became upset and had sat down on a curb, where she apparently had a seizure and fell over, landing on her right side. A witness stated that on May 5, 2000 she found appellant lying on the pavement outside the rear door of the airport work site.

In response to a request for additional information, appellant stated that she went outside to get some air after a stressful argument with a supervisor, Larry Thorns. According to appellant, she could not recall specific details of the incident because she apparently had a seizure and became unconscious; she was told that she was sitting on the curb and must have fallen over and struck the concrete surface. Appellant noted that she was diagnosed with a seizure disorder in 1995, and from March to June 1995 she had 3 or 4 seizures.

In a report dated July 23, 2000, Dr. Jack Johnson, a family practitioner, indicated that appellant had a history of seizure disorder since 1994, and had been seizure-free since March 1997. Dr. Johnson reported that appellant had a syncopal episode on May 5, 2000 following a stressful encounter. He diagnosed possible recurrent seizure versus syncopal episode and stress secondary to her work environment.

By decision dated March 22, 2001, the Office of Workers' Compensation Programs denied the claim on the grounds that an injury in the performance of duty on May 5, 2000 had not been established. The Office found that appellant suffered a fall from a personal, nonoccupational pathology, with no injury as a result of a hazard or special condition of employment.

Appellant requested reconsideration and submitted additional evidence. In a report dated May 6, 2001, Dr. Johnson stated that appellant was examined on May 8, 2000 with a history of having what felt like a seizure episode on May 5, 2000 after an argument with her supervisor. Dr. Johnson noted that the examination was unremarkable and no x-rays were taken. He stated that the diagnosis was seizure episode most likely precipitated by stress at work.

In an undated statement received by the Office on May 9, 2001, appellant alleged that on May 5, 2000 at 7:30 a.m. Mr. Thorns asked her how late she had worked the previous night, and what work she had performed. According to appellant, Mr. Thorns then stated that he was only asking because he had received a message from his supervisor regarding overtime. Appellant indicated that Mr. Thorns stated that he was not aware that any employees were staying on their own time to get things done, which appellant alleged was untrue since it had been discussed at a mid-year review. Appellant further alleged that at 8:45 a.m. Mr. Thorns asked her a question in a rude manner regarding why she did not take a statement to a coworker as she was asked to do; appellant replied that she had not been asked to take the statement. Mr. Thorns yelled in a rude manner that she had been told to take the statement to a coworker. Appellant also submitted witness statements indicating that she was found lying on the ground near the curb and appeared to be confused and disoriented. A coworker, Patti Hagar, reported that she was asked by Mr. Thorns in a loud voice to confirm that appellant had been asked to take the statement. When Ms. Hagar replied in the negative, Mr. Thorns insisted in a loud voice that he did ask appellant.

By decision dated June 25, 2001, the Office denied modification of the March 22, 2001 decision. The Office found that appellant had not established a compensable work factor with respect to an administrative or personnel matter; it also found that appellant's fall was idiopathic in nature and was not compensable.

The Board finds that appellant has not established an injury in the performance of duty on May 5, 2000.

In this case, appellant has alleged that she became upset after speaking with her supervisor on May 5, 2000. She walked outside, sat on a curb, where she suffered a seizure that rendered her unconscious and caused her to fall onto the sidewalk.[1] The initial issue is whether the incident with her supervisor constituted a compensable work factor that could support a claim for either an emotional condition or the seizure episode.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. On the other hand, where disability results from an employee's emotional reaction to her regular or specially assigned work duties or to a

[1] The incident occurred at an airport facility and it appears from the record that appellant remained on the employing establishment's premises.

requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[2]

It is well established that administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.[3] The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.[4]

The discussion with the supervisor regarding appellant's work the previous night, and the alleged disagreement over whether appellant was told to perform a specific task, falls within the scope of an administrative or personnel matter.[5] In order to be a compensable work factor, there must be evidence of error or abuse by the supervisor. Appellant has alleged that the supervisor's conduct rose to the level of verbal abuse, but the Board finds that the allegation does not establish error or abuse. The record indicates that there was a disagreement with the supervisor on the morning of May 5, 2002, and a witness statement indicates that the supervisor spoke in a loud voice. This factual scenario does not in itself rise to the level of error or verbal abuse. Not every statement uttered in the workplace will give rise to coverage under the Act, and a raised voice in the course of a conversation does not in itself warrant a finding of verbal abuse.[6] The Board finds insufficient evidence establishing error or abuse in this case.

Since appellant has not established a compensable work factor with respect to the May 5, 2000 incidents, she cannot establish a claim for an emotional condition or seizure episode based on those incidents. The medical evidence is considered only if a compensable work factor has been alleged and substantiated.[7] The Board finds that appellant has not met her burden to establish an emotional condition or seizure episode on May 5, 2000 as employment related.

With respect to the actual fall on May 5, 2000, it is not clear what specific injury appellant may be claiming from the fall itself. Dr. Johnson, for example, noted that his examination on May 8, 2000 was unremarkable. In any case, the initial issue is whether the fall may be considered an "unexplained" fall or an "idiopathic" fall.

It is a general rule 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 the employment -- the injury is not a

[2] *Lillian Cutler*, 28 ECAB 125 (1976).

[3] *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

[4] *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

[5] The assignment of work and related matters are administrative functions; *see Robert W. Johns*, 51 ECAB 137 (1999).

[6] *Carolyn S. Philpott*, 51 ECAB 175, 179 (1999).

[7] *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

personal injury while in the performance of duty as it does not arise out of a risk connected with the employment.[8] On the other hand, if the cause of the fall cannot be determined, or the reason it occurred cannot be explained, then it is an unexplained fall that comes within the general rule that an injury occurring on the industrial premises during working hours is compensable.[9]

In this case, Dr. Johnson indicated that appellant had a history of seizure disorder since 1994. In his May 6, 2001 report, he stated that the diagnosis was seizure episode precipitated by stress at work. As the above discussion indicates, however, the alleged stress at work is not considered a compensable work factor. The weight of the medical evidence therefore indicates that the seizure episode on May 5, 2000 was a personal, nonoccupational pathology. Appellant had a prior history of seizure episodes and Dr. Johnson diagnosed a seizure episode on May 5, 2000. The fall must be considered idiopathic in nature, and would be compensable only if appellant suffered an injury as a result of special hazard of work, such as striking a table as she fell. The evidence in this case indicates that appellant fell and struck the concrete surface of the curb, without striking any intervening work objects. The Board concludes that, based on the evidence of record, the fall was idiopathic in nature and any resulting injury would not be compensable.

The decision of the Office of Workers' Compensation Programs dated June 25, 2001 is affirmed.

Dated, Washington, DC
July 2, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

[8] *John R. Black,* 49 ECAB 624, 626 (1998).

[9] *Id.* The Board notes that it appears from the record that appellant worked at an airport facility and remained on the airport premises when she fell on May 5, 2000.