United States Department of Labor
Employees' Compensation Appeals Board

M.M., Appellant	)	
and	)	**Docket No. 08-1510**
	)	**Issued: November 25, 2008**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Los Angeles, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On April 30, 2008 appellant filed a timely appeal from an April 22, 2008 decision of the Office of Workers' Compensation Programs denying his traumatic injury claim. Pursuant to 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's fall at work on April 25, 2006 was sustained in the performance of duty.

FACTUAL HISTORY

On May 8, 2006 appellant, then a 68-year-old hospitality aid, filed a traumatic injury claim alleging that on April 25, 2006 he passed out in the men's room while attempting to urinate, injuring both shoulders, his lower back, neck and legs during the fall. In a personal statement, he indicated that, although he did not remember falling, he "came to" on a cement

floor and "must have braced [his] right shoulder" when he fell. Appellant noted that he had been suffering from acute bronchitis when he went to work on the date of injury.[1]

Appellant submitted an April 25, 2006 emergency department progress note from Dr. Keri Gardner, a treating physician, who provided a history of an injury that allegedly occurred that day at the employing establishment. He informed Dr. Gardner that he had been feeling tired and somewhat dizzy during the day. Appellant went into the bathroom at the end of his shift and felt nauseated. The last thing he remembered, before passing out, was going to the urinal to urinate. After appellant regained consciousness, there were "lots of people around him." Dr. Gardner noted appellant's chronic low back and bilateral shoulder pain. Although appellant denied any previous history of syncopal episodes, Dr. Gardner's notes reflect that he had a "likely micturation syncope (vasovagal)." He noted no signs of trauma, and his neck and head computerized tomography (CT) scans were normal.

On April 27, 2006 Dr. Curtis W. Spencer, III, a Board-certified orthopedic surgeon, treated appellant for bilateral shoulder and low back pain. He related appellant's report that he passed out in the employing establishment restroom on April 25, 2006 prior to going home. Appellant remembered feeling dizzy earlier in the day. He stated that, when he woke up, he was surrounded by doctors, and felt a sharp pain in his head and right shoulder and arm from hitting the cement floor. Dr. Spencer noted that appellant had experienced weakness in both arms since the accident. He found limited range of motion in appellant's right shoulder, as well as a positive drop sign and tenderness in the acromioclavicular (AC) joint and the subacromial area of the right shoulder. X-rays and examination revealed Type III acromion; mild degenerative neck disease; degenerative disc disease of the lumbar spine; and positive impingement signs. A previous magnetic resonance imaging scan showed a possible complete tear of both rotator cuffs. Dr. Spencer stated, "I think [appellant] has a cervical strain related to his shoulder disability." In an April 27, 2006 disability slip, he recommended that appellant be "off work" for three months, due to bilateral shoulder, neck and low back pain.

The employing establishment controverted appellant's claim, contending that appellant was treated by Dr. Spencer on April 27, 2006 for injuries related to a March 5, 2000 shoulder injury, rather than the alleged April 25, 2006 injury.

By letter dated May 23, 2006, the Office informed appellant that the information and evidence submitted was insufficient to establish his claim. It requested additional information and evidence, including: details surrounding the events of April 25, 2006; information regarding preexisting conditions which may have caused or contributed to the incident; witness statements; and a narrative report from his physician with a diagnosis and an opinion as to the relationship between the diagnosed condition and the alleged incident.

[1] A May 12, 2006 statement of accepted facts reflects that appellant filed several previous claims for compensation, including: a December 8, 1989 occupational disease claim which was accepted for lumbosacral strain (File No. xxxxxx840); a December 16, 1990 occupational disease claim which was accepted for a left shoulder strain (File No. xxxxxx889); and a March 28, 2000 traumatic injury claim which was accepted for lumbar strain and bilateral shoulder strains (File No. xxxxxx427).

By decision dated June 23, 2006, the Office denied appellant's claim for compensation on the grounds that the evidence did not establish that he sustained an injury in the performance of duty. It found that appellant's collapse and fall on April 25, 2006 was idiopathic, noting that the fall was due to a micturation syncope, and that the evidence did not establish that he had struck an intervening object prior to landing on the floor.

On October 30, 2006 appellant requested reconsideration. He stated that he was performing his duties of wiping the sink and urinal bowl prior to passing out. Appellant indicated that he was not sure whether or not he hit the urinal as he fell, "because [his] legs, back, neck and both shoulders [were] sore."

Appellant submitted a June 8, 2006 report, wherein Dr. Spencer opined that the April 25, 2006 accident aggravated appellant's low back and left shoulder conditions. However, he stated his belief that appellant's right rotator cuff tear was a natural progression of his March 5, 2000 injury.

In a merit decision dated November 13, 2006, the Office denied modification of its prior decision. It found that appellant fell due to a personal, unknown, nonoccupational pathology and that the evidence did not establish that he fell onto any object on his way to the floor.

On November 13, 2007 appellant, through his representative, requested reconsideration, contending that the April 25, 2006 fall was unexplained and, therefore, compensable. The representative argues that the Office had failed to meet its burden of proof to show that the fall was caused by a preexisting condition.

In an October 29, 2007 report, Dr. Spencer stated that it was "really impossible for [him] to say whether [the April 25, 2006 fall] was an idiopathic fall or that he had an unexplained fall or that he had [micturation] syncope." He indicated that it "sounded" as though he had a vasovagal response. Noting that Dr. Spencer was unable to say whether the fall was industrial in nature, he opined that it did not contribute to his low back or shoulder disability.[2]

In a December 17, 2007 letter, the employing establishment contended that appellant was not entitled to compensation for his April 25, 2006 fall because there was no job-related reason for the fall. Further, the establishment argued that Dr. Spencer's October 29, 2007 report lacked probative value.

By decision dated April 22, 2008, the Office denied modification of its previous decisions, finding that the evidence was consistent with a syncopal episode. The claims examiner stated that, although Dr. Spencer's opinion was not well reasoned, it was the sole medical opinion regarding the cause of the fall. He further stated that, if Dr. Spencer had known that appellant suffered from acute bronchitis, "there would be more reason to believe that the fall was syncopal in nature."

[2] The Board notes that appellant submitted additional medical evidence for the period from October through December 13, 2007 related to carpal tunnel release surgery, exacerbation of chronic back pain and psychiatric issues.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[3] has the burden to establish the essential elements of his claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed, 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.[4]

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.[5] 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.[6] 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]

ANALYSIS

The Board finds that appellant met his burden of proof to establish that he sustained an injury in the performance of duty.

As stated above, an injury resulting from an idiopathic fall is not compensable.[8] However, the fact that the cause of a particular fall cannot be ascertained, or that the reason it occurred cannot be established, 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

[3] 5 U.S.C. §§ 8101-8193.

[4] *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *See Carol A. Lyles*, 57 ECAB 265 (2005).

[6] *Dora J. Ward*, 43 ECAB 767, 769 (1992); *Fay Leiter*, 35 ECAB 176, 182 (1983).

[7] *John R. Black*, 49 ECAB 624 (1998); *Judy Bryant*, 40 ECAB 207 (1988); *Martha G. List*, 26 ECAB 200 (1974).

[8] *Carol A. Lyles*, *supra* note 5.

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.[9]

In the present case, the factual evidence of record is insufficient to establish that appellant's fall was idiopathic. No one actually witnessed, and appellant does not remember, the fall or the events immediately preceding it. He does remember feeling tired and dizzy earlier in the day. Though there is no evidence establishing that appellant tripped or slipped, the Board is unable to make a determination as to the cause of the fall based on the scant factual evidence at hand.

The medical evidence does not establish that appellant sustained a syncopal episode on April 25, 2006 due to a personal, nonoccupational pathology. Dr. Gardner stated that appellant had a "likely micturition syncope." Dr. Spencer indicated that it was "really impossible" for him to say whether the April 25, 2006 fall was idiopathic, though it "sounded like a vascular response." The medical opinions of Drs. Gardner and Spencer are speculative as to the cause of appellant's fall. In addition, appellant's medical history did not include previous syncopal episodes. Although appellant stated that he felt dizzy during the workday and had been suffering from acute bronchitis, there is no probative medical evidence of record which establishes that the fall was idiopathic. Neither Dr. Gardner's nor Dr. Spencer's reports provide a rationalized opinion as to the cause of the condition that caused or contributed to the fall. The Board finds that the syncopal episode remains an unexplained fall while appellant was engaged in activities incidental to his employment duties. Appellant's injury is therefore compensable.

CONCLUSION

The Board finds that appellant's April 25, 2006 fall at work was sustained in the performance of duty.

[9] *Steven S. Saleh*, *supra* note 4; *Judy Bryant*, *supra* note 7; *Martha G. List*, *supra* note 7.

ORDER

The April 22, 2008 decision of the Office of Workers' Compensation Programs is reversed. The case is remanded to the Office for a determination of the nature and extent of any disability causally related to the April 25, 2006 fall.

Issued: November 25, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board