U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LETICIA R. GARCIA and DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Dallas, TX

Docket No. 01-1455; Submitted on the Record;
Issued February 1, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof to establish that her fall at work on August 1, 2000 was sustained in the performance of duty.

On August 2, 2000 appellant, then a 43-year-old secretary, filed a notice of traumatic injury completed by her supervisor, which indicated that on August 1, 2000 while sitting in her chair at work, appellant had a seizure and fell out of her chair, landing on her left wrist. In an August 4, 2000 witness statement, Vernon Harris stated that he walked up to appellant's desk at the front of the office and saw her sitting in her chair, crying and rubbing her arm. He stated that appellant said that she had fallen on her arm, that it hurt and that she could not move it. Mr. Harris stated that he immediately notified appellant's supervisor, Bruce Parker.

By letter dated September 27, 2000, the Office of Workers' Compensation Programs requested factual and medical evidence from appellant, specifically, a detailed description of how the injury occurred, the immediate effects of the injury, whether she had had any similar diseases or symptoms before the injury and a comprehensive medical report from the treating physician.

In an October 5, 2000 narrative statement submitted in response to the factual portion of the Office's request for additional information, appellant stated that she suffered from epilepsy and that she had a grand mal seizure and fell to the floor while sitting in her chair at work. She stated that she fell on her wrist, breaking it. Appellant added that following the incident, her supervisor, Mr. Parker walked her to the medical clinic where her wrist was wrapped in ice. Appellant was then collected by her mother, who took her to a local emergency room for further treatment.

Treatment notes from the Dallas Hospital indicate that appellant was seen on August 1, 2000 and was diagnosed with a fracture. She then came under the treatment of Dr. Bruce I. Prager, an orthopedic surgeon, who stated in an undated report that he first treated appellant on August 8, 2000, when he diagnosed a fractured left distal radius and applied a short arm

fiberglass cast. Dr. Prager noted that appellant had a history of epilepsy with seizures and that she stated that, while at work, she had a seizure causing her to fall to the floor and sustain a fracture of her left wrist. He indicated by check mark that appellant's injury was not employment related. In a series of follow-up reports, Dr. Prager documented his care and treatment of appellant's fracture and noted that she subsequently developed de Quervain's tenosynovitis as a result of her fracture. He did not otherwise discus the cause of appellant's injury.

By decision dated November 7, 2000, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that the injury occurred in the performance of duty.

The Board finds that appellant has failed to meet her burden of proof to establish that her fall at work on August 1, 2000 was sustained in the performance of duty within the meaning of the Act.[1]

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 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 the coverage of the Act. Such an injury does not arise out of a risk connected with or in the course of employment and it, therefore, is not compensable.[2] The question of causal relationship in cases of a fall like that in the present case is a medical one and must be resolved by medical evidence.[3]

It is also well established and the Board has recognized on numerous occasions, that although a fall is idiopathic, an injury resulting from it is compensable if "some job circumstance of working condition intervenes in contributing to the incident or injury, for example, the employee falls onto, into or from an instrumentality of the employment"[4] or where, instead of falling directly to the floor on which he has been standing, the employee strikes a part of his body against a wall, a piece of equipment, furniture or machinery or some like object.[5]

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[1] The Board notes that on November 21, 2000, subsequent to the issuance of the Office's decision, appellant requested a review of the written record and submitted evidence which was not previously before the Office. The Office acknowledged her request as timely and informed appellant that her case would be assigned to an Office hearing representative for review. Prior to the issuance of a decision, however, on March 21, 2001 appellant appealed to the Board and again submitted additional evidence. The Board notes that any evidence which was not previously submitted to the Office for consideration prior to its decision of November 7, 2000, represents new evidence which cannot be considered by the Board. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). Appellant may resubmit this evidence to the Office, together with a formal request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.138(b).

[2] *Martha G. List*, 26 ECAB 200 (1974); *Gertrude E. Evans*, 26 ECAB 195 (1974); *Rebecca C. Daily*, 9 ECAB 255 (1956); *see also Larson*, The Law of Workers' Compensation §§ 12.00, 12.11.

[3] *Robert J. Choate*, 39 ECAB 103 (1987); *John D. Williams*, 37 ECAB 238 (1985).

[4] *Rebecca C. Daily*, *supra* note 2.

[5] *Chunny Wong*, 31 ECAB 579 (1980); *Pauline Finley*, 19 ECAB 481 (1968); *Wilford M. Smith*, 9 ECAB 259 (1957).

Appellant has the burden of establishing that he struck an object connected with the employment during the course of his idiopathic collapse.[6]

In the present case, the medical evidence consists of Dr. Prager's reports. The reports identify appellant's nonoccupational, preexisting epileptic condition and therefore, lend support that a personal, nonoccupational pathology caused appellant to fall on August 1, 2000. None of the reports causally relate appellant's condition to any employment factors. Moreover, the factual evidence indicates that appellant was sitting in her chair at work when she suffered a grand mal seizure and fell directly to the floor, landing on her wrist and breaking it. There is no evidence indicating that her fall was caused by intervention of or contribution by any employment-related factors, *i.e.* She did not strike any object, other than the floor, during the course of her fall at work on August 1, 2000.

The decision of the Office of Workers' Compensation Programs dated November 7, 2000 is affirmed.

Dated, Washington, DC
February 1, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[6] *Gertrude E. Evans*, *supra* note 2.