United States Department of Labor
Employees' Compensation Appeals Board

GAVIN E. CHOATE, Appellant	)	
and	)	**Docket No. 04-526**
	)	**Issued: June 1, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Detroit, MI, Employer	)	

Appearances:
Steve Burt, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On December 18, 2003 appellant, through his representative, filed a timely appeal from the Office of Workers' Compensation Programs' hearing representative's October 1, 2003 decision. In this decision, the hearing representative affirmed the Office's January 17, 2003 decision, finding that appellant failed to establish that he sustained an injury in the performance of duty on November 9, 2002. 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 sustained an injury in the performance of duty on November 9, 2002.

FACTUAL HISTORY

On November 13, 2002 appellant, then a 38-year-old mail carrier, filed a traumatic injury claim alleging that on November 9, 2002 he hurt his right shoulder, when he blacked out and fell

to the ground from a porch.[1] Appellant indicated that Karen Malone, a coworker, witnessed the incident. He stopped work on the date of injury and has not returned to work.

In an accompanying narrative statement dated November 13, 2002, appellant provided a detailed description of the November 9, 2002 incident. He stated that on November 9, 2002 he was taking a break when a supervisor asked him if he could take one-half hour to deliver mail. Appellant responded yes to overtime work and Ms. Malone volunteered to help him. He stated that, when he approached the last house, he felt light-headed but he was able to deliver the mail. Appellant came down off the porch and told Ms. Malone that he had some of her mail and packages. He remembered bending down and not much else after that.

Sharon Anderson, an employing establishment customer service supervisor, controverted appellant's claim on the grounds that he indicated that he was not on the porch when he fell and there was insufficient medical evidence to establish his claim.

By letter dated November 29, 2002, the Office advised appellant that the information submitted was insufficient to establish his claim. The Office further advised him about the type of medical information he needed to establish his claim.

After reviewing the case record again, the Office determined that a telephone conference was necessary to obtain additional information. On December 5, 2002 an Office claims examiner conducted a telephone conference with appellant regarding his claim and prepared a memorandum to reflect the discussion. The claims examiner reported in the memorandum that 12 years ago, prior to his employment at the employing establishment, appellant passed out and a medical evaluation determined that he suffered from some sort of seizure that was never defined. The claims examiner noted that appellant was hired as a part-time letter carrier at the employing establishment on March 25, 2000 with no medical problems relating to seizures. She noted that on June 13, 2000 appellant was attacked by a dog while working and he hit his head and passed out for about one to one and one-half minutes, but never received treatment for a head injury.[2] Appellant stated that he vaguely heard the dog growling while he was "out" and then "coming to" and being able to assist himself. The claims examiner noted that appellant wondered whether his problems on November 9, 2002 were related to his old head injury and he mentioned this to one of his physicians treating him for the current injury, but he did not recall a response. Appellant stated that he did not have any problems with his head or headaches from June 2000 through November 2002. The claims examiner advised him to file a recurrence claim if he attributed his passing out on November 9, 2002 to the June 13, 2000 injury and to submit supportive factual and medical evidence.

The claims examiner reported that appellant recalled the events leading up to passing out on November 9, 2002 but he could not recall much about the immediate time period after the incident. He stated that he was not aware of why he passed out. Appellant related that he was walking his route with Ms. Malone. He had just come off a porch and was standing with or near Ms. Malone when he bent over to check something. Appellant stated that he passed out and fell

[1] The Board notes that appellant's traumatic injury claim was filed on his behalf by Roxanne Moore.

[2] Appellant filed a claim for the June 13, 2000 injury which was assigned number 09-467553.

hurting his right shoulder, arm and ankle. He indicated that he did not fall off the porch, rather, he fell straight down when he passed out. The claims examiner asked him about this because his traumatic injury form indicated that he was on the porch and fell to the ground. Appellant responded that he did not believe he fell off the porch. The claims examiner noted that, after the fall, appellant was admitted to the hospital where he stayed from November 9 until 14, 2002 and that the cause of his fall could not be determined. Lastly, the claims examiner noted that appellant subsequently received additional medical treatment. She also discussed coverage for explained and unexplained falls.

By letter dated December 16, 2002, the Office informed appellant to disregard its previous November 29, 2002 letter because a review of the case record indicated that additional factual information was necessary. The Office explained the rules governing explained and unexplained falls and the medical evidence needed to establish coverage. The Office instructed appellant to submit factual and medical information establishing that his passing out was caused by his employment. The Office also requested that appellant submit medical evidence regarding any injuries he sustained from the fall itself.

On January 7, 2003 the Office received a narrative statement and medical bills from appellant. In this narrative statement, appellant described the weather on November 9, 2002 and stress he experienced at work which included confrontations with customers when they did not receive their mail, being aware of stray dogs on a daily basis while delivering the mail and the June 2000 incident where he was attacked by a dog. He stated that, earlier in the week of the November 9, 2002 incident, he had a run in with a customer, a business owner, regarding mail delivery. Appellant noted that he did not deliver any mail to this customer on November 9, 2002. He reiterated how he was assigned overtime work on November 9, 2002. Regarding his fall, appellant stated that, as he turned to come down off the porch, he blacked out and fell on the right side of the porch. He further stated that he was unable to move his right arm and had very little feeling in his right leg. Appellant related that he was on the porch when his coworker told him that emergency medical services was on the way. He also provided a detailed description of the June 13, 2000 incident and stated that since that time he had experienced headaches off and on and wondered whether they were related to this incident. Appellant noted that his only other seizure took place in March 1990 and that he did not have another one until November 9, 2002.

On January 13, 2003 Dr. Daniel Stachelski, a Board-certified family practitioner, reported that he saw appellant on December 11, 2002 and January 10, 2003. He provided a history that on November 9, 2002 appellant was approaching a business for mail delivery when he developed chest pain shortly followed by unconsciousness and a grand mal seizure. Dr. Stachelski stated that during this time appellant fell on the porch of the business and sustained injuries to his right arm, shoulder, distal leg and foot. He noted that appellant was transported to the hospital for emergency care and was admitted to the hospital. Dr. Stachelski further noted that details could be obtained from the hospital record. He found that appellant had a soft tissue injury to his shoulder and that he was currently in the middle of extended physical therapy and he was being treated by an orthopedist for his ankle injury. Dr. Stachelski reported that appellant stated that an unpleasant incident had occurred at the business where the event occurred and he was feeling significant anxiety while approaching the building. He opined that "[i]t is possible that this anxiety may have contributed to the sequence of events detailed above."

The Office also received the January 13, 2003 treatment notes of a physician whose signature is illegible indicating that appellant suffered from a severe right ankle sprain and that he was undergoing physical therapy two to three times a week.

By decision dated January 17, 2003, the Office found the evidence of record insufficient to establish that appellant sustained an injury in the performance of duty on November 9, 2002. The Office determined that appellant's fall was medically explained as a grand mal seizure and there was no rationalized medical evidence establishing a causal relationship between the medical condition and factors of his employment. Accordingly, the Office denied appellant's claim.

The Office received Dr. Stachelski's January 10, 2002 prescription for physical therapy. In a January 13, 2003 letter, he stated that appellant could return to work with light-duty restrictions until further notice. Further, the Office received a duplicate copy of the January 13, 2003 treatment notes of a physician whose signature is illegible indicating that appellant suffered from a severe right ankle sprain and that he was undergoing physical therapy two to three times a week.

In a January 22, 2003 letter, appellant, through his representative, requested an oral hearing before an Office hearing representative. At the July 15, 2003 hearing, appellant's representative submitted a brief arguing that appellant's work duties such as extra work and walking a residential route while carrying his satchel up and down stairs may have contributed to his personal latent health problems and proneness to grand mal seizures. He also argued that appellant's injuries should be covered under the idiopathic theory of the Federal Employees' Compensation Act because test results obtained shortly after the November 9, 2002 fall were negative. Finally, appellant's representative contended that the porch was an instrumentality of his employment. Appellant's representative concluded by requesting that the Office's January 17, 2003 decision be vacated and that the Office award appropriate compensation to appellant. His representative submitted several documents providing additional factual and medical information.

Ms. Malone's July 14, 2003 narrative statement provided a description of the November 9, 2002 incident. She noted that she and appellant were working together on the same route on the date of injury and that appellant was at his last house delivering mail. Ms. Malone noted that he went up onto the porch of the house and delivered the mail. She indicated that he gasped and bent over. Appellant stood up, clutched his chest and fell down on the top part of the porch. Ms. Malone described his physical condition when she reached him and telephoned the employing establishment for help. She stated that the line was busy and patrons came out of their homes after she screamed for help. Emergency medical services was telephoned and they picked up appellant and transported him to the hospital. Ms. Malone noted that two employing establishment supervisors arrived at the site of the injury before appellant was taken to the hospital.

Emergency medical services records indicated that appellant had a seizure. The employing establishment stated in an April 23, 2003 letter that there was no job available for him with his current restrictions at the employing establishment. A June 6, 2003 order from the state

revealed that appellant's driving privileges had been restored without restrictions as they were previously suspended due to his November 9, 2002 seizure.

An April 9, 2003 body study of both of appellant's feet revealed increased tracer activity in the right ankle and proximal portion of the fourth metatarsal bone of the right foot that was probably traumatic in nature. A November 10, 2002 hospital report from Dr. Choon Soo Rim, a Board-certified neurologist, indicated that appellant had a seizure disorder with generalized tonic/clonic type in 1991 and he was given Dilantin to treat this condition which was tapered off after three months. He stated that appellant was doing well until November 9, 2002, when he suddenly felt light-headed and passed out and apparently had a generalized tonic clonic seizure with some tongue biting while delivering the mail. Dr. Rim provided his findings on physical examination and diagnosed seizure disorder with generalized tonic/clonic type of undetermined etiology.

In a November 11, 2002 report, Dr. Narsimha R. Gottam, a Board-certified internist, provided a history of the November 9, 2002 incident. She further provided a history of appellant's medical, social and family background and her findings on physical examination. Dr. Gottom stated that historically appellant had seizures and that he possibly suffered from angina. In her November 21, 2002 report, Dr. Gottam stated that appellant had chest pain which she doubted was cardiac related rather, it was most likely gastroesophageal reflux disease. She recommended a diagnostic cardiac catheterization if the tilt table was negative and appellant continued to have chest pain.

Treatment notes of physicians whose signatures are illegible indicated that appellant received physical therapy for her right ankle and foot. A magnetic resonance imaging (MRI) scan of appellant's right ankle on April 5, 2003 demonstrated focal marrow edema along the proximal metadiaphysis of the third and fourth metatarsals and no definite fracture line visualized. The appearance suggested stress-related change and no additional abnormality was identified. Dr. Stachelski's May 3, 2003 note indicated that appellant was referred to an orthopedist for evaluation of his foot and ankle injury sustained on November 9, 2002 and that he may have been reinjured recently.

An undated disability certificate revealed that appellant was released to clerical work on January 7, 2003. A May 9, 2003 disability certificate revealed that he could not work for three weeks. A June 20, 2003 disability certificate revealed that appellant was released to light-duty work as of June 23, 2003.

Subsequent to the July 15, 2003 hearing, appellant's representative submitted a July 23, 2003 letter from Dr. Yi C. Sul, a Board-certified neurologist, who provided a history that appellant had an episode of a seizure in 1990 or 1991 and at that time he was doing well and Dilantin was tapered off three months later. He noted that appellant was doing well until he passed out in November 2002, while delivering the mail. At that time, Dr. Sul stated that appellant had a seizure described as a generalized tonic clonic type with tongue biting followed by postictal confusion. He was started on Dilantin and there had been no further episode of seizure. Dr. Sul opined that the loss of consciousness in November 2002 was "most likely" a recurrent seizure of the generalized tonic type or grand mal seizure.

Appellant's representative also submitted the responses of Jerry Hunter, an emergency medical service worker, who assisted appellant on November 9, 2002. He indicated that appellant was fully unconscious on the porch when he arrived. Mr. Hunter reported that appellant was confused and that he was unable to answer questions about what happened, but he was able to answer personal questions.

By decision dated October 1, 2003, the hearing representative affirmed the Office's January 17, 2003 decision. The hearing representative found that the evidence established that appellant's collapse to the surface of the porch on November 9, 2002 was the result of an idiopathic fall. The hearing representative further found that, under these circumstances, the porch did not constitute a special hazard of employment since it did not increase the dangerous effects of the fall. Accordingly, the hearing representative found that any injury caused by the fall did not constitute an injury sustained in the performance of duty. The hearing representative also found the medical evidence of record insufficient to establish that appellant's employment contributed to the seizure he sustained on November 9, 2002 as Dr. Rim opined that the etiology of the seizure was undetermined. The hearing representative found that Dr. Stachelski's opinion was based on an accurate factual background and it was speculative and devoid of any medical rationale.

LEGAL PRECEDENT

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.[2] 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 the fall and caused the fall.[3]

ANALYSIS

In this case, the medical evidence establishes that appellant's fall on November 9, 2002 was due to a personal, nonoccupational pathology. In his January 13, 2003 report, Dr. Stachelski opined that appellant developed chest pain shortly followed by unconsciousness and a grand mal seizure while delivering the mail on November 9, 2002. His opinion that "[i]t is possible that this anxiety may have contributed to the sequence of events detailed above" is speculative in

establishing a causal relationship between appellant's employment factors and his loss of consciousness and thus, it is of limited probative value.[3]

Dr. Rim reported on November 10, 2002 that appellant had a history of seizure disorder with generalized tonic/clonic type as he experienced this type of seizure in 1991. He opined that on November 9, 2002 appellant apparently had a generalized tonic/clonic seizure with some tongue biting when he suddenly felt light-headed and passed out and while delivering the mail. He concluded that the etiology of the seizure was undetermined. Dr. Rim's report does not establish a causal relationship between appellant's loss of consciousness and factors of his employment as he opined that the etiology of appellant's seizure could not be determined.

In his July 23, 2003 letter, Dr. Sul indicated that appellant had a history of seizure disorder in 1990 or 1991 and he was doing well until he passed out in November 2002. He diagnosed a seizure of the generalized tonic/clonic type with tongue biting followed by postictal confusion. Dr. Sul opined that appellant's loss of consciousness in November 2002 was "most likely" a recurrent seizure of the generalized tonic type or grand mal seizure. Dr. Sul's opinion is speculative as to the cause of appellant's loss of consciousness and it does not relate appellant's loss of consciousness to factors of his employment.

The weight of the medical evidence, therefore, establishes that the seizure episode and fall on November 9, 2002 were of a personal, nonoccupational pathology and were not caused by factors of appellant's employment. The record shows that he had a prior history of seizure episodes. Thus, the Board finds that the fall was idiopathic in nature.

The Board has recognized that, although a fall is idiopathic, an injury resulting from an idiopathic fall is compensable, if "some job circumstance or working condition intervenes in contributing to the incident or injury, for example, the employee falls onto, into or from an instrumentality of the employment" or where, instead of falling directly to the floor on which he or she has been standing, the employee strikes a part of his or her body against a wall, a piece of equipment, furniture or machinery or some like object. An employee has the burden of establishing that he or she struck an object connected with the employment during the course of the idiopathic collapse.[4]

The evidence in this case establishes that appellant fell and struck the surface of the porch without striking any intervening work objects. His fall onto the porch is essentially the same as a fall onto the floor. Appellant did not fall off the porch sustaining additional injuries.[5] The

[3] *Phillip J. Deroo*, 30 ECAB 1294 (1988); *Margaret A. Donnelly*, 15 ECAB 40 (1963); *Morris Scanlon*, 11 ECAB 384 (1960).

[4] *Margaret Cravello*, 54 ECAB __ (Docket No. 03-256, issued March 24, 2003).

[5] *See Rebecca C. Daily*, 9 ECAB 255 (1957) in which the Board distinguishes situations in which an employee "drops into a pit, strikes against or gets tangled in a machine or tumbles off a platform, ladder or down the office stairs" instead of simply falling directly to the floor on which the employee was standing. Such situations involve an additional hazard created by the factors of the employment and are to be distinguished from those cases where the employee falls directly to the floor on which he was standing or from an office chair where no undue hazard is created by the employment.

Board, therefore, finds that the evidence of record does not establish that appellant's injury was caused by intervention of or contribution by any employment-related factors, *i.e.*, he did not strike any object, other than the ground, during the course of his fall at work. The Board concludes that, based on the evidence of record, the fall was idiopathic in nature and any resulting injury is not compensable.[6]

CONCLUSION

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty on November 9, 2002.

ORDER

IT IS HEREBY ORDERED THAT the October 1 and January 17, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 1, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[6] *Id.*