

**United States Department of Labor
Employees' Compensation Appeals Board**

A.C., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
ILLIANA HEALTHCARE SYSTEM,)
Danville, IL, Employer)

Docket No. 11-952
Issued: March 9, 2012

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 28, 2011 appellant filed a timely appeal from a January 21, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied her traumatic injury claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 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 27, 2010.

FACTUAL HISTORY

On December 4, 2010 appellant, then a 54-year-old psychiatric nursing assistant, filed a traumatic injury claim alleging that on November 27, 2010 she twisted her ankle when she

¹ 5 U.S.C. § 8101 *et seq.*

walked down the hall and suddenly fell down, the time of injury was noted as 8:15 p.m. The employing establishment stated that the injury did not occur in the performance of duty because she was leaving work when she fell in the hallway. Appellant's regular work hours were noted as 7:30 a.m. to 4:00 p.m. The employing establishment controverted the claim on the grounds that the injury was not work related because she had reported to her supervisor that she had muscle cramps earlier and that she was supposed to take Takelasix and Potassium, which she failed to take for the past week. Appellant did not stop work.

In a December 17, 2010 letter, OWCP advised appellant that the evidence submitted was insufficient to establish that she actually experienced the November 27, 2010 incident and that she sustained any diagnosed condition as a result of the alleged incident. It requested that she respond to specific questions to substantiate the factual elements of her claim and provide a physician's opinion explaining how her alleged fall caused any injury.

In a November 27, 2010 treatment note, an unknown provider indicated that appellant received emergency treatment but was not incapacitated from her job.

In a November 27, 2010 handwritten progress note, an unknown provider related that on November 27, 2010 at 8:15 p.m. appellant was walking down the hall to go home when she fell down on the floor. Appellant tried to catch herself but was not able to. The examination revealed that both her ankles were twisted but she was authorized to return to full duty.

By decision dated January 21, 2011, OWCP denied appellant's claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of her claim by the weight of the reliable, probative and substantial evidence² including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.³

As to employees having fixed hours of work, injuries occurring on the premises of the employing establishment, while the employee is going to and from work, before and after working hours within a reasonable interval are generally compensable.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether "fact of injury" has been established.⁵ There are two components involved in establishing fact of injury. First, the employee must

² *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

³ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989); *M.M.*, Docket No. 08-1510 (issued November 25, 2010).

⁴ *R.A.*, 59 ECAB 581 (2008); *see also Maryann Batista*, 50 ECAB 343 (1999).

⁵ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged.⁶ Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.⁷

ANALYSIS

Appellant alleged that on November 27, 2010 she twisted her ankle and fell down in an employing establishment hallway at 8:15 p.m. The employing establishment controverted the claim on the grounds that she was leaving work for the day when she fell and that she had earlier noted muscle spasms and had forgotten to take medications, ostensibly to alleviate the muscle spasms. OWCP denied appellant's claim on the grounds of insufficient factual evidence establishing that the incident occurred as alleged and insufficient medical evidence demonstrating that she sustained a diagnosed condition as a result of the alleged incident.

The Board finds that appellant has not established that she sustained an injury in the performance of duty. OWCP did not explicitly adjudicate the issue of performance of duty, although this issue was raised by the employing establishment. As the Board has previously noted, if the employee has fixed hours of work, injuries occurring on the premises of the employing establishment while the employee is going to or from work and for a reasonable time before or after working hours are generally compensable. If the injury occurs outside of regular work hours, the employee's presence on premises must be incidental to work activity. The employing establishment has stated that appellant was not in the performance of duty at the time of the injury.

The question is whether appellant's presence on premises, hours after her regular work hours ended, was incidental to work activity. In this case, appellant has not established that she remained on premises for work.

Appellant and her supervisor indicated on the claim form that appellant had completed work and was leaving for the day when the injury occurred. The Board notes that her Form CA-1 indicated that her regular work hours ended at 4:00 p.m., but that the injury occurred at 8:15 p.m. The Board in *Catherine Cullen*,⁸ found that the employee remained in the performance of duty even six hours after her shift ended because she remained on premises to complete a work project.

There is, however, insufficient evidence to establish that appellant remained on premises to complete work. On December 17, 2010 OWCP informed her that further evidence was necessary to establish her claim. Appellant was requested to provide additional factual information explaining the circumstances surrounding the incident. She did not respond to this request. It is appellant's burden of proof to establish that she remained on premises four hours

⁶ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁷ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ 47 ECAB 192 (1995).

after the end of her shift to perform work activity. She has not explained why she had to remain on premises for this extended period of time and has not provided the necessary description of her work activities during this prolonged period following the end of her shift. The record therefore does not substantiate that appellant was on premises, in the performance of duty at the time of her fall.

The Board also notes that the employing establishment controverted the claim because appellant had mentioned experiencing muscle spasms earlier and the fall was therefore idiopathic in nature. It is a well-settled principle of workers' compensation law 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 FECA. Such an injury does not arise out of a risk connected with the employment and is, therefore, not compensable. However, 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. 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.⁹ Even though appellant may have mentioned previous muscle spasms to her supervisor, there is no evidence of record that she twisted her ankle and fell due to an idiopathic muscle spasm. The fall remains an unexplained fall.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not establish that she sustained an injury in the performance of duty on November 27, 2010.¹⁰

⁹ *G.B.*, Docket No. 10-2155 (issued June 1, 2011); *see also M.M.*, Docket No. 08-1510 (issued November 25, 2008).

¹⁰ The Board notes that appellant submitted additional evidence following the January 21, 2010 decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005). Appellant may submit that evidence to OWCP along with a request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the January 21, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 9, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board