

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

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<b>J.P., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 13-1176</b>
	)	<b>Issued: July 29, 2013</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>TENNESSEE VALLEY HCS, Murfreesboro, TN,</b>	)	
<b>Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On April 17, 2013 appellant filed a timely appeal from a November 5, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) that denied her claim and a March 12, 2013 decision that denied merit review. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant met her burden of proof to establish that she sustained an employment-related injury on September 4, 2012; and (2) whether OWCP properly refused to reopen appellant's claim for further review of the merits pursuant to 5 U.S.C. § 8128(a).

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

On appeal, appellant asserts that she was injured in the performance of duty on September 4, 2012 when her neuropathic right foot slipped on a shiny, waxed floor.

### **FACTUAL HISTORY**

On September 24, 2012 appellant, then a 64-year-old physician, filed a traumatic injury claim, alleging that on September 4, 2012 her right foot gave way inside an employing establishment building while she was walking to her office. She indicated that she injured her right wrist, hand and elbow and stopped work that day.

By letter dated September 28, 2012, OWCP informed appellant of the type of evidence needed to support her claim. In an October 20, 2012 response, appellant indicated that she entered work through the emergency room and was going towards her office when her right foot slipped on the tile floor and she fell onto her right upper extremity. She stated that she was seen by an employing establishment nurse but, since there were no emergency orthopedic services there, she elected to go to a private emergency facility, where she was evaluated and a radial head fracture was diagnosed. Appellant described her medical condition and indicated that on September 10, 2012 the fracture was surgically repaired and that she continues to have hand therapy and orthopedic follow-ups.

In a September 5, 2012 note, an employing establishment nurse practitioner whose signature is illegible, noted a history that appellant had a history of neuropathy of the right knee, which gave out as she was walking into work and that she fell and injured her right arm. The nurse indicated that appellant elected to travel by private vehicle to a local hospital for treatment.

In a September 4, 2012 emergency room report, Dr. Dexter L. Woods, Board-certified in emergency medicine, noted a history that appellant slipped and fell at work. A right wrist x-ray demonstrated no acute fracture. A computerized tomography (CT) scan of the right elbow demonstrated an impacted and angulated fracture involving the radial neck. Dr. Woods diagnosed right proximal radius fracture and appellant was discharged for follow-up with an orthopedic surgeon. In a September 4, 2012 treatment note, Dr. Kyle S. Joyner, a Board-certified orthopedic surgeon, noted that she reported a history of neuropathy and at times had lost proprioception in the right lower extremity which could lead to a fall “as such was the case this morning.” He described the preceding treatment, provided physical examination findings, reviewed the CT scan study and diagnosed impacted mal-angulated right radial neck fracture. Dr. Joyner recommended surgical treatment.

On September 10, 2012 Dr. Samir Patel, Board-certified in orthopedic surgery, performed open reduction internal fixation (ORIF) of the right radial neck fracture. In a September 26, 2012 report, Dr. Joyner noted seeing appellant in follow-up for a complaint of right wrist pain. He reviewed x-rays of the right forearm and wrist, noting a well-aligned radial neck fracture and no wrist fracture. Dr. Joyner diagnosed radial neck fracture, status post ORIF; right wrist pain, likely secondary to the recent injury; and basilar thumb joint arthritis. He recommended that appellant continue therapy. On October 3, 2012 Dr. Joyner provided physical restrictions and advised that she could return to light duty on October 9, 2012. On October 12, 2012 appellant accepted a light-duty assignment in accordance with the restrictions provided by Dr. Joyner.

By decision dated November 5, 2012, OWCP denied appellant's claim on the grounds that the evidence was not sufficient to establish that the injury arose during the course of employment and within the scope of compensable work factors. It noted that both Dr. Joyner and the employing establishment nurse reported a history of neuropathy that caused the fall.

On an OWCP appeal request form, on February 20, 2013 appellant indicated that she was requesting reconsideration. In a nonmerit decision dated March 12, 2013, OWCP denied her reconsideration request on the grounds that she did not raise substantive legal questions or submit new and relevant evidence.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each and every compensation claim, regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.<sup>2</sup>

OWCP regulations at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.<sup>3</sup> In order to determine whether an employee sustained an injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components which must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.<sup>4</sup>

Generally, 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.<sup>5</sup> It is also 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 FECA. Such an injury does not arise out of a risk connected with the employment and is therefore not compensable. Although a fall is idiopathic, an injury resulting from the fall is compensable if some job circumstance or working condition intervenes in

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<sup>2</sup> *Roy L. Humphrey*, 57 ECAB 238 (2005).

<sup>3</sup> 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>4</sup> *Tracey P. Spillane*, 54 ECAB 608 (2003).

<sup>5</sup> *N.P.*, Docket No. 08-102 (issued May 8, 2009).

contributing to the incident or injury, such as if an employee, instead of falling directly onto the floor, strikes a part of his or her body against a wall, a piece of equipment, furniture, machinery or some similar object.<sup>6</sup>

The question of causal relationship in such cases is a medical one and must be resolved by medical evidence.<sup>7</sup> 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. 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 the general rule. 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, that is one which is distinguishable from a fall in which it is definitely established that a physical condition preexisted the fall and caused the fall.<sup>8</sup>

### ANALYSIS

The Board finds that appellant's fall on September 4, 2012 occurred in the performance of duty. As noted above, an injury resulting from an idiopathic fall due to a personal nonoccupational pathology is not compensable.<sup>9</sup> However, if the cause of a particular fall cannot be ascertained, the fall is then considered an unexplained fall.<sup>10</sup> To properly apply the idiopathic fall exception to the premises rule, there must be two elements present: a fall resulting from a personal, nonoccupational pathology and no contribution from the employment.<sup>11</sup> OWCP has the burden to present medical evidence showing the existence of a personal nonoccupational pathology and the mere fact that an employee has a preexisting medical condition, without supporting medical rationale, is not sufficient to establish that a fall is idiopathic.<sup>12</sup>

The medical evidence in this case does not clearly establish that appellant's fall was idiopathic. While appellant, who is a physician, indicated that she has a neuropathic right foot and indicated on the claim form that her right foot gave way causing her to fall, she also indicated that the floor was waxy and shiny. The medical evidence regarding her neuropathic condition is scant. The September 5, 2012 note from the employing establishment nurse is of no probative value because nurses are not physicians under FECA and are not competent to render a

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<sup>6</sup> *Carol A. Lyles*, 57 ECAB 265 (2005).

<sup>7</sup> *Lowell D. Meisinger*, 43 ECAB 992 (1992).

<sup>8</sup> *See Martha G. List (Joseph G. List)*, 26 ECAB 200 (1974).

<sup>9</sup> *Carol A. Lyles*, *supra* note 6.

<sup>10</sup> *Martha G. List (Joseph G. List)*, *supra* note 8.

<sup>11</sup> *N.P.*, *supra* note 5.

<sup>12</sup> *Steven S. Saleh*, 55 ECAB 169 (2003).

medical opinion.<sup>13</sup> Dr. Woods did not mention a preexisting condition in the September 4, 2012 emergency room report. In a September 4, 2012 treatment note, Dr. Joyner noted a history of neuropathy and indicated that at times appellant had lost proprioception in the right lower extremity, which could lead to a fall as had happened that morning.

While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.<sup>14</sup> As there is no conclusive evidence regarding the cause of the September 4, 2012 fall, it must be considered an unexplained fall that occurred in the performance of duty.<sup>15</sup> The case must therefore be remanded to OWCP to determine the nature and extent of any injury or disability that resulted from the fall. After such further development deemed necessary, OWCP shall issue an appropriate decision.

In light of the Board's findings regarding Issue 1, Issue 2 is rendered moot.

### **CONCLUSION**

The Board finds that appellant's September 4, 2012 fall at work was an unexplained fall and therefore occurred within the performance of duty.

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<sup>13</sup> See *K.W.*, 59 ECAB 271 (2007); *G.G.*, 58 ECAB 389 (2007). Section 8101(2) of FECA provides that "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); see *L.D.*, 59 ECAB 648 (2008).

<sup>14</sup> *Ricky S. Storms*, 52 ECAB 349 (2001).

<sup>15</sup> *Steven S. Saleh*, *supra* note 12.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated March 12, 2013 and November 5, 2012 are set aside and the case is remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: July 29, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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