



On appeal counsel contends that there is clearly no idiopathic cause for appellant's fall as she was not aware of any personal, nonoccupational pathology which caused her to collapse. He further contends that appellant's doctors diagnosed syncope of unknown cause and, as such, her fall must be considered as merely an unexplained fall while she was engaged in activities related to her employment duties.

### **FACTUAL HISTORY**

On September 10, 2013 appellant, a 41-year-old information technology specialist, filed a traumatic injury claim (Form CA-1) alleging that she sustained injuries to her head, neck, knees, and left ankle on June 25, 2013 when she fell as she was walking to her vehicle. She indicated that she crossed a road, walked down a hill, and fell. Appellant was temporarily unconscious and had difficulty recalling what happened. The record establishes that her tour of duty was Monday through Friday from 7:00 a.m. to 3:30 p.m.

In an e-mail message dated September 17, 2013, appellant notified the employing establishment that she was back in the office and had gone past the parking area where she fell and "saw that there [was] a hump in the grass where [she] was parked."

On September 30, 2013 the employing establishment controverted appellant's claim because she had failed to explain how or why she fell and she did not recall tripping over or stepping down into or off of anything.

In an October 2, 2013 letter, OWCP notified appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and respond to its inquiries.

In a narrative statement, appellant reported that the injury occurred while she was walking to her vehicle at the end of her work shift on the premises of the employing establishment. She stated that she was wearing flat shoes while walking down a hill to her vehicle and "tripped on the grassy area on the hill then fell face forward to the ground." Appellant stated that she was temporarily unconscious for a few minutes, and when she awoke she did not see any witnesses around her. She attempted to get up, but was too weak. After sitting for a few minutes, appellant tried again and noticed that she could not walk. She fell next to her vehicle and dragged herself to the car door and pulled herself up. Appellant then sat in the car for a few minutes, and then drove home, which was approximately 15 minutes away. She had no symptoms prior to the fall, did not suffer from any heart conditions or epileptic seizures, and was "fine all day." Appellant stated that she parked in "handicap parking Lot A." She stated that the parking facilities were owned by the employing establishment, the parking lot was open for employees and visitors. Furthermore, appellant was assigned handicap parking for which she did not pay.

Appellant submitted hospital records dated June 25, 2013. Dr. Tzvi Robbins, appellant's attending physician, diagnosed "syncope, unknown cause," ankle sprain, concussion, and knee contusion. He indicated that appellant's "legs gave out and [she] fell" and hit her head at approximately 3:30 p.m. on June 25, 2013. Dr. Robbins noted that her medical history included anemia and hypertension. He noted that the results of a computerized tomography (CT) scan of the brain, electrocardiogram (EKG), and complete blood count (CBC) were within normal limits.

On June 27, 2013 appellant returned to the hospital and Dr. Douglas Gilbert, a Board-certified internist, diagnosed left ankle fracture and neck sprain. Dr. Gilbert noted that appellant was seen in the emergency department on June 25, 2013 after “syncope with fall” and had a history of anemia and hypertension. A CT scan of the cervical spine demonstrated a loss of the normal cervical lordosis which could have been related to muscle spasm.

In reports dated July 1 through September 11, 2013, Dr. Rishi Bhatnagar, a Board-certified family practitioner, indicated that appellant fell while she was leaving work and diagnosed left ankle sprain and bilateral meniscal tear.

By decision dated November 14, 2013, OWCP denied the claim as appellant’s injury on June 25, 2013 did not arise in the performance of duty. It found that her fall on June 25, 2013 was idiopathic, noting that the fall was due to syncope, and that the evidence did not establish that she struck an intervening object prior to landing on the ground. OWCP noted that appellant also claimed that she believed that it was a hump or patch of grass that caused her fall and injuries; however, it found that this was merely conjectural in nature.

On November 19, 2013 appellant, through counsel, requested a review of the written record by an OWCP hearing representative and submitted a November 19, 2013 statement reiterating that she was injured after she fell on the employing establishment’s premises. She indicated that the hospital “erred in judgment when stating [she] was dizzy and fell [as this] was not an issue on the day of the fall, nor [did she] have issues with dizzy spells or a heart condition.” Appellant stated that all she knew was that she fell coming down the hill and given her concussion and memory issues from the fall, she should be given some leniency. The concussion affected her level of understanding and the various details specifically as to what happened given the impact of the fall. Appellant further indicated that the parking lot had ongoing construction issues and that “the inability to get to parking spaces *via* a ramp or stairwell in the middle of the lot could have prevented [her] from having to walk down the hill to get to [her] vehicle.”

In a narrative statement dated December 4, 2013, appellant indicated that she did not have any injury other than arthritis prior to the incident.

On February 28, 2014 appellant, through counsel, requested reconsideration.

On March 20, 2014 appellant submitted a petition to withdraw her request for a review of the written record. By decision dated March 27, 2014, OWCP accepted appellant’s request for withdrawal of the record review.

By decision dated May 29, 2014, OWCP denied modification of its November 14, 2013 decision.

## LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>3</sup> An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim.<sup>4</sup>

It is a general rule of workers' compensation law 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.<sup>5</sup>

One exception applies to falls in the workplace: When 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 the employment, the injury is not a personal injury while in the performance of duty as it does not arise out of a risk connected with the employment.<sup>6</sup> When the fall is unexplained and, therefore, attributable neither to the employment nor to the claimant personally, the risk is neutral, and an injury arising in the course of employment from a neutral risk is compensable.<sup>7</sup>

## ANALYSIS

The Board finds that this case is not in posture for decision.

In *A.F.*,<sup>8</sup> the employee fell on the employing establishment's premises at approximately 8:30 a.m. on September 3, 2009. In a September 4, 2009 hospital discharge form, an attending physician noted that appellant presented on September 3, 2009 and diagnosed syncope and hypertension. OWCP denied the claim on the basis that the hospital discharge record established that the fall was related to the employee's preexisting hypertension and was, therefore, idiopathic. It also found that even if he had an intervening impact, the medical evidence was insufficient to show that the impact caused an injury. The Board found that OWCP's decision did not contain adequate facts and findings or clear reasoning to allow the claimant to understand the precise defects of his claim and how to overcome them.

In the present case, OWCP accepted that appellant fell at the premises of the employing establishment at approximately 3:30 p.m. on June 25, 2013. In a June 25, 2013 hospital report, Dr. Robbins indicated that appellant's "legs gave out and [she] fell." He diagnosed "syncope, unknown cause" and noted that her medical history included anemia and hypertension. In a June 27, 2013 hospital report, Dr. Gilbert diagnosed left ankle fracture and neck sprain. He

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<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> See *John J. Carlone*, 41 ECAB 354 (1989).

<sup>5</sup> See *Martha G. List*, 26 ECAB 200 (1974).

<sup>6</sup> See *Edward V. Juare*, 41 ECAB 126 (1989).

<sup>7</sup> See *Martha G. List*, *supra* note 5.

<sup>8</sup> Docket No. 10-1344 (issued February 11, 2011).

indicated that appellant was seen in the emergency department on June 25, 2013 after “syncope with fall” and had a history of anemia and hypertension.

In its November 14, 2013 decision, OWCP denied appellant’s claim in reliance upon Dr. Robbins’ and Dr. Gilbert’s reports, finding that her fall on June 25, 2013 was idiopathic. It further found that the evidence did not establish that she had struck an intervening object prior to hitting the ground. OWCP noted that appellant believed that it was a hump or patch of grass that caused her fall and subsequent injuries; however, it found that this was merely conjectural in nature. The Board finds that OWCP’s decision does not contain adequate facts and findings or clear reasoning to allow appellant to understand the precise defects of her claim and how to overcome them.

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>9</sup> The Board has held that OWCP has the burden to present medical evidence showing the existence of a personal, nonoccupational pathology if it chooses to make a finding that a given fall is idiopathic in nature.<sup>10</sup> In his June 25, 2013 hospital report, Dr. Robbins diagnosed “syncope, unknown cause” and noted that appellant’s medical history included anemia and hypertension. However, he offered no opinion explaining how appellant’s blood pressure or sugar levels, or any other personal, nonoccupational pathology, led to her fall on the premises. 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>11</sup> If the cause of the fall cannot be determined or the reason it occurred cannot be explained, then it is an unexplained fall and any resulting injury would be compensable. Thus, the Board finds that OWCP did not make a proper determination that appellant’s June 25, 2013 fall was idiopathic in nature due to her anemia, hypertension, or other nonoccupational condition.

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>12</sup> Accordingly, the case will be remanded to further develop the evidence and make appropriate fact findings with regards to the location, time, and circumstances surrounding appellant’s fall on June 25, 2013 to determine whether it occurred within the performance of duty and, if so, the nature and extent of any injury or disability that resulted. Following this and such further development as is deemed necessary, OWCP shall issue a *de novo* decision.

### CONCLUSION

The Board finds that this case is not in posture for decision.

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<sup>9</sup> *Id.*

<sup>10</sup> See *Jennifer Atkerson*, 55 ECAB 317 (2004).

<sup>11</sup> See *Steven S. Saleh*, 55 ECAB 169, 173 (2003).

<sup>12</sup> See *K.C.*, Docket No. 08-2355 (issued May 15, 2009).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 29, 2014 decision of the Office of Workers' Compensation Programs be set aside and the case remanded for further action consistent with this decision of the Board.

Issued: April 1, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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