United States Department of Labor
Employees' Compensation Appeals Board

STEVEN S. SALEH, Appellant	)	
and	)	**Docket No. 03-2232**
	)	**Issued: December 12, 2003**
DEPARTMENT OF COMMERCE, NATIONAL TELECOMMUNICATIONS & INFORMATION ADMINISTRATION, Washington, DC, Employer	)	

Appearances:
Steven S. Saleh, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On September 15, 2003 appellant filed a timely appeal of the March 4, 2003 decision of the Office of Workers' Compensation Programs, which denied appellant's claim for a traumatic injury arising on November 19, 2002. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d) the Board has jurisdiction over the merits of appellant's claim.[1]

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on November 19, 2002.

[1] Appellant submitted additional evidence on appeal. The Board, however, is limited to reviewing the record as it existed at the time of the Office's final decision. 20 C.F.R. § 501.2(c). Accordingly, the Board may not consider the additional evidence appellant submitted with his September 15, 2003 appeal.

FACTUAL HISTORY

On November 21, 2002 appellant, then a 42-year-old program officer, filed a traumatic injury claim alleging that he was hit on November 19, 2002 by a man standing on a maintenance vehicle. He stated that the vehicle was traveling approximately 10 miles per hour and that he was thrown and hit the floor. Appellant did not identify a specific injury, but noted that he needed to be evaluated by a specialist. He stopped work on November 20, 2002.

The record revealed that appellant suffered from a number of preexisting medical conditions including possible multiple sclerosis, fibromyalgia, human immunodeficiency virus (HIV) infection, osteopenia, gait unsteadiness, mild photophobia and severe depression. As a result of his medical condition appellant had been prescribed various medications, including narcotics. At the time of the November 19, 2002 incident appellant was on crutches and reportedly sucking on an Actiq stick, an opioid analgesic, primarily used for the management of breakthrough cancer pain.

Immediately following the incident, appellant received treatment at the employing establishment health unit. He later sought treatment from his personal physician, Dr. Marco Pappagallo, a Board-certified neurologist. In a November 22, 2002 report, Dr. Pappagallo indicated that appellant suffered from myelopathy, neuropathy and fibromyalgia and that he experienced a worsening of his condition status post motor vehicle accident on November 19, 2002. Dr. Pappagallo also provided a December 6, 2002 report, wherein he noted that appellant sustained a bodily injury on November 19, 2002 as a pedestrian during a motor vehicle accident. Appellant reportedly was "'hit by an electric car' while at work." Dr. Pappagallo diagnosed post-traumatic exacerbation of fibromyalgia in a patient known to have HIV infection. He stated that appellant could return to regular duty on February 28, 2003. Dr. Pappagallo also stated that the traumatic injury sustained by appellant during the motor vehicle accident caused his exacerbation of fibromyalgia and his current inability to work due to pain.[2]

In a November 26, 2002 statement, Jerry Thacker, an employee in the engineering shop, indicated that he was operating an electric-powered industrial scooter on November 19, 2002 and as he was proceeding down the corridor he saw a door open and a metal crutch enter the hallway. Mr. Thacker stated that he beeped the horn on the scooter and immediately applied the brakes upon seeing the door open. The scooter reportedly came to a stop about six inches before reaching the doorway. Mr. Thacker further explained that a person using crutches entered the hallway and without looking in either direction, suddenly fell to the floor in front of the scooter. He stated that the scooter stopped about a foot away from the individual, without striking him. Mr. Thacker reportedly dismounted the scooter to assist appellant, who by then had rolled over and was in a sitting position on the floor next to the opposite side of the hallway from the office he had just exited. Several other individuals reportedly arrived on the scene shortly thereafter and with their assistance appellant got to his feet. Appellant expressed his desire to go to the employing establishment health unit.

[2] Dr. Pappagallo did not clearly indicate whether appellant's injury was a result of being struck by the maintenance vehicle and/or a consequence of appellant's striking the floor on November 19, 2002.

In a subsequent statement, appellant seemingly retreated from his initial allegation that he had been struck by the maintenance vehicle. Appellant explained that he was aware of the approaching vehicle and that he attempted to get out of its way but his forward progress was allegedly impeded by another cart in the hallway that was loaded with computer monitors. Appellant stated that he attempted to move backwards on his crutches; however, by that time the maintenance vehicle was in relatively close proximity to appellant and he tensed up in anticipation of being struck, stumbled and fell. Appellant also stated that his injury was not from being hit by the cart but from falling on his back.

In a decision dated March 4, 2003, the Office denied appellant's claim. The Office found that appellant sustained an idiopathic fall and that the evidence was not sufficient to explain the etiology of the idiopathic fall.

LEGAL PRECEDENT

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.[3] The second component is whether the employment incident caused a personal injury.[4] Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[5]

ANALYSIS

The record establishes that appellant fell in the hallway at work on November 19, 2002. The record, however, does not establish that appellant was struck by the maintenance vehicle as originally alleged. Mr. Thacker, who operated the maintenance vehicle, denied having struck appellant in the hallway on November 19, 2002. Other than appellant and Mr. Thacker, there were no reported eyewitnesses to appellant's fall and what immediately preceded the fall. The Board finds that appellant failed to establish that he was struck by the maintenance vehicle operated by Mr. Thacker on November 19, 2002.

The Office denied appellant's claim "because the evidence [was] not sufficient to explain the etiology of [appellant's] idiopathic fall." It is a well-settled principle of workers' compensation law that an injury resulting from an idiopathic fall -- where a personal

[3] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *John J. Carlone*, 41 ECAB 354 (1989).

[5] *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of causal relationship must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and claimant's specific employment factors. *Id.*

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 covered under the Federal Employees' Compensation Act.[6] The rationale for excluding such coverage is that an injury resulting from an idiopathic fall 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. 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.[7] 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.[8]

While there is evidence of record to suggest that appellant has preexisting medical conditions and he used prescribed narcotics, there is no evidence to establish that these factors caused appellant's fall at work. Dr. Pappagallo, the only physician to offer an opinion regarding the cause and extent of appellant's condition relevant to the November 19, 2002 incident, did not attribute appellant's fall to any of his preexisting conditions.

In the instant case, the Office did not identify a specific cause for appellant's fall, but merely noted that appellant had "several underling (sic) conditions, which ***could*** contribute to [his] idiopathic fall." (Emphasis added.) Hence, the Office did not identify a specific personal, nonoccupational pathology for appellant's fall and the evidence does not support such a finding. Because the cause of appellant's fall cannot be attributed to his preexisting conditions, under the circumstances it must be considered an unexplained fall. Accordingly, the Office erred in finding that appellant sustained an idiopathic fall, and was thus excluded from coverage under the Act.

CONCLUSION

The Board finds that appellant's November 19, 2002 fall remains an unexplained fall that occurred while appellant was engaged in activities related to his employment. As such, appellant's November 19, 2002 fall at work is compensable under the Act.

[6] *John R. Black*, 49 ECAB 624, 626 (1998).

[7] *Id*.; *Lowell D. Meisinger*, 43 ECAB 992, 1000-01 (1992); *Dora J. Ward*, 43 ECAB 767, 769-70 (1992).

[8] *John R. Black, supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the March 4, 2003 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded to the Office for further development of the record and a determination of the nature and extent of any condition and disability causally related to appellant's November 19, 2002 fall.

Issued: December 12, 2003
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member