U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBORAH A. PERRY and U.S. POSTAL SERVICE,
POST OFFICE, Greensboro, NC

Docket No. 02-2225; Submitted on the Record;
Issued June 19, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied to reopen appellant's case for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

On November 15, 2000 appellant, then a 40-year-old letter carrier, filed a claim alleging that she sustained injury to her left ankle and left wrist when she fell at work on that date. Appellant indicated that she was walking to the restroom when she twisted her left ankle, that she stopped and waited a few minutes before starting to walk and then twisted her left ankle again and fell to the floor. Appellant grabbed a heavy piece of equipment in order to try to stop her fall. She stopped work on November 15, 2000.[1]

By decision dated March 14, 2001, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that she sustained an injury in the performance of duty on November 15, 2000. The Office found the evidence of file was insufficient to establish a relationship between the November 15, 2000 event and a medical condition "because the evidence does not support that walking to the restroom and falling to the ground caused your medical condition." The Office noted, "It appears that you may have suffered an idiopathic fall." It indicated that an idiopathic fall, was a fall, which may have been caused by a personal and nonoccupational pathology, such as a myocardial infarction, fainting spell, chronic ankle problems, or epileptic seizure. The Office explained that injuries due to such falls are excluded from coverage under the Federal Employees' Compensation Act unless there is an intervention or contribution by some hazard or special condition of the employment. The Office stated: "The record clearly indicates that your fall was to the immediate supporting

[1] In a statement dated November 16, 2000, appellant's supervisor indicated that appellant told her on November 16, 2000 that she grabbed a piece of postal equipment as she fell in an attempt to stop her fall.

surface floor."[2] It further noted that whether a fall at work was idiopathic or unexplained will usually be determined on the basis of the medical evidence and stated, "If the medical evidence shows that the employee's fall was caused by a nonoccupational, preexisting physical condition, it is idiopathic and not compensable." The Office indicated that the medical evidence submitted by appellant was insufficient to establish her claim because it did not "explain or describe how your current medical condition is related to your employment."

On December 21, 2001 appellant requested reconsideration of her claim. She submitted a brief in which her attorney argued that the Office had misinterpreted and misapplied the case law pertaining to idiopathic falls. By decision dated February 11, 2002, the Office denied appellant's request for merit review. The Office found that appellant's argument was not relevant in that "the claim was denied because of causal relationship, not because the fall was idiopathic."

The Board finds that the Office improperly denied to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

The only decision before the Board on this appeal is the Office's February 11, 2002 decision denying appellant's request for a review on the merits of its March 14, 2001 decision. Because more than one year has elapsed between the issuance of the Office's March 14, 2001 decision and May 10, 2002, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the March 14, 2001 decision.[3]

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[4] the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.[5] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file her application for review within one year of the date of that decision.[6] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[7]

In support of her reconsideration request, appellant, through her attorney, argued that the Office had erroneously interpreted and applied the case law pertaining to idiopathic falls. She cited case law and Office procedure, which she claimed showed that the Office had failed to

[2] The Office discussed two cases, *Martha G. List*, 26 ECAB 200 (1974) and *Gertrude E. Evans*, 26 ECAB 195 (1974).

[3] *See* 20 C.F.R. § 501.3(d)(2).

[4] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

[5] 20 C.F.R. §§ 10.606(b)(2).

[6] 20 C.F.R. § 10.607(a).

[7] 20 C.F.R. § 10.608(b).

adequately distinguish between falls, which are idiopathic in nature and those which are merely unexplained. She claimed that the Office improperly analyzed the issue in this case as it erroneously discussed certain aspects of Board precedent concerning idiopathic falls. Appellant asserted that the Office did not discuss Board precedent, which provides the fact that the cause of a particular fall cannot be determined does not establish that it was due to an idiopathic condition and that, if the record does not establish a particular fall was due to an idiopathic condition, it must be considered as merely an unexplained fall, which would be covered by the Act.[8] She claimed that the Office erroneously applied the relevant case law because it effectively determined her fall on November 15, 2000 was idiopathic in nature without presenting evidence that her fall was due to a personal, nonoccupational pathology. Appellant argued that the Office impermissibly fully placed the burden on her to show that her fall was due to a personal, nonoccupational pathology and, therefore, not idiopathic in nature.

Appellant made reference to a portion of the Office procedure manual, which provides that the Office claims examiner is responsible for obtaining appropriate evidence from the injured employee, the immediate superior, the witnesses and the attending physician, in order to determine whether a fall is due to an idiopathic condition or an unknown cause.[9] She argued that the Office failed in this regard and that the Office had not presented medical evidence showing that her fall was idiopathic in nature. Appellant noted that her fall was not due to a condition, which was idiopathic in nature in that the medical evidence of record showed that her fall was either due to an unexplained condition or a condition that was related to her previous work-related ankle condition.[10] She argued that, if the Office were to determine that her fall was idiopathic in nature, it was the Office's burden to present medical evidence showing a personal, nonoccupational pathology for her fall and not her burden or proof to show that the fall was not caused by a personal, nonoccupational pathology.

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[8] 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 the 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 mere 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, one which is distinguishable from a fall, in which it is definitely established that a physical condition preexisted the fall and caused the fall. *Dora J. Ward,* 43 ECAB 767, 769-70 (1992).

[9] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.9a, b (August 1992). Office procedure further provides that if the incident was due to an idiopathic condition, the record must clearly show whether the fall was to the immediate supporting surface or whether some special condition, hazard, or instrumentality of the work (including normal furnishing of an office or other workplace) contributed to or intervened as a cause of the injury. If a fall is not shown to be caused by an idiopathic condition, it is simply unexplained and is, therefore, compensable if it occurred in the performance of duty. An idiopathic fall is one where a personal, nonoccupational pathology causes an employee to collapse and an unexplained fall is one where the cause is unknown even to the employee. *Id.*

[10] The record contains evidence, which suggests that appellant suffered a prior work-related injury to her ankles.

The Board finds that appellant has shown that the Office erroneously interpreted and applied a specific point of law. Appellant correctly argued that the Office misinterpreted the relevant case law when it effectively placed the burden on her to present medical evidence showing that her fall was not caused by a personal, nonoccupational pathology. She properly explained that it is the Office's 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. Appellant was correct in noting that the Office's discussion of the case law failed to convey this important point and the Office provided an incomplete and inaccurate recitation of the relevant law concerning idiopathic falls. For example, the Office failed to discuss Board precedent, which provides the fact that the cause of a particular fall cannot be determined does not establish that it was due to an idiopathic condition and that, if the record does not establish a particular fall was due to an idiopathic condition, it must be considered as merely an unexplained fall, which is covered under the Act. Appellant was correct in arguing that, due to this misinterpretation of the relevant case law, the Office improperly applied Board precedent when it found that her fall was not covered by the Act.[11]

For these reasons, the Office improperly denied to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a) Accordingly, the case shall be remanded to the Office for the performance of a merit review to be followed by an appropriate decision regarding whether appellant sustained an injury in the performance of duty on November 15, 2000.

The February 11, 2002 decision of the Office of Workers' Compensation Programs is hereby set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Dated, Washington, DC
June 19, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[11] In its February 11, 2002 decision, the Office indicated that "the claim was denied because of causal relationship, not because the fall was idiopathic." However, the effect of the Office's decision was to make a finding that appellant sustained an idiopathic fall.