U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT J. COX and U.S. POSTAL SERVICE,
POST OFFICE, Aurora, CO

Docket No. 03-360; Submitted on the Record;
Issued June 25, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether appellant sustained an injury on April 3, 2000 causally related to his federal employment; and, (2) whether the Office of Workers' Compensation Programs properly refused to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a).

On April 12, 2000 appellant's sister[1] filed a traumatic injury claim, alleging that on April 3, 2000 appellant was found unconscious on the workroom floor at which time he sustained a "laceration to [the] head, front to back from hairline above right eye." She indicated that a physician reported that appellant had suffered a stroke and could not move his arms and legs.[2] He stopped work that day and has not returned. By letter dated April 28, 2000, the employing establishment controverted the claim, stating that appellant had a history of seizures, that he was found face down on the floor and that photographs of the area showed no intervening work structures. The employing establishment submitted medical evidence dating from 1964 to 1998, a diagram of the incident, photographs of the area, an accident report and statements by Jim Jewell and Tam Le.

In letters dated May 11, 2000, the Office informed appellant of the type evidence needed to support his claim.

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[1] At the time the claim was filed, appellant was a 58-year-old distribution clerk. The record contains a power of attorney authorizing appellant's sister to act on his behalf.

[2] This case has been before the Board previously. By decision dated January 17, 2003, the Board set aside Office decisions on the grounds that the record before the Board was incomplete. On February 19, 2003 the Office filed a petition for reconsideration with the Board to set aside the January 18, 2003 remand decision and, on that date transmitted the case record to the Board. By decision dated February 25, 2003, the Board granted the petition for reconsideration and set aside the January 18, 2003 decision. On November 20, 2002 appellant submitted a second application for review with the Board. This appeal was docketed as 03-397. In its February 19, 2003 pleading, the Office further requested that the Board dismiss the appeal docketed as No. 03-397 as it was a duplicate of this case. By decision dated April 30, 2003, the Board dismissed Docket No. 03-397.

By decision dated June 13, 2000, the Office denied the claim, finding that the incident occurred on April 3, 2000, but that the record did not contain medical evidence establishing that appellant sustained an injury there from.

By letter dated July 4, 2000, appellant's sister requested a hearing and provided a power of attorney, authorizing her to represent him. At the time of the hearing, held on December 5, 2000, appellant was an inpatient in a Veterans hospital in the Bronx, New York. Appellant's attorney testified, stating that appellant had no memory of the fall and that he had suffered a vascular stroke or injury which rendered him semi-quadriplegic, as well as a contusion on the forehead and nose. Subsequent to the hearing, appellant submitted a statement advising that he did not remember the fall and medical evidence.

By decision dated February 7, 2001, an Office hearing representative remanded the case to the Office for further development of the medical record. On May 4, 2001 the Office referred the case, together with a set of questions, a statement of accepted facts and the medical record, to Dr. Stanley H. Ginsburg, a Board-certified neurologist, for consultant case review.

In a decision dated June 14, 2001, the Office denied the claim, crediting the opinion of Dr. Ginsburg, who found that appellant had sustained an idiopathic fall.

On June 29, 2001 appellant, through his attorney, requested a hearing that was held on December 5, 2001. At the hearing, appellant's attorney argued that, since appellant sustained lacerations to the front and back of his head when he fell, he hit something on the way down. Additional evidence was also submitted.

In a decision dated February 20, 2002, an Office hearing representative affirmed the June 14, 2001 decision. By letter dated March 20, 2002, appellant, through counsel, requested reconsideration. In a decision dated March 25, 2002, the Office denied appellant's reconsideration request. By letter dated March 20, 2002, stamped received by the Office on March 27, 2002, appellant's attorney submitted additional medical evidence, including a July 15, 2002 report from Dr. Mark P. Cilo, a Board-certified neurologist. The employing establishment submitted a diagram of the site of the fall and argued that there were no intervening objects that appellant could have hit.

By decision dated August 1, 2002, the Office denied modification of the prior decisions. In a letter dated August 14, 2002, appellant, through his attorney, again requested reconsideration, arguing that the Office had failed to consider Dr. Cilo's July 15, 2002 report. By decision dated November 1, 2002, the Office denied appellant's reconsideration request. The instant appeal follows.

Initially the Board notes that, in its November 1, 2002 decision, the Office performed a merit review of appellant's claim, rather than denying his reconsideration request. In discussing the July 15, 2002 medical report submitted by Dr. Cilo, the Office stated that "[a]nalysis of the report reveals it to be of limited probative value" and went on to discuss the doctor's opinion and conclusions. The Office held that an award may not be based upon speculation before concluding that the evidence was irrelevant and, therefore, insufficient to warrant merit review.

As demonstrated by the above language, the Office weighed this evidence and thus conducted a merit review.

The Board finds that appellant failed to meet his burden of proof to establish that he sustained an injury on April 3, 2000 causally related to factors of his employment.

It is a general rule that where an injury arises in the course of employment, occurs within the period of employment at a place where the employee reasonably may be and takes place while the employee is fulfilling his or her duties or is engaged in doing something incidental thereto, the injury is compensable unless it is established to be within an exception to the general rule.[3] One of the exceptions to the general rule is an idiopathic fall, which the Board has defined as "where a personal, nonoccupational pathology caused 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."[4] An idiopathic fall is not compensable because it did not arise out of a risk connected with the employment.[5] The question of causal relationship in such cases is a medical one and must be resolved by medical evidence.[6] 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.[7]

The medical evidence establishes that appellant's fall was due to a personal, nonoccupational pathology without employment contribution. The medical record documents that appellant had seizures in 1962, 1964, 1996 and 1998 and since June 1998 took Lamictal and Dilantin to control his seizures. In a June 18, 2000 report, Dr. Joseph M. Forrester, a Board-certified internist with subspecialties in pulmonology and critical care, advised:

> "[Appellant] is a patient I cared for at the Aurora South Campus. He was admitted on [April 3, 2000] after having fallen at work hitting the front of his head and sustaining a laceration. [Appellant] was brought in with a cervical collar unresponsive. He may have had a seizure at work, although, the exact etiology of his syncope was never clearly delineated. Nonetheless, following that episode when he was brought in with a cervical collar and intubated, he was found to have a cervical cord compression which I believe was as a result of his fall and hitting

[3] *Daniel F. McGettigan*, 43 ECAB 502 (1992).

[4] *Gertrude E. Evans (Wesley W. Evans)*, 26 ECAB 195 (1974).

[5] *Martha G. List (Joseph G. List)*, 26 ECAB 200 (1974).

[6] *Lowell D. Meisinger*, 43 ECAB 992 (1992).

[7] *See Martha G. List (Joseph G. List), supra* note 5.

> his head. It appears as if he hit the front of his head during the act of falling, given his frontal laceration and may have hyperextended his neck creating this cervical cord injury. He was essentially found on the floor unresponsive. The details of his subsequent hospitalization can be gleaned from his hospital chart."

Dr. Thomas C. Ribovich, a Board-certified neurosurgeon, provided an operative report dated April 24, 2000, in which, he stated that appellant presented "most likely after experiencing a seizure being found unresponsive at work."[8] In a May 31, 2001 report, Dr. Stanley H. Ginsburg, a Board-certified neurologist, who performed a chart review for the Office, advised:

> "One cannot be certain what the etiology of [appellant's] fall on April 3, 2000 was. However, it is strongly suggested that a generalized seizure occurred resulting in [appellant's] fall. There is no evidence from the clinical records that [appellant] suffered a cardiovascular-related fall and there was no history of syncope in his past. There was, however, clearly a history of seizures on multiple occasions dating back to the 1960s. I, therefore, feel strongly that [appellant] most likely had a convulsive episode resulting in his fall.... I do think that the fall was related to nonwork-related factors and specifically the preexisting condition of a convulsive disorder."

Appellant had a history of a seizure disorder for which he was on medication. The medical evidence from Dr. Forrester and Dr. Ribovich found that appellant sustained a seizure or a convulsive episode on April 13, 2000, which caused him to fall, striking his head and sustaining a laceration. Based on this evidence, the Board finds that appellant's fall on that date was idiopathic in nature.

The Board has recognized that, although a fall is idiopathic, an injury resulting from an idiopathic fall is compensable, if "some job circumstance or working condition intervenes in contributing to the incident or injury, for example, the employee falls onto, into or from an instrumentality of the employment" or where, instead of falling directly to the floor on which he or she has been standing, the employee strikes a part of his or her body against a wall, a piece of equipment, furniture or machinery or some like object. An employee has the burden of establishing that he or she struck an object connected with the employment during the course of the idiopathic collapse.[9]

In the instant case, there is some question as to whether appellant sustained one or two lacerations to his head when he fell at work on April 3, 2000. The facts indicate that he was found unconscious. In an April 7, 2000 statement, Mr. Jewell, a coworker, reported that he saw appellant close to the end of the work tour, at about 7:00 p.m. An accident report dated April 4, 2000 provides that appellant was discovered by Mr. Le, a coworker, at approximately 7:50 p.m. on April 3, 2000 lying on the floor on his stomach. Mr. Le then called his supervisor, Debbie Phillips, who advised him to call 911. Appellant was taken by ambulance to the hospital. In a statement dated April 7, 2000, Mr. Le described finding appellant unconscious on the floor at

[8] Dr. Ribovich performed a decompressive cervical laminectomy extending from C7 through C3.

[9] *Margaret Cravello*, 54 ECAB __ (Docket No. 03-256, issued March 24, 2003).

about 7:50 p.m, between his desk and the left notice parcels door. Mr. Lee stated that he found appellant on the floor snoring and that he could not be aroused. He provided a diagram of the area of the fall. The record further contains photographs of the area and an additional diagram. By report dated April 20, 2000, "Wayne," stated:

> "The width of the area is approximately 5 [feet]. Where [appellant] was found, the area opens up to at least 12 [feet]. I examined the wall for any blood stains and found nothing."

In a statement dated January 28, 2001, appellant advised that he could not remember the circumstances of the fall, stating that the last thing he remembered was "standing by my desk sorting mail or taking it from a chute." He stated that he had had a seizure condition since 1964 that was controlled by medication, sustaining his last seizure in 1998.

Nursing notes submitted by appellant indicate that a "buzz" haircut was done on April 30, 2000. A nursing note dated April 4, 2000 advised that appellant had a laceration to the top of the head and a nursing note dated April 5, 2000 described a "scalp laceration." A note dated April 7, 2000 indicated that a mid-line scalp abrasion was noted. In his June 18, 2000 report, Dr. Forrester advised that appellant sustained a frontal laceration when he fell at work and in a January 5, 2001 letter, an employing establishment nurse reported that when, appellant was found on April 3, 2000 he had a laceration on his head, in the hairline above his right eye.

At appellant's request, Jeffrey P. Broker, Ph.D.,[10] provided a report dated January 24, 2001. Mr. Broker, who reviewed the reports from Retro/Metro Ambulance, the emergency room report and hospital discharge summary, stated:

> "Medical records and photographs indicate [that appellant] sustained a laceration and underlying hematoma to his right forehead, just above his eye, an abrasion to his nose and ecchymosis to his left anterior chest in the vicinity of his 2nd and 3rd intercostals and a horizontal laceration to the back of his head. Recent records indicate he also sustained a right rotator cuff tear (complete supraspinatus tear). Paramedics noted coagulated blood on the floor where [he] laid [sic]. Note that the laceration to the back of [his] head, photographed in the hospital, was not identified in any of the medical records provided. More significantly, he also sustained an anterior cervical cord infarction, ultimately resulting in quadriplegia at C4 (with residual intact sensory function involving the lower extremities and residual biceps motor function)."

Mr. Broker further advised that appellant sustained two distinct impact injuries to his head, one to the front and one to the back, which could not both have occurred as a result of a fall to the floor. Mr. Broker concluded that appellant sustained two independent impacts, "likely involving some object other than the floor (on the way down) and probably then the floor."

In a letter dated January 10, 2002, appellant's sister contended that "in early May 2000," after appellant's head was shaved, she discovered a gash several inches long on the back of his

[10] Mr. Broker has a Ph.D. in kinesiology and is a forensic consultant in the biomechanics of injury.

head. By report dated July 15, 2002, Dr. Mark P. Cilo, a Board-certified neurologist, reviewed the nursing notes and opined that, after reviewing the nursing notes in the hospital record, it was his opinion that appellant "did have a scalp laceration as described on April 4, 2000" and advised that it was unlikely that this occurred either in the critical care unit or the hospital emergency room. He did not comment on whether appellant had one or two lacerations.

The Board finds that the evidence is insufficient to show that appellant struck any intervening object when he fell. While the record contains evidence that he sustained a laceration on his forehead when he fell and nursing notes indicate that appellant had a scalp laceration or lacerations, there were no witnesses to the fall. The employing establishment investigated the circumstances of appellant's fall on April 3, 2000 shortly thereafter and provided evidence to indicate that he did not strike an intervening object. Mr. Broker cites to medical evidence not in the record. The Board, therefore, finds that the evidence of record does not establish that appellant's fall was caused by intervention of or contribution by any employment-related factors, *i.e.*, he did not strike any object, other than the floor, during the course of his fall at work. The incident was an idiopathic fall and is not compensable.[11]

The decision of the Office of Workers' Compensation Programs dated November 1, 2002 is affirmed, as modified.

Dated, Washington, DC
June 25, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[11] *See Margaret Cravello*, *supra* note 9.