United States Department of Labor
Employees' Compensation Appeals Board

ANNA F. ROTONDO, Appellant	)	
and	)	**Docket No. 05-145**
	)	**Issued: March 14, 2005**
DEPARTMENT OF THE ARMY, PICATINNY ARSENAL, Picatinny, NJ, Employer	)	

Appearances:
Anna F. Rotondo, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On October 18, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated July 22, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden to establish that she sustained an injury in the performance of duty on December 17, 2003.

FACTUAL HISTORY

Appellant, a 52-year-old systems accountant, filed a traumatic injury claim on February 11, 2004, alleging that she sustained a bruise on her left upper arm, tingling and numbness in her left arm, and pain and stiffness in her neck after she fell in a hallway on December 17, 2003. Although appellant thought the hallway might have been wet, she could not state this definitively. The Form CA-1 on which appellant filed her claim stated that there were no witnesses to the fall.

On March 18, 2004 the Office advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. The Office asked appellant to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition, and an opinion as to whether her claimed condition was causally related to her federal employment. The Office requested that appellant submit the additional evidence within 30 days.

In a report dated January 14, 2004, Dr. Louis Bouillon, a Board-certified orthopedic surgeon, noted appellant's history of injury, stating:

> "[Appellant] is a middle-aged right-handed CPA who fell at work on December 17, 2003 and landed on the left side. She does not know exactly what happened when she fell and what she hit but she remembers having a bruise on the left arm around the mid left humerus. Ever since, she has had gradually increasing pain, numbness, and paresthesias in all the fingers in the left hand to the point that she has marked difficulty feeling things and pain with ADL's and she is really unable to drive or use the steering wheel."

Dr. Bouillon diagnosed mild cervical radiculitis and wrist contusion and carpal tunnel syndrome.

In a statement to the Office dated April 19, 2004, appellant stated:

> "I don't know how I fell. I was walking to the hallway elevator and found myself on the floor on my side. Don't recall hitting my head at all. The floor could have been wet as it was wintertime.... There were no eyewitnesses but my supervisor heard me fall.... [On] December 17, 2003 I went to the post clinic."

Appellant stated that the clinic medical officer sent her to an orthopedic surgeon.

Appellant submitted an employing establishment medical clinic form note dated December 17, 2003 which stated, "Tripped and fell in elevator waiting area, fourth floor, B-1 around 12:00 p.m., December 17." The form further stated that appellant was advised to rest, elevate her ankle and apply ice. The form was signed by the clinic medical officer.

In an April 26, 2004 letter to the Office, the employing establishment stated it was controverting the claim because appellant did not file her claim within 30 days. In a letter dated April 21, 2004, appellant's supervisor stated that he was not an eyewitness but heard appellant fall on December 17, 2003. He stated that the floor was dry on that occasion.

By decision dated July 22, 2004, the Office denied appellant's claim, finding that she failed to submit sufficient evidence to establish that her injury occurred in the performance of duty. The Office found that the evidence did not establish that appellant's fall was due to any special hazard or special condition of employment, therefore, the fall was caused by a nonoccupational etiology.

LEGAL PRECEDENT

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 coverage of the Federal Employees' Compensation Act.[1] 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 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.[2] 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 and caused the fall.[3] But 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.[4]

ANALYSIS

In this case, the medical evidence does not establish that appellant's fall on December 17, 2003 was due to a personal, nonoccupational pathology. Appellant indicated that she fell to the floor and landed on her left side on December 17, 2003. There were no witnesses to the event, although her supervisor stated that he heard her fall. The employing establishment submitted documentation which indicated she received treatment at its medical clinic after sustaining a fall on December 17, 2003, and was referred to an orthopedic surgeon, Dr. Bouillon, who submitted a January 14, 2004 report in which appellant provided an account of the incident consistent with the ones she provided to the clinic and on her Form CA-1. In addition, appellant did not submit any medical evidence which would indicate that the fall was causally related to any employment-related condition or factor of employment. Thus, there was no evidence in the record which

[1] 5 U.S.C. §§ 8101-8193.

[2] *Dora J. Ward*, 43 ECAB 767, 769 (1992); *Fay Leiter*, 35 ECAB 176, 182 (1983).

[3] *Edward V. Juare*, 41 ECAB 126 (1989). This is not to say that mere existence of a personal, nonoccupational pathology settles the issue of entitlement to compensation. It is well established that when a factor of employment aggravates, accelerates, or otherwise combines with a preexisting, nonoccupational pathology, the employee is entitled to compensation. *See Charles A. Duffy*, 6 ECAB 470 (1954) (aggravation of preexisting disease or defect is as compensable as an original or new injury); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Idiopathic Falls*, Chapter 2.804.9(b) (August 1992) (if some factor of the employment intervened or contributed to the injury resulting from the fall, the employee has coverage for the results of the injury but not for the idiopathic condition that caused the fall).

[4] *Martha G. List*, 26 ECAB 200 (1974); *Maria G. Marello*, 52 ECAB 363 (2001); *John R. Black*, 49 ECAB 624 (1998).

provided any cause for appellant's falling episode on December 17, 2003. There is insufficient evidence to establish that a personal, nonoccupational pathology caused appellant to fall on December 17, 2003. Accordingly, the Office erred in finding that appellant sustained an idiopathic fall, and thus was excluded from coverage under the Act.

CONCLUSION

The Board finds that appellant's December 17, 2003 fall remains an unexplained fall that occurred while appellant was engaged in activities related to her employment. As such appellant's December 17, 2003 fall at work is compensable under the Act.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 22, 2004 is reversed and the case is remanded to the Office for a determination of the nature and extent of any condition and/or disability causally related to the December 17, 2003 fall.

Issued: March 14, 2005
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member