United States Department of Labor
Employees' Compensation Appeals Board

L.N., Appellant	)	
and	)	**Docket No. 06-2053**
	)	**Issued: April 9, 2007**
U.S. CAPITOL POLICE, Washington, DC, Employer	)	

Appearances:
Kelly Burchell, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 6, 2006 appellant filed a timely appeal from the January 5, 2006 decision of the Office of Workers' Compensation Programs and a July 18, 2006 decision of an Office hearing representative. By the January 5, 2006 decision, the Office denied her traumatic injury claim. The Office hearing representative affirmed this denial by the July 18, 2006 decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case. On appeal, appellant argued that the Office hearing representative's decision should be overturned because it placed great weight on statements that were not part of the record. No specific statements were identified.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on October 15, 2005.

FACTUAL HISTORY

On October 15, 2005 a traumatic injury claim, Form CA-1, was filed on behalf of appellant, a 35-year-old police officer, by Sergeant Patricia Covington who alleged that appellant fell down two steps, hit a metal stanchion and then hit the ground. Ms. Covington stated that appellant appeared to have a seizure, which continued while she was transported to George Washington University Hospital. She stated that the nature of the injuries, which might include head and neck injuries, could not be fully ascertained as appellant was unable to speak. The CA-1 form included the witness statement of Officer Raymond Mudd, who stated that appellant "started to shake and tremble, then fell off of one of the lower steps of the Lower West Terrace, striking her head on a metal stanchion and the pavement. Appellant continued to shake uncontrollably and began to bleed out of her mouth."

Appellant also submitted the statements of three other witnesses. Officer J.R. Bleiden "observed [appellant] fall from the lower steps head first onto the stanchions and then the pavement. Although she lay motionless for a couple of seconds, she then began to tremble as if she were having a seizure." Officer Trina Hamilton stated that she "witnessed [appellant] fall from the steps of the Lower West Terrace Door. [Appellant] hit her head on a portable metal barrier (bike rack) before falling completely onto the ground on the back of her head. [Her] body began to tremble vigorously and blood started to flow from her mouth." Officer Amanda Norris stated that she "heard a loud thud and turned around. [She] saw [appellant] lying on the ground trembling and shaking. [Appellant's] head was resting against a portable metal barrier (bicycle rack). Her head had hit the ground and there was blood running from the corner of her mouth."

Appellant was transported to George Washington University Hospital, where it was discovered that she had anterior temporal lobe lesions consistent with meningioma with substantial mass effect. Dr. Anthony Caputy, a Board-certified neurological surgeon, diagnosed a left temporal lobe mass and seizure disorder. On October 19, 2005 Dr. Caputy conducted a craniotomy to remove the tumor. Appellant was released from the hospital on October 23, 2005 and placed on nonduty status.

On December 1, 2005 the Office requested additional information from appellant, including a medical opinion as to whether her seizure or tumor were caused by her employment and a narrative statement of the facts surrounding her fall. The Office informed appellant that idiopathic falls, which arise from personal, nonoccupational conditions, were compensable only if there was intervention or contribution by an employment factor.

In response to this request, appellant provided records dated October 15 to 16, 2005 from the hospital emergency department and records dated October 16 to 21 and November 9, 2005 related to her surgery. They consisted of diagnostic tests, progress notes and procedure reports. The medical history taken at intake indicated that this was appellant's first seizure. In the discharge summary report completed on November 9, 2005, Dr. Caputy explained that appellant had presented at the hospital with a seizure. He stated that she was standing on the steps of the Capitol building and then fell down them. Dr. Caputy noted that she had not experienced any symptoms prior to the fall.

By decision dated January 5, 2006, the Office denied appellant's claim on the grounds that she had provided no evidence that her seizure or fall was related to her employment. It found that she had not provided the requested medical and factual evidence about the cause of her fall that would establish a relationship to her federal employment. The Office noted that from the evidence in the record it appeared that appellant's fall was "caused by a seizure disorder which was a personal medical condition."

On January 9, 2006 the Office received statements from appellant, her supervisor and Dr. Caputy. On January 17, 2006 the Office received a substantial amount of medical evidence from George Washington University Hospital.

In a narrative statement dated December 8, 2005, appellant stated that, before her fall, she had no history of seizure, dizziness, fainting, heart condition, high blood pressure or any other medical problems. On the day of the incident she was working a 14-hour shift for a special event, which entailed long periods of standing and few breaks. Appellant recalled walking up and then down the stairs to speak with a coworker prior to her fall. She postulated that it was possible that she slipped on the stairs, but she had no recollection of how she fell. Appellant's coworkers told her that she struck her head against a bike rack as she fell. She listed her injuries as a bruise and lump on forehead, a swollen left leg and scrapes on shin.

In a statement dated December 8, 2005, Sergeant Renee Wilson stated that she was appellant's supervisor and had been working with her on the day that she fell. She stated that she and appellant were required to be at work at 3:00 a.m. because of a large public event and had been on duty for nearly 14 hours when the incident occurred. Ms. Wilson recalled that appellant was standing on a staircase outside of the U.S. Capitol Building and suddenly fell and struck her head on a metal bike rack located near the bottom of the staircase. She stated that appellant had never experienced episodes of fainting, dizziness or seizures on the job.

In a report dated December 21, 2005, Dr. Caputy opined that appellant's seizure was caused by the brain tumor and not the subsequent fall. He also stated that appellant was under his care following a craniotomy for excision of a brain tumor.

Appellant's full hospital records consisted of charts, progress notes, diagnostic testing results and administrative records. In the history section of a handwritten intake form[1] of unclear authorship, it is noted that she was standing on the Capitol steps and fell and rolled down five to six steps and hit her head on the ground. Appellant was unable to talk afterwards. She reported "dizziness this a.m. at little league game [illegible] x 15 min, then got better." It was also noted that appellant did not "remember anything right before incident." An undated and unsigned neurological history form in the hospital records indicated that she reported an occipital headache after the seizure where she fell on her head. It also noted that appellant felt "strange" the night before the seizure, but experienced no aura.

Appellant was released to work on January 18, 2006. On January 20, 2006 she requested an oral hearing to review the decision of the Office.

[1] Several parts of this form are illegible.

On April 3, 2006 appellant was examined by Dr. Allan Weber, a Board-certified neurologist, who noted that on the day of her seizure appellant reported to work at 3:00 a.m. and that, prior to her fall, approximately 13 hours into her shift, she was excessively fatigued. Mr. Weber stated that she had "a slip-and-fall" which caused head trauma when she hit the bike rack at the bottom of the steps and that she then had a seizure. He reported that the meningioma found by the hospital corresponded with the epileptiform activity seen on appellant's electroencephalogram. Dr. Weber stated that people who are prone to seizure can experience them as a result of lowering the seizure threshold. He opined that appellant's seizure was likely the result of her head trauma, but that her threshold level was lowered by the excessive fatigue she was experiencing. Dr. Weber stated that she may have had subclinical seizures prior to her clinical seizure. He noted that he would like to see medical records related to appellant's prior treatment.

An Office hearing representative conducted the oral hearing on May 3, 2006. At the hearing, appellant gave testimony about the day of the seizure, including the fact that she was wearing approximately 30 pounds of equipment and had only 45 minutes of break-time since starting the shift at 3:00 a.m. She said that she felt very tired and that her equipment felt very heavy. Appellant also introduced Dr. Weber's report. Through counsel, she argued that his opinion was better rationalized than that of Dr. Caputy, who gave no analysis for his conclusion that the seizure was caused by the tumor and not the fall. Appellant argued that Dr. Weber's opinion supported the conclusion that the seizure was caused by her employment and was therefore compensable. She also argued that Dr. Caputy's opinion, which was rendered two months after the accident, was conclusory and was not clearly based on any medical records.

The Board notes that another version of Dr. Caputy's December 21. 2005 report was introduced by appellant at the oral hearing conducted on May 3, 2006. It contained an additional sentence: "She did not sustain a work-related injury and when her condition warrants she may return to her regular work activity."

On May 30, 2006 appellant sent additional records, including event reports from the District of Columbia Fire and Emergency Medical Service and excerpts from the previously submitted hospitalization record.

On July 18, 2006[2] the Office hearing representative issued a decision affirming the denial on the grounds that appellant had not established that she was injured in the performance of duty. After reviewing the medical and factual evidence, she found that the report of Dr. Weber was of diminished probative value in establishing that appellant had been injured in the course of duty. The hearing representative found that the hospital records contemporaneous to the fall and the statement of Dr. Caputy both indicated that the seizure was caused by the tumor and not the fall. Based on the witness statements, the Office hearing representative found that appellant did not slip on the steps, as Dr. Weber had assumed. She stated that, while it appeared that appellant had struck her head on the metal bike rack, which would be an intervening object, there was no evidence that appellant sustained any injuries from it. The Office hearing representative also

[2] The Board notes that neither the decision nor the accompanying letter is dated, but that it was entered into the Office's electronic record on July 18, 2006.

noted that the hospital records indicated that, in the days before the seizure, appellant reported dizziness and "feeling strange."

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]

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 Act.[6] Such an injury does not arise out of a risk connected with the employment and is, therefore, not compensable. Although a fall is idiopathic, an injury resulting from the fall is compensable if some job circumstance or working condition intervenes in contributing to the incident or injury, such as if an employee, instead of falling directly onto the floor, strikes a part of his body against a wall, a piece of equipment, furniture, machinery or some similar object.[7] In situations involving idiopathic falls, Office procedures provide that, 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.[8]

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.[9] This

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[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.*

[6] 5 U.S.C. §§ 8101-8193.

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

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, 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).

[9] *Steven S. Saleh*, 55 ECAB 169, 173 (2003).

follows 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.[10] 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.[11]

ANALYSIS

The record establishes that appellant fell on the Capitol steps on October 15, 2005 and hit her head on a bike rack and on the ground. The record also indicates that she had a seizure shortly before or after the fall. As a result of her seizure, she was taken to the hospital, where it was discovered that she had a brain tumor or meningioma. The tumor was surgically removed on October 19, 2005 and appellant was placed on nonduty status until January 18, 2006, when she was released to return to work.

In order for an injury to be compensable, a factor of appellant's employment must have caused or contributed to it. Appellant argued that her fall was work related and that her seizure was caused by striking her head on the bike rack as she fell. The Office found that her seizure and the attendant fall were caused by her tumor and were therefore unrelated to her employment. It found that the bike rack was an intervening factor of employment, but that she did not sustain any compensable injury from hitting it as she fell. The Board finds that the Office has not established that appellant's fall was idiopathic.

The factual evidence of record is insufficient to establish an idiopathic fall. It is unclear from the witness's statements whether a seizure precipitated appellant's fall from the Capitol steps: one witness stated that appellant began to shake before her fall, one witness stated that she did not begin to shake until after her fall and the others do not specify. None of them stated that she appeared to trip or slip. Appellant does not remember the fall or the events immediately preceding it, but remembers feeling exhausted from the long shift and heavy equipment. Hospital history forms indicate that appellant reported 15 minutes of dizziness a few days before her seizure and feeling "strange" the night before it. Though the evidence does establish that appellant's fall was not caused by slipping or tripping down the steps, the Board cannot make a determination of whether appellant fell because she was experiencing a seizure based only on these contradictory and inconclusive statements.

Like wise, the medical evidence of records is insufficient to establish whether the fall was idiopathic. The fact that appellant had a preexisting condition of meningioma is not in itself adequate evidence that the fall was idiopathic. The Board has held that the fact of a claimant's preexisting medical condition, without additional medical evidence, is not sufficient to establish that a fall is idiopathic.[12] The physicians' reports in the hospital records do not posit a causal

[10] *John R. Black*, 49 ECAB 624, 626 (1998); *Lowell D. Meisinger*, *supra* note 7 at 1000-01; *Dora J. Ward*, 43 ECAB 767, 769-70 (1992).

[11] *John R. Black*, *supra* note 10; *Steven S. Saleh*, *supra* note 9.

[12] *Steven S. Saleh*, *supra* note 9.

relationship between the fall and seizure, they only indicate that both events occurred. Dr. Caputy, a Board-certified neurological surgeon, diagnosed a seizure disorder, but did not specify what triggered the seizure. In a report dated December 21, 2005, Dr. Caputy stated that appellant's seizure was caused by her brain tumor. However, he provided no medical history or rationalization for this medical opinion. Moreover, in a revised report of the same date, Dr. Caputy concluded that appellant did not sustain a work-related injury and that she may return to work. The fact that he was the surgeon who removed appellant's tumor is not sufficient to give his unrationalized opinion the weight of the medical evidence. The Board finds that, based on the factual and medical evidence of record, the Office has not established that the fall was idiopathic.

The Board has held that, if the record does not establish that a fall was due to an idiopathic condition, it must be considered as an unexplained fall, which is covered by the Act.[13] However, appellant still has the burden of proving that her unexplained fall was the cause of her injury. The Board finds that appellant has not provided adequate evidence to establish that she sustained a work-related injury. Dr. Weber, a Board-certified neurosurgeon, opined that appellant slipped on the Capitol steps after a long day at work and hit her head against a metal bike rack, which precipitated a seizure. He also stated that the long hours she worked on October 15, 2005 lowered her threshold for seizure. Though his opinion contains more analysis than Dr. Caputy's, the Board notes that Dr. Weber's report is of diminished probative value as it was made without reference to a full and accurate history, notably, the medical reports and diagnostics from her surgical hospitalization. Dr. Weber also states that appellant had a "slip-and-fall," which does not appear to be a correct statement of the facts based on the witnesses' statements. The medical opinion evidence of Dr. Weber is therefore insufficient to establish that appellant's unexplained fall resulted in an injury in the form of a seizure of head injury.

The Board concludes that the Office did not establish that the fall was idiopathic, and reverses this finding in the Office's decisions below. The Board also finds that appellant has not met her burden of proof in establishing that her seizure or other injuries were caused by her fall.

Additionally, the Board finds that, contrary to appellant's assertions on appeal, the Office hearing representative relied only on statements that were part of the record in reaching her decision.

CONCLUSION

The Board finds that appellant has not established that she sustained an injury in the performance of duty on October 15, 2005. The Board also finds that the Office did not establish that appellant's fall was idiopathic.

[13] *Id*.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 18 and January 5, 2006 are reversed in part, modified in part and affirmed in accordance with this decision.

Issued: April 9, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board