



## **FACTUAL HISTORY**

On September 11, 2009 appellant, then a 36-year-old veterans' service representative, filed a traumatic injury claim alleging that he sustained a hand, neck and back injury when he fell out of his chair on September 3, 2009. He stopped working on September 4, 2009 and returned September 14, 2009.

Four of appellant's coworkers who were near him when the September 3, 2009 incident occurred submitted statements. In a September 3, 2009 e-mail, Cresel Moore, a coworker, noted that she heard a loud noise behind her, turned around and saw him lying unresponsive on the floor next to his desk. She alerted Monica Blanchard, the supervisor, who instructed her to have a security guard call 911.

In a September 11, 2009 statement, Erica Underwood, a coworker, recalled that she and appellant briefly conversed on September 3, 2009 after a team meeting ended around 8:25 a.m. before returning to their cubicles. Within a few minutes, she heard a loud crashing sound "as if something had fallen" and was advised by Pamela Washington, a coworker, that appellant hit his head on his desk and fell to the floor. Ms. Underwood, who was certified in cardiopulmonary resuscitation (CPR), attended to appellant around 8:32 a.m. Appellant, who was visibly shaken and crying, told her that he had a history of hypertension, he did not take his blood pressure medication that morning and his leg was hurting. Ms. Underwood helped him into his chair and stayed until an employing establishment nurse arrived.

In a September 11, 2009 statement, Ms. Washington noted that appellant stared at her the morning of September 3, 2009 with a "glazed" look. She later observed him sitting and "leaning to the right." Ms. Washington then heard a loud bang "as if a file cabinet had fallen down" and noticed appellant laying on his right side. She saw Ms. Underwood and Cheryl Wright, a coworker, standing over and speaking to him until he "came to." Ms. Washington reported that one of the two women asked appellant if he had high blood pressure or was on medication, but did not hear his response. An employing establishment nurse and ambulance personnel arrived and he was transported to a local hospital.

Gloria Daly, a coworker, recounted her September 11, 2009 statement that she was at her cubicle when she heard Ms. Wright asking appellant questions. She looked and saw him lying on the floor on his stomach and crying. Ms. Wright told her that appellant hit his arm on the cabinet above his cubicle and fell. Ms. Daly observed that he was conscious but did not answer questions asked by his coworkers.

In a September 4, 2009 hospital discharge form, Dr. Abel Joy, a Board-certified internist, noted that appellant presented on September 3, 2009. Appellant was diagnosed with syncope, hypertension, obstructive sleep apnea and gastroesophageal reflux disease. A computed tomography (CT) scan of the head was normal. Appellant was advised to follow up with his primary care physician. In a September 8, 2009 note, Dr. Carl Sperling, a Board-certified internist, stated that appellant was allowed to return to work on September 14, 2009.

Dr. Marcus Allen, a chiropractor, advised appellant in a September 4, 2009 work status form to refrain from working between September 8 and 14, 2009. He added that appellant could

resume limited duty between September 14 and 21, 2009 and regular duty thereafter. On September 16, 2009 Dr. Allen stated that appellant was disabled until October 4, 2009 and stated that he sustained an “at-work injury.”

In a September 22, 2009 letter, the employing establishment controverted the claim, contending that appellant’s disability was not incurred in the performance of duty since the vital signs check performed the morning of the September 3, 2009 incident indicated elevated blood pressure and he admitted that he did not take his hypertension medicine. It also pointed out that while he complained of a head, neck and back injury, medical documentation did not indicate any damage to those members of the body. The employer advised that appellant had a prior injury as a result of an April 3, 2009 car accident.<sup>1</sup>

In an undated statement, Ms. Blanchard recalled having a team meeting that ended around 8:30 a.m. of September 3, 2009. Subsequently, she heard a loud noise “like a file cabinet had fallen” and Ms. Moore stated that appellant was on the floor. Ms. Blanchard left her office, saw him passed out on his stomach and yelled for someone to notify the guards to call 911. She observed Ms. Underwood asking appellant, who started to move a little and cry, whether he was on medication. Appellant responded that he was, but did not take it that day. An employing establishment nurse and emergency medical services (EMS) team arrived and asked him questions as they took his blood pressure. Appellant reiterated that he was on hypertension medication and did not take his dosage that day. Ms. Blanchard heard EMS personnel remark that his blood pressure was “very high” and that he needed to be transported to a local hospital.

In a September 28, 2009 statement, appellant elaborated that, on September 3, 2009, as he was trying to stand up from his desk to go to the bathroom, his pants pocket became caught in the arm of the chair, causing him to fall forward and hit his head. He remembered having an extreme headache and seeing his colleagues standing around him. Appellant was nervous and disoriented and started to cry due to the pain.” When the paramedics arrived, he was asked a series of health questions, had his blood pressure taken and was transported to the emergency room.

In an October 7, 2009 letter, the Office informed appellant that the evidence submitted was insufficient to establish his traumatic injury claim and informed him of the evidence needed to establish his claim.

Appellant provided chiropractic records from Dr. Allen, including notes for the period September 15 to October 19, 2009. Dr. Allen stated that appellant sustained an “on-the-job trip and fall injury,” complained of a head, neck and upper back pain and was previously involved in a motor vehicle accident. He examined appellant and diagnosed a head contusion, cervical sprain/strain, thoracic sprain/strain and headache.

In a November 2, 2009 statement, appellant explained that on September 3, 2009 he simultaneously placed his weight on the right armrest of his chair and twisted his body as he started to stand up and go to the bathroom, positioning his open pants pocket at the end of the

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<sup>1</sup> The employing establishment noted that appellant received disability payments from the Department of Veterans Affairs for a low back and a skin condition related to his prior military service.

armrest. The pocket hooked onto the armrest and caused him to fall and hit his head on the side of his desk, knocking him unconscious. Appellant woke up on the floor and noticed someone helping him back to his chair. He was incapable of speaking to anyone at the time due to the blow to his head. Appellant asserted that his traumatic injury claim form did not contain these details because it was filled out by human resources personnel. He attached photographs of his pants, chair and desk. Appellant challenged coworkers' accounts that he did not take his hypertension medication, maintaining that he took his medication and that he never had any previous adverse reaction when he forgot to take his medication. He disputed that he was confused or disoriented before the incident, reasoning that he may have given such an impression when he sat at his desk thinking about the items of the morning meeting and his conversation with Ms. Underwood. Appellant related that he was diagnosed with hypertension two years prior and had a history of prior neck, back and leg injuries due to a 2005 slip-and-fall accident and an April 2009 automobile collision.

In a November 9, 2009 decision, the Office denied the claim on the grounds that the injury did not occur within the performance of duty. Based on the "consensus" of his coworkers' statements and Dr. Joy's September 3, 2009 hypertension and syncope diagnoses, it found that the fall and any resulting injury was idiopathic in nature, a consequence of a sudden drop in blood pressure. The Office added that the evidence was in conflict with regards to whether appellant struck a part of his body on a desk, cabinet or other object before hitting the floor, but did not reach the issue, citing the lack of medical evidence of trauma secondary to such impact.

Appellant requested reconsideration on November 18, 2009.

In a January 15, 2010 decision, the Office denied appellant's request for reconsideration, finding that he did not submit evidence warranting review of the November 9, 2009 decision.

Appellant requested an oral hearing on February 22, 2010.

By decision dated March 12, 2010, the Office denied appellant's request on the grounds that he previously requested reconsideration and was not, as a matter of right, entitled to an oral hearing on the same issue. It noted further considering whether to grant a discretionary hearing but determined that the issue could equally be addressed by requesting reconsideration before the Office and submitting new evidence.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking compensation under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his claim by the weight of reliable, probative and substantial evidence,<sup>3</sup> including that he is an "employee" within the meaning of the Act and that he filed his claim within the applicable time limitation.<sup>4</sup> The employee must

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

<sup>4</sup> *R.C.*, 59 ECAB 427 (2008).

also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.<sup>5</sup>

It is a general rule of workers' compensation law that an injury occurring on the industrial premises during working hours is compensable unless it falls within an exception to the general rule.<sup>6</sup> One exception to the general rule applies to falls in the workplace. 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 the employment, the injury is not a personal injury while in the performance of duty as it does not arise out of a risk connected with the employment.<sup>7</sup> This is referred to as an idiopathic fall.<sup>8</sup> On the other hand, if the cause of the fall cannot be determined or the reason it occurred cannot be explained, then it is an unexplained fall that comes within the general rule that an injury occurring on the industrial premises during working hours is compensable.<sup>9</sup>

An injury resulting from an idiopathic fall may still be 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 to the floor, strikes a part of his body against a wall, a piece of equipment, furniture, machinery or some similar object. Appellant has the burden of establishing that he struck an object connected with his employment during the course of the idiopathic fall.<sup>10</sup>

### **ANALYSIS -- ISSUE 1**

The Office accepted that appellant fell at the premises of the employing establishment around 8:30 a.m. on September 3, 2009. It denied his claim on November 9, 2009, relying upon statements of his coworkers and Dr. Joy's September 3, 2009 discharge record to establish that the fall was related to his preexisting hypertension and therefore idiopathic. The Office also found that there was conflicting evidence as to whether a desk, cabinet or other employment-related object contributed to the fall but it did not resolve the matter by making any clear findings. Instead, it found that, even if appellant had an intervening impact, the medical evidence was insufficient to show that the impact caused an injury. The Board finds that the Office's decision does not contain adequate facts and findings or clear reasoning to allow him to understand the precise defects of his claim and how to overcome them.<sup>11</sup>

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<sup>5</sup> *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>6</sup> *Martha G. List*, 26 ECAB 200 (1974).

<sup>7</sup> *John R. Black*, 49 ECAB 624, 626 (1998).

<sup>8</sup> *See Karen K. Levene*, 54 ECAB 671 (2003).

<sup>9</sup> *N.P.*, 60 ECAB \_\_\_\_ (Docket No. 08-1202, issued May 8, 2009); *John R. Black*, *supra* note 7.

<sup>10</sup> *Robert J. Choate*, 39 ECAB 103 (1987); *Sharon I. Erdmann*, 38 ECAB 589 (1987).

<sup>11</sup> *See T.K.*, 61 ECAB \_\_\_\_ (Docket No. 09-1729, issued May 10, 2010).

To properly apply the idiopathic fall exception to the premises rule, there must be two elements present: a fall resulting from a personal, nonoccupational pathology and no contribution from the employment.<sup>12</sup> The Board has held that the Office has the 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.<sup>13</sup> In this case, the only medical evidence to which it referred was Dr. Joy's September 3, 2009 hospital discharge form. Although Dr. Joy diagnosed syncope and hypertension, among other things, he offered no opinion explaining how appellant's elevated blood pressure or any other personal, nonoccupational pathology led to his fall in the workplace. The mere fact that an employee has a preexisting medical condition, without supporting medical rationale, is not sufficient to establish that a fall is idiopathic.<sup>14</sup> If the cause of the fall cannot be determined or the reason it occurred cannot be explained, then it is an unexplained fall and any resulting injury would be compensable. In light of this scant evidence, the Office did not make a proper determination that appellant's September 3, 2009 fall was due to his hypertension or other nonoccupational condition. Also, as noted, it did not make a clear finding on whether he struck a piece of equipment, furniture or some similar object as he fell which would also bring the fall within the performance of duty.

Consequently, the case will be remanded for the Office to further develop the evidence and make appropriate fact findings with regards to whether appellant's fall occurred within the performance of duty and, if so, the nature and extent of any injury or disability that resulted from the fall. After such further development as the Office deems necessary, it should issue an appropriate merit decision.

### CONCLUSION

The Board finds that the medical evidence was not sufficient to establish an idiopathic fall on September 3, 2009 and the case is remanded for further development.<sup>15</sup>

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<sup>12</sup> *N.P.*, *supra* note 9.

<sup>13</sup> *Jennifer Atkerson*, 55 ECAB 317 (2004).

<sup>14</sup> *Steven S. Saleh*, 55 ECAB 169, 173 (2003).

<sup>15</sup> In light of the Board's disposition of the first issue, the second and third issues are moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 9, 2009 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further action consistent with this decision of the Board.

Issued: February 11, 2011  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board