United States Department of Labor
Employees' Compensation Appeals Board

S.B., Appellant	)	
and	)	
DEPARTMENT OF JUSTICE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, IMMIGRATION COURT, Orlando, FL, Employer	)	**Docket No. 10-435** **Issued: January 14, 2011**

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 7, 2009 appellant, through her attorney, filed a timely appeal from a November 3, 2009 decision of the Office of Workers' Compensation Programs that denied her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of appellant's claim.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on August 7, 2008.

On appeal appellant, through her attorney, contends that the Office decisions are contrary to fact and law.

FACTUAL HISTORY

On August 8, 2008 appellant, then a 53-year-old supervisory legal clerk and technician, filed a traumatic claim alleging injury to her head, back, hip, shoulder and side when she fell from a chair on August 7, 2008. She had a severe anxiety attack after receiving an upsetting e-mail. Rhonda Simmons, a witness, noted seeing appellant slumped over her computer and called 911. Appellant was transported to the hospital and was admitted. In an October 9, 2008 statement, she explained that she received an e-mail from a judge informing her that she was not hired for the court administrator position for which she applied. The e-mail was not as respectful as appellant deserved and forwarded it to an Equal Employment Opportunity (EEO) Commission specialist. Appellant called for help and told Ms. Simmons that she thought she was having a heart attack and to call 911. She stated that she remembered nothing further. Appellant alleged generally that she was overworked and was essentially doing a court administrator's job. She provided a copy of the e-mail.

The employing establishment submitted a number of witness statements. Ms. Simmons stated that at approximately 9:00 a.m. she received a call from appellant asking for help and upon arriving at her office found her slumped over her computer. Appellant stated that she thought she was having a heart attack and to call 911. Ms. Simmons left to call 911 and when she returned, appellant was on the floor, not responsive to questions, not moving and her breathing was heavy and raspy. Carrie Sutherland, a coworker, stated that, when Ms. Simmons left appellant's office, appellant called to her to help. When she entered the office appellant was slumped at her desk. Appellant informed Ms. Sutherland of her belief. Ms. Sutherland left but, returned to find Ms. Simmons and Ruth Osborne, a coworker, with appellant who was on the floor, apparently passed out. Ms. Osborne stated that, when she entered the office, appellant was leaning over her keyboard, she went to comfort her but appellant did not respond and started sliding off her chair. She tried to stop the fall but was unsuccessful. Appellant struck the floor on the left side of her body. Kevin Chapman, a judge, then entered the room and helped turn her on her back. Appellant was initially unconscious and appeared confused when she regained consciousness. The paramedics arrived within 15 to 20 minutes and transported her. Mr. Chapman noted that, when he entered appellant's office, she was slumped over her desk and, after a minute or two, slid from her desk to the floor. Appellant appeared to be in and out of consciousness.

An August 7, 2008 paramedics report noted that appellant was found lying supine on the floor with a complaint of chest pain of acute onset. She related a past medical history of severe anxiety, hypertension, myocardial infarct, a percutaneous transluminal angioplasty. Appellant had self-administered a baby aspirin and her nitroglycerine prescription had expired. She was then transported to a local hospital. In an emergency room report, Dr. James D. Tesar, Board-certified in emergency medicine, diagnosed acute chest pain and appellant was admitted.[1] On August 7, 2008 James P. Brown, a physician's assistant, noted the history of appellant's complaint of chronic low back and right leg pain, exacerbated by the fall at work. He noted that she experienced multiple episodes of syncope that day with no clear-cut seizure activity and provided findings on physical examination. An August 7, 2008 chest x-ray demonstrated no

[1] Parts of the report are illegible.

abnormality and a computerized tomography (CT) scan of the head was normal. An August 8, 2008 cardiac stress test was negative.

In an August 9, 2009 report, Dr. Sanjeev K. Singh, a Board-certified psychiatrist, noted that appellant provided a history of work-related stress. He conducted a mental status examination, diagnosed adjustment disorder with anxiety and advised that she needed outpatient counseling.

On August 9, 2009 Dr. Bakkian Subbiah, a Board-certified neurologist, noted the history of injury and a past medical history of anxiety, dyslipidemia, asthma, hypertension, nonmalignant abdominal and breast tumors, previous abdominal and back surgeries and breast cyst removal. On physical examination, appellant was able to stand and walk across the room without difficulty, Romberg's test was negative, alternating motion movements were full, finger-to-nose and heel-to-shin testing was normal and motor strength was normal in upper and lower extremities. All reflexes were symmetric and sensory testing was grossly normal. Dr. Subbiah advised that appellant's symptoms did not represent a neurologic syndrome but most likely were due to considerable stress. An August 10, 2008 magnetic resonance imaging (MRI) scan study of the lumbar spine demonstrated mild degenerative disc disease with no stenosis.

Appellant was discharged from the hospital on August 11, 2008. Dr. Simon L. Condron, a Board-certified internist, reported final diagnoses of atypical chest pain, syncopal event, hypertension, asthma, chronic pain and anxiety. He noted that all studies were negative and, that from a clinical standpoint, appellant had an entirely uneventful stay.

Appellant followed up with Dr. Chad E. Frank, an attending Board-certified osteopath specializing in family practice. In an August 1, 2008 report, Dr. Frank noted her complaint of mid and low back pain, neck pain, bilateral shoulder pain and bilateral lower extremity pain. He provided examination findings and diagnosed cervicalgia, low back pain, somatic dysfunction and muscle spasm. In August 13, 2008 reports, Dr. Frank reported that appellant had a history of chronic neck and lower back pain with generalized anxiety that had markedly increased over the past five years. He described the fall at work and noted that she was hospitalized. Dr. Frank described appellant's past medical and surgical history, provided findings on examination, and diagnosed low back pain, migraine headaches, somatic dysfunction, severe anxiety and neck pain. He checked an Office form box "yes," indicating that the diagnosed conditions were caused by the fall at work, stating "anxiety, panic attack, collapse, fell on back, head, temple and pulmonary." Dr. Frank advised that appellant was totally disabled.

On August 22, 2008 Dr. Frank reported that appellant's low back, lower extremity and neck pain, anxiety and migraines had not abated a history of Epstein-Barr virus and chronic fatigue syndrome, diagnosed seven years previously. His subsequent treatment notes reiterated his conclusions.

By decision dated April 29, 2009, the Office denied the claim on the grounds that the evidence did not establish that appellant sustained an injury in the performance of duty. While the August 7, 2008 fall from the chair was in the performance of duty, no secure diagnosis of a medical condition had been provided.

Appellant, through her attorney, timely requested a hearing. In a June 23, 2009 report, Dr. Frank noted appellant's complaints of low back, neck and hip pain, migraine headaches and severe anxiety. On examination, he found spasm and tenderness in the cervical, thoracic and lumbar paraspinal muscles and diagnosed cervicalgia, low back pain, migraine headaches and anxiety. Dr. Frank advised that appellant's condition was related to work injuries, due to severe stress and physical requirements of the job.

At the August 10, 2009 hearing, appellant's attorney advised that she was not claiming an employment-related emotional condition but a physical injury as a result of the August 7, 2008 fall. Appellant stated that on August 7, 2008 she was sitting at her desk performing daily routine duties when she received a very upsetting e-mail regarding being turned down for a transfer promotion. After contacting an EEO specialist, she began experiencing chest and back pain and told coworkers that she thought she was having a heart attack. Appellant remembered little after that. She stated that when discharged she was upset and in pain. Appellant noted a prior employment injury for cervical and lumbosacral strain in 1998 and that she hurt her neck at work in 2005. She was treated by Dr. Frank after that time and since the 2005 injury, she had hip and low back problems. Appellant was off work for about 12 weeks following the August 2008 employment injury.

By decision dated November 3, 2009, an Office hearing representative found that appellant's fall on August 7, 2008 was caused by a nonoccupational, preexisting physical condition of syncope resulting from an anxiety reaction of chest pain and was idiopathic. She further found that the medical evidence did not provide a firm medical diagnosis related to the fall or that appellant struck a surface other than the floor.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[3]

Office regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.[4] To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in

[2] 5 U.S.C. §§ 8101-8193.

[3] *Gary J. Watling*, 52 ECAB 278 (2001).

[4] 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[5]

It is a well-settled principle of workers' compensation law 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. Such an injury does not arise out of a risk connected with the employment and is, therefore, not compensable. 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. 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.[6] 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.[7] 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.[8]

ANALYSIS

The Board finds that appellant's fall on August 7, 2008 occurred in the performance of duty. An injury resulting from an idiopathic fall is not compensable but if the cause of a particular fall cannot be ascertained, the fall is considered an unexplained fall. While it is clear from the record that appellant was anxious and had chest pain at the time she slid from her chair to the floor on August 7, 2008, the medical evidence does not establish that the fall was idiopathic, *i.e.*, due to a personal nonoccupational pathology. The hospital reports that day do not provide clear support that the fall was idiopathic. Dr. Tesar merely advised that appellant was admitted for acute chest pain. A cardiac stress test and CT scan of the head were negative. While there is evidence of record to suggest that appellant has several preexisting medical conditions, it does not establish that these caused her fall at work. Dr. Singh noted work-related stress but did not discuss the fall. Dr. Subbiah advised that appellant's symptoms did not represent a neurologic syndrome but were most likely due to stress. Dr. Condron reported diagnoses of atypical chest pain, syncopal event, hypertension, asthma, chronic pain and anxiety and noted that, from a clinical standpoint, appellant had an uneventful hospital stay. Based on

[5] *Gary J. Watling, supra* note 3.

[6] *M.M.*, 60 ECAB ___ (Docket No. 08-1510, issued November 25, 2008).

[7] *N.P.*, 60 ECAB ___ (Docket No. 08-1202, issued May 8, 2009).

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

the contemporaneous medical evidence, the Board finds there is no conclusive evidence as to the cause of the fall. Therefore it is an unexplained fall that occurred in the performance of duty.[9]

The Board finds that the medical evidence does not establish that appellant sustained an injury or medical condition as a result of the fall. As noted, the discharge diagnoses were atypical chest pain, syncopal event, hypertension, asthma, chronic pain and anxiety and Dr. Condron noted that appellant had an uneventful hospital stay. Appellant testified at the hearing that she did not claim any emotional condition rather that she sustained a physical injury on August 7, 2008. Dr. Frank provided the diagnoses of cervicalgia, low back pain, somatic dysfunction and muscle spasm. He checked an Office form "yes," generally indicating that appellant's condition was employment related. Dr. Frank also described the events of the fall in general terms without providing further explanation. It is well established that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale it is of diminished probative value.[10] Dr. Frank also noted a history of Epstein-Barr virus and chronic fatigue syndrome diagnosed seven years prior and that appellant was first injured at work on December 1, 1998 when she picked up heavy cases and had chronic pain since that time. He did not provide a firm medical diagnosis related to the August 7, 2008 fall or adequately explain how the fall contributed to any condition for which he treated appellant.

The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[11] The factors that comprise the evaluation of medical evidence include the opportunity for and the thoroughness of physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion. The opinion of a physician must be of reasonable medical certainty and must be supported by medical rationale explaining causal relationship.[12] The evidence of record is not sufficient to establish that appellant sustained injury causally related to the August 7, 2008 fall.[13]

The Board finds that the issue of reimbursement of appellant's medical expenses is not in posture for decision. The Board has noted that the Office procedures provide that when an employee sustains a job-related injury that may require medical treatment, the designated employing establishment official shall promptly authorize such treatment by giving the employee a properly executed (Form CA-16) with four hours.[14] Cases of doubtful nature so far as compensability is concerned, may also be referred using a Form CA-16 for medical services and, in cases involving unusual circumstances, the Office may, in the exercise of its discretion,

[9] *Id*.

[10] *Sedi L. Graham*, 57 ECAB 494 (2006).

[11] *C.B.*, 60 ECAB ___ (Docket No. 08-1583, issued December 9, 2008).

[12] *K.W.*, 59 ECAB 271 (2007).

[13] *Gary J. Watling*, *supra* note 3.

[14] *Val D. Wynn*, 40 ECAB 666 (1989).

authorize treatment or approve payment for medical expenses incurred, other than by a Form CA-16.[15]

The record contains witness statements from coworkers pertaining to the August 7, 2008 fall and appellant's belief of having a heart attack. A 911 call was placed and she was transported to the hospital where she was admitted. No Form CA-16 is of record. Although the Office adjudicated and denied appellant's claim of injury, it did not adjudicate the issue of whether she should be reimbursed for medical expenses incurred. The case will be remanded for further development of this issue.[16]

CONCLUSION

The Board finds that appellant failed to establish that she sustained an injury causally related to the August 7, 2008 fall at work and that the case is not in posture as to whether her medical expenses should be reimbursed.

ORDER

IT IS HEREBY ORDERED THAT the November 3, 2009 decision of the Office of Workers' Compensation Programs is affirmed, as modified, in part and set aside in part. The case remanded for further action on the issue of reimbursement of medical expenses.

Issued: January 14, 2011
Washington, DC

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

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

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

[15] *Id.*; 20 C.F.R. § 10.304.

[16] *E.K.*, 61 ECAB __ Docket No. 09-1827 (issued April 21, 2010).