

employing establishment acted abusively in an administrative action by refusing to allow her to seek medical treatment for her breathing problems and duress.

FACTUAL HISTORY

On May 12, 2010 appellant, then a 51-year-old special assistant, filed a traumatic injury alleging on March 8, 2010 she required medical attention and fainted in an elevator striking her head. She lost her vision and was taken by ambulance to the hospital. Appellant stated that since May 2009 she had been subjected to unhealthy work conditions. She filed a notice of occupational disease on April 16, 2010.

In a letter dated November 16, 2011, OWCP requested additional factual and medical evidence in support of appellant's claim and allowed 30 days for a response. Counsel responded on December 15, 2011 and stated that appellant lost consciousness due to an ongoing hostile work environment and harassment. She stated that on March 8, 2010 appellant was not feeling well and was experiencing difficulty breathing due to her asthma. Appellant was also feeling anxious and stressed. Her supervisor, Paul Tsosie, would not approve her leave request. Appellant was on restricted leave procedures and was threatened with losing her job if she took unapproved leave. Eventually, she and the nurse contacted George Skibine, another supervisor, for permission to use leave and visit her physician. Mr. Skibine approved the leave request. Counsel stated, "As [appellant] and her husband were riding down in the elevator together, [she] became dizzy and lost consciousness. She fell, hitting her head on the ground, injuring her back, side and arm. When [appellant] woke up, she could not see. Her vision returned, but it was blurry (her vision continues to be blurry to this day)." Appellant received hospital diagnoses of anxiety, syncope vasovagal and back contusions.

By decision dated January 17, 2012, OWCP denied appellant's claim. It found that she failed to submit the necessary medical evidence containing a medical diagnosis in connection with her injury.

Counsel requested an oral hearing before an OWCP hearing representative on February 10, 2012. She alleged that the traumatic injury claim was for a physical injury separate and distinct from the occupational disease claim accepted by OWCP for acute reaction to stress.² Counsel stated that appellant was ill, was prevented from using leave to seek medical treatment and that this action resulted in a syncope vasovagal episode. She stated that appellant injured herself and incurred costs and medical expenses from the workplace injury.

Appellant submitted notes dated September 21, 2010 and February 9, 2011 from Dr. Peter A. Moskovitz, a Board-certified orthopedic surgeon, who noted her history of neck, arm, low back, hip and foot pain beginning on December 13, 2007. Dr. Moskovitz described two tripping incidents at work in 2007 and July 2010. He diagnosed spondylosis, degenerative disc disease, cervical sprain and chronic back pain.

² The record includes a June 8, 2011 decision from OWCP accepting appellant's occupational disease claim for acute reaction to stress under OWCP File No. xxxxxx046.

Dr. Mary Ellen Gallagher, a Board-certified internist, examined appellant on July 21, 2010 and stated that appellant was experiencing acute asthma exacerbation and neck pain. She noted that 16 dusty old boxes had recently been placed in appellant's office. Dr. Gallagher found that appellant was in moderate respiratory distress, had pain and was anxious and upset. She advised appellant not to return to work until her symptoms had resolved and her work environment was free of old debris.

Appellant submitted her hospital discharge instructions dated March 8, 2010 noting that she had temporary loss of consciousness due to a common vagal reaction which could occur during sudden fear, severe pain, emotional stress, overexertion or suddenly standing up after sitting or lying for a long time. These instructions also stated that appellant had a contusion of the back.

Appellant testified at the oral hearing on June 26, 2012. She stated that when she fainted she hit her head on the steel railing around the elevator. Appellant resubmitted documents in support of her claim at the oral hearing. She also submitted an e-mail dated December 20, 2010.

By decision dated September 10, 2012, an OWCP hearing representative noted that appellant filed both an occupational disease claim and a traumatic injury claim for an incident that occurred on March 8, 2010. The hearing representative found that appellant's fainting spell on March 8, 2010 was not in the performance of duty because the alleged cause for this incident, the refusal of appellant's supervisor to allow her to use leave for treatment of her asthma, was an administrative action. The hearing representative found that appellant had not established a compensable factor of employment and that her emotional condition on March 8, 2010 was not a compensable traumatic injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of FECA and that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

OWCP defines 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. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected."⁶ To determine

³ 5 U.S.C. §§ 8101-1893.

⁴ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ 20 C.F.R. § 10.5(ee).

whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁷ Second, the employee must submit sufficient evidence, generally only in the form a medical evidence, to establish that the employment incident caused a personal injury.⁸

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 FECA.⁹ Such an injury does not arise out of a risk connected with the employment and is, therefore, not compensable. 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.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 and caused the fall.¹¹

ANALYSIS

Appellant filed a claim alleging that on March 8, 2010 she fainted in an elevator at the employing establishment striking her head while leaving the building for medical attention. However, she failed to provide any medical reports establishing that she sustained an employment injury. OWCP advised appellant on November 16, 2011 to submit medical evidence in support of her claim. Following its January 17, 2012 decision denying her claim, she submitted medical evidence with her request for an oral hearing. Appellant submitted Dr. Moskowitz’ notes dated September 21, 2010 and February 9, 2011. These notes addressed her back condition as the result of tripping incidents at work in 2007 and July 2010. Dr. Moskowitz did not mention appellant’s fainting on March 8, 2010 or any condition resulting from this injury. His medical reports are, therefore, not sufficient to establish that she sustained an injury on March 8, 2010 as a result of her fainting.

⁷ *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *J.Z.*, 58 ECAB 529 (2007).

⁹ *See Carol A. Lyles*, 57 ECAB 265 (2005).

¹⁰ *Dora J. Ward*, 43 ECAB 767, 769 (1992); *Fay Leiter*, 35 ECAB 176, 182 (1983).

¹¹ *John R. Black*, 49 ECAB 624 (1998); *Judy Bryant*, 40 ECAB 207 (1988); *Martha G. List*, 26 ECAB 200 (1974).

Appellant also submitted a note dated July 21, 2010 from Dr. Gallagher diagnosing acute asthma exacerbation and neck pain. Dr. Gallagher attributed appellant's condition to old boxes that had recently been placed in appellant's office. She did not mention the March 8, 2010 fainting or any physical or emotional condition resulting from this employment incident. This report is, therefore, not sufficient to establish that appellant sustained any injury as a result of her March 8, 2010 employment incident.

Appellant submitted her hospital discharge instructions dated March 8, 2010, which noted her temporary loss of consciousness and stated that she had a contusion of the back.¹² These discharge instructions were not signed by a physician and are not considered medical evidence under FECA.¹³

As appellant has failed to submit any medical evidence diagnosing a physical condition as a result of her fall on March 8, 2010, the Board finds that she has failed to establish a claim for compensation.¹⁴

The Board finds that the issue of reimbursement of appellant's medical expenses is not in posture for decision. The Board has noted that OWCP's 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) within four hours.¹⁵ 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, OWCP may, in the exercise of its discretion, authorize treatment or approve payment for medical expenses incurred, other than by a Form CA-16.¹⁶

Appellant was transported to the hospital and discharged as the result of her March 8, 2010 fall. No Form CA-16 is of record. Although OWCP adjudicated and denied her 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.¹⁷

The Board finds that, as appellant did not submit sufficient medical evidence to establish that any condition resulted from her March 8, 2010 employment incident, it is not necessary to address counsel's arguments on appeal.

¹² While a back contusion is a condition which could be identified by visual inspection by a lay person and the injury was witnessed, there is a dispute regarding fact of injury as OWCP has not developed the cause of appellant's fall. Therefore, appellant's claim does not fall within an exception to the requirement for medical evidence. See Federal (FECA) Procedure Manual Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(c) (July 2000).

¹³ *Merton J. Sills*, 39 ECAB 572 (1988).

¹⁴ *T.M.*, Docket No. 13-577 (issued June 13, 2013).

¹⁵ *S.B.*, Docket No. 10-435 (issued January 14, 2011); *Val D. Wynn*, 40 ECAB 666 (1989).

¹⁶ *Id.*; 20 C.F.R. §§ 10.300-304.

¹⁷ *S.B.*, *supra* note 15; *E.K.*, Docket No. 09-1827 (issued April 21, 2010).

CONCLUSION

The Board finds that appellant did not establish that she sustained a traumatic injury in the performance of duty on March 8, 2010

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 10, 2012 is affirmed as modified.

Issued: August 27, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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