

**United States Department of Labor  
Employees' Compensation Appeals Board**

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C.Y., Appellant )

and )

**DEPARTMENT OF THE NAVY, NAVAL  
SUPPLY SYSTEMS COMMAND,  
Mechanicsburg, PA, Employer** )

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**Docket No. 12-1530  
Issued: March 29, 2013**

*Appearances:*

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 9, 2012 appellant, through his attorney, filed a timely appeal from the June 8, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 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 his burden of proof to establish that he sustained an injury in the performance of duty on June 22, 2010.

**FACTUAL HISTORY**

On July 12, 2010 appellant, then a 56-year-old general supply specialist, filed a traumatic injury claim, alleging that he injured his lumbar spine at L4-5 and S1 due to a fall at work on

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

June 22, 2010. Regarding the cause of the injury, he stated, "I was getting out of my chair. I took a step forward to get out of my cubicle and on the second step my knee gave out and I fell forward into the cabinet." Appellant stopped work on July 12, 2010.

In a June 22, 2010 note, a person with an illegible signature, set forth that appellant had low back pain status post fall. X-rays of the back did not reveal any acute bony abnormality. It was noted that appellant had a history of cervical and lumbar spine surgeries over the past 17 years, spinal cord stimulator implant and constant chronic back pain.

The findings of June 22, 2010 cervical and lumbar spine x-rays showed stable postoperative changes of posterior spinal fusion, an anterior spinal fusion of the cervical spine without acute bony abnormality or change in the visualized hardware and stable postoperative changes of lumbar fusion without evidence of hardware complication, fracture or misalignment.

In a June 24, 2010 note, a person with an illegible signature, listed that appellant continued with pain and bilateral lower extremity weakness and numbness. With respect to pain, appellant was "unable to distinguish if new or not." The note contained a diagnosis of low back pain, history of recurrent falls and history of multiple back surgeries.

The findings of a June 28, 2010 computed tomography scan of appellant's lumbar spine showed no evidence of obvious acute impingement upon the thecal sac and extensive postsurgical changes in the lumbar spine as well as marked degenerative disc disease. It was also noted that appellant had extensive previous back surgery with screws positioned at levels L1-3.

In a July 22, 2010 letter, OWCP requested that appellant submit additional factual and medical evidence in support of his claim.

Appellant submitted an undated statement, which further described his fall on June 22, 2010. As he stood up out of his chair to go to the printer, he changed his mind and decided to go to the restroom instead. Appellant took a step outside his cubicle using his cane and, when he went to take another step, he started to fall forward into a metal storage cabinet. He fell forward about five feet before striking the cabinet. Appellant turned sideways before hitting his head on the cabinet. He struck his right hip, twisted his lower back and fell face down on the floor. Appellant had experienced lower back problems since 1993 and a prior fall at work on December 10, 2009 for which he did not receive any treatment.

Appellant submitted an employing establishment incident report, which stated that on June 22, 2010 he got up out of his chair, took a step forward to leave his cubicle and on the second step, his knee gave out and he fell forward into the cabinet. He indicated that his right ear and hip slammed into the cabinet, causing bruises on his right head and hip and that he fell down on his right side.

In a June 23, 2010 report, Dr. Eleanor Dunham, an attending Board-certified emergency medicine physician, stated that appellant reported that on June 22, 2010 he was trying to get out of his chair when it fell back. Appellant fell forward and hit his head on a metal locker and twisted his back in the process. He stated that he had back pain, but no head pain. Dr. Dunham diagnosed intractable back pain.

In an undated report, Dr. Erez Dachinger, an attending Board-certified internist, stated that on June 22, 2010 appellant reported that he was trying to get out of his chair when it fell backward. Appellant fell forward, hit his head on a metal locker and twisted his back. Dr. Dachinger noted that appellant reported that he had back pain, but no head pain. He diagnosed intractable back pain, history of more than 40 cervical and lumbar spine surgeries over the past 17 years and chronic back pain.

A June 23, 2010 consult report countersigned by an attending physician noted that appellant stated that he sustained “the second such fall at work since December of 2009” and that “legs just do not want to cooperate.” Appellant had been using a cane since December 2009 and experienced numbness and tingling in his legs for years. In a June 23, 2010 discharge summary report, Dr. Andrea Prats, an attending osteopath, diagnosed intractable low back pain secondary to a fall at work on June 22, 2010, history of multiple lumbar fusions and spinal cord stimulator, chronic pain and obstructive sleep apnea.

In a September 2, 2010 decision, OWCP denied appellant’s claim for a June 22, 2010 work injury finding that the medical evidence was insufficient to establish that he sustained an injury. It indicated that the medical evidence did not provide a firm diagnosis connected with the June 22, 2010 work incident.

Appellant requested a hearing before an OWCP hearing representative regarding his claimed June 22, 2010 work injury. At the January 18, 2011 hearing, he testified that he fell to the floor on June 22, 2010 because his legs went numb. Appellant indicated that his spine gave out, that he could not move and that he fell over. He collapsed because his fourth vertebra “shoved down” into his fifth vertebra. Appellant testified regarding conditions prior to the June 22, 2010 work incident and his counsel confirmed that, prior to June 22, 2010, there was no work-related low back condition for which a claim had been filed or accepted.

In an April 12, 2011 decision, the hearing representative affirmed OWCP’s September 2, 2010 decision denying appellant’s claim for a June 22, 2010 work injury. She found that there was no medical evidence that gave a history of the June 22, 2010 work incident and provided an acceptable diagnosis of a medical condition caused by that incident. The hearing representative suggested that appellant might have sustained an idiopathic fall, *i.e.*, a fall caused by a preexisting pathology not accepted as work related.

In February 29, 2011 report, Dr. Kevin L. Trangle, an attending Board-certified internist, provided an extensive medical history, including a description of appellant’s surgical history and the results of diagnostic testing. He recounted appellant’s description on June 22, 2010 fall and detailed the findings on physical examination. Dr. Trangle noted that appellant’s substantial preexisting problems including peripheral neuropathy and degenerative lumbar spine disease that caused his fall on June 22, 2010. After the fall, appellant was admitted to the hospital because of problems with ambulation, mobility and pain. He had a lumbar myelogram performed on June 28, 2010 which probably was the most definitive diagnostic study done. It showed considerable narrowing, vacuum disc phenomenon, hypertrophic bone growth and stenosis. Dr. Trangle also noted an acute fractured bridging osteophyte observed, which constituted further evidence of an acute traumatic event. On July 19, 2010 appellant underwent a spinal fusion at L3-S1 with screws and interbody fusion L4-5 and L5-S1 after removal of the L1

through L3 spinal hardware. Dr. Trangle posited that the need for appellant's surgery was related to the June 22, 2010 fall, which substantially aggravated his underlying problem. He concluded that appellant's claim should be allowed for aggravation of marked degenerative disc disease and neuroforaminal impingement at multiple levels including the L4-5 level due to the June 22, 2010 fall.

Appellant also submitted diagnostic studies that did not address the cause of his June 22, 2010 fall.

In a June 8, 2012 decision, OWCP denied appellant's claim that he sustained an injury in the performance of duty on June 22, 2010. It modified its prior decision to reflect that he sustained an idiopathic fall and hit his body on a file cabinet before he fell to the supporting surface. OWCP noted that appellant's fall on June 22, 2010 was caused by a nonwork-related pathology, including extensive preexisting lumbar disc disease with multiple surgeries. However, appellant did not submit a rationalized medical report describing a specific injury caused by his body hitting a file cabinet. OWCP indicated that Dr. Trangle did not provide adequate support for his opinion that appellant sustained aggravation of marked degenerative disc disease and neuroforaminal impingement at multiple levels, including L4-5.

#### **LEGAL PRECEDENT**

An employee seeking benefits under FECA 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 FECA, 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>2</sup> 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. The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>3</sup>

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 the coverage of FECA. Such an injury does not arise out of a risk connected with the employment and, therefore, it is not compensable. However, an injury may be found if there is intervention or contribution by any hazard or special condition of employment before striking the

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<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *Julie B. Hawkins*, 38 ECAB 393, 396 (1987).

supporting surface.<sup>4</sup> The question of causal relationship in such cases is a medical one and must be resolved by medical evidence.<sup>5</sup>

It is well established that, proceedings under FECA are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>6</sup>

### ANALYSIS

On July 12, 2010 appellant alleged that he injured his lumbar spine at L4-5 and S1 due to a fall at work on June 22, 2010. Regarding the cause of the injury, he stated, “I was getting out of my chair. I took a step forward to get out of my cubicle and, on the second step, my knee gave out and I fell forward into the cabinet.” Appellant fell to the floor after his body struck the file cabinet. OWCP determined that the June 22, 2010 fall was caused by a nonwork-related pathology, including extensive preexisting lumbar disc disease with multiple surgeries. It further found that appellant did not submit a rationalized medical report describing a specific injury caused by his body hitting a file cabinet during his fall and it denied his claim on this basis.

The Board notes that OWCP properly determined that appellant’s fall on June 22, 2010 was due to a personal, nonoccupational pathology. The preponderance of the medical evidence of record, including the February 29, 2001 report of Dr. Trangle, an attending Board-certified internist, shows that appellant’s June 22, 2010 fall was caused by nonwork-related conditions including extensive preexisting lumbar disc disease with multiple surgeries. But when appellant fell on June 22, 2010, he experienced intervention or contribution by a hazard or special condition of employment in that he struck a file cabinet before he fell to the supporting surface.<sup>7</sup>

As noted OWCP denied appellant’s claim after finding that he did not submit a rationalized medical report describing a specific injury caused by his body hitting a file cabinet during his June 22, 2010 fall. However, the record contains probative evidence suggesting that he sustained such an injury.

In February 29, 2011 report, Dr. Trangle provided an opinion that, as a result of appellant’s June 22, 2010 fall when his body struck the file cabinet, he sustained an aggravation of his degenerative disc disease and neuroforaminal impingement at multiple levels including the L4-5 level. He indicated that a lumbar myelogram performed on June 28, 2010 showed an acute fractured bridging osteophyte, a finding which constituted evidence of an acute traumatic event occurring due to the June 22, 2010 fall.

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<sup>4</sup> *Robert J. Choate*, 39 ECAB 103, 106 (1987).

<sup>5</sup> *Amrit P. Kaur*, 40 ECAB 848, 853 (1989). The term “injury” as defined by FECA, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions. *John D. Williams*, 37 ECAB 238, 240 (1985).

<sup>6</sup> *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

<sup>7</sup> See *supra* note 4.

The Board notes that, while the February 29, 2011 report of Dr. Trangle is not completely rationalized, it indicates that appellant sustained an employment-related injury on June 22, 2010 when he fell and his body struck a file cabinet and this opinion is not contradicted by any substantial medical or factual evidence of record. Therefore, while this report is not sufficient to meet appellant's burden of proof to establish his claim for a June 22, 2010 work injury, it raises an uncontroverted inference between his claimed condition and the employing establishment incident of June 22, 2010 and is sufficient to require OWCP to further develop the medical evidence and the case record.<sup>8</sup> After such development as it deems necessary, OWCP shall issue an appropriate decision on appellant's claim for a June 22, 2010 work injury.

### **CONCLUSION**

The Board finds that the case is not in posture for decision regarding whether appellant sustained an injury in the performance of duty on June 22, 2010. The case is remanded to OWCP for further development.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 8, 2012 decision of the Office of Workers' Compensation Programs is set aside and case remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: March 29, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>8</sup> See *Robert A. Redmond*, 40 ECAB 796, 801 (1989).