



establishment's Bistro. On August 15, 2012 OWCP informed him that the information submitted was insufficient to establish his claim. It requested additional information and evidence, including details surrounding the incident of August 2, 2012, witness statements and a narrative report from his physician with a diagnosis and an opinion as to the causal relationship between the diagnosed condition and the alleged incident.

Appellant submitted a statement from Theresa Garcia, a coworker, dated August 3, 2012. Ms. Garcia saw him standing at the grill on the date in question and he "was doing great." She turned around and appellant was on the floor. Ms. Garcia told him that his knee gave out.

In an undated statement, Margaret Lopez, a coworker, reported that while passing the Bistro on the day in question, she noticed Ms. Garcia placing a pan on the Bistro and then turned away. Appellant was standing in front of the Bistro fryer, fell to the floor. Ms. Garcia opined that the fall was intentional and stated that appellant did not fall back on his head.

In an August 2, 2012 statement, Dahlea Romero, a coworker, advised that on the date in question, she saw appellant standing in front of the fryer while she was walking through the cafeteria with her cart. Appellant reportedly turned to the serving line, then dropped to the floor while saying "ouch." Ms. Romero did not see him slip in anyway.

Appellant submitted an August 10, 2012 duty status report from a Dr. Lasco, a treating physician, who stated that appellant's knee buckled while he was working at the grill on August 2, 2012. Dr. Lasco diagnosed a left knee cartilage injury and responded "yes" to an inquiry as to whether the diagnosed condition was due to appellant's injury.

By decision dated September 24, 2012, OWCP denied appellant's claim for compensation. It found that the evidence did not establish that he sustained an injury in the performance of duty. OWCP found that appellant had failed to establish the factual component of his claim.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden to establish the essential elements of his 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, that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>2</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 coverage of FECA.<sup>3</sup> Such an injury does not arise out of a risk

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<sup>2</sup> *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *See Carol A. Lyles*, 57 ECAB 265 (2005).

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.<sup>4</sup> 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.<sup>5</sup>

### ANALYSIS

The Board finds that appellant sustained an unexplained fall in the performance of duty.

An injury resulting from an idiopathic condition is not compensable.<sup>6</sup> 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 the fall and caused the fall.<sup>7</sup>

The factual evidence of record is insufficient to establish that appellant's fall was idiopathic. Witnesses confirmed that appellant did, indeed, fall as alleged at the time, place and in the manner alleged. There is no evidence establishing that he tripped or slipped. The Board is unable to make a determination as to the cause of the fall based on the scant factual evidence at hand.

The medical evidence does not establish that appellant's fall was due to a personal, nonoccupational pathology. Dr. Lasko's report states that appellant's leg "gave out" as claimed. It does not, however, provide information regarding the cause of the fall.<sup>8</sup> The Board finds that the August 2, 2012 incident remains an unexplained fall while appellant was engaged in activities related to his employment duties and is therefore a compensable incident.

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<sup>4</sup> *Dora J. Ward*, 43 ECAB 767, 769 (1992); *Fay Leiter*, 35 ECAB 176, 182 (1983).

<sup>5</sup> *John R. Black*, 49 ECAB 624 (1998); *Judy Bryant*, 40 ECAB 207 (1988); *Martha G. List*, 26 ECAB 200 (1974).

<sup>6</sup> *Supra* note 3.

<sup>7</sup> *Steven S. Saleh*, *supra* note 2; *Judy Bryant*, *supra* note 5; *Martha G. List*, *supra* note 5.

<sup>8</sup> The Board notes that the first name in Dr. Lasco's signature is illegible. It is therefore not possible to determine whether he is a qualified physician under FECA. A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as "physician" as defined in 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law." See *Merton J. Sills*, 39 ECAB 572, 575 (1988).

As OWCP denied appellant's claim on the grounds that he did not establish the factual element of the claim. It did not develop or evaluate the medical evidence of record. The case will be remanded to OWCP for consideration of the medical evidence. After such further development as necessary, OWCP shall issue an appropriate decision.

**CONCLUSION**

The Board finds that appellant's August 2, 2012 fall at work was sustained in the performance of duty within the meaning of FECA.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 24, 2012 decision of the Office of Workers' Compensation Programs was set aside and the case is remanded to OWCP for a determination of the nature and extent of any injury causally related to the August 2, 2012 fall.

Issued: March 15, 2013  
Washington, DC

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

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

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