United States Department of Labor
Employees' Compensation Appeals Board

C.L., Appellant	)	
and	)	**Docket No. 13-917**
	)	**Issued: September 4, 2013**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, New Orleans, LA, Employer	)	

Appearances:
Bennie Hooker, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 7, 2013 appellant, through her representative, filed a timely appeal from a September 17, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 a traumatic injury in the performance of duty on March 5, 2012.

FACTUAL HISTORY

On March 5, 2012 appellant, then a 61-year-old Veterans Affairs (VA) laborer, filed a traumatic injury claim (Form CA-1) alleging that on that same date he sustained a split upper lip,

[1] 5 U.S.C. § 8101 *et seq.*

chipped tooth and knocked out two teeth when he was walking down the hall on 10G and "slip down," causing him to hit his face on the floor. He notified his supervisor and received medical attention on March 5, 2012, the date of injury. The employing establishment controverted the claim stating that there were different accounts about the circumstances surrounding the injury.

By letter dated March 13, 2012, OWCP informed appellant that the evidence of record was insufficient to support his claim. It requested additional factual and medical evidence and provided him 30 days to respond.

In a March 5, 2012 narrative statement, William St.Clair, appellant's supervisor, reported that at approximately 7:28 a.m. on March 5, 2012, heexited the elevator on the 10th floor and entered the hallway to find appellant on the floor bleeding by the mouth surrounded by nurses. The clinical staff was checking appellant's vitals and appellant stated that he had tripped. Mr. St.Clair noted that appellant had an impediment due to an old injury. After appellant was transported to urgent care, Mr. St.Clair checked in on him and asked him how he was. Appellant was crying and uncomfortable and responded, "I just tripped, the floor was too dry and you know I drag my foot, I just didn't pick it up enough." The following day he reported to Mr. St.Clair with a return to work note and when asked how he felt responded, "I feel okay, I just slipped."Mr. St.Clair informed appellant that he had told him that he had tripped several times and appellant responded, "Well, I don't remember that but I did trip and I slipped, there was water on the floor from condensation."He stated that he was there minutes after appellant fell and the only fluid on the floor was his blood.

In a March 6, 2012 witness statement, Jeffrey Hudson, of VA facilities management, stated that he reported for duty that date at 6:05 a.m. and was doing his walk through of 10G. At no time did he notice any spills, excessive wax or any moisture on the floors. Mr. Hudson further noted that he did not receive any complaints or notifications concerning slippery floors.

In a March 5, 2012 witness statement, Tonic Smith, a VA housekeeping aid, reported that he reported to work on March 5, 2012 at 6:00 A.M. and began to tour his area of responsibility on 10G. During his tour, he noticed that the hallways were free of spills and trash.

In a March 5, 2012 urgent care report, Barbara A. Johnson, a registered nurse, reported that appellant fell and suffered facial and oral trauma. She noted that he ambulated with a limp and his right foot stuck on the tile flooring.

In a March 5, 2012 urgent care report, Dr. Vernon E. Chee, Board-certified in internal medicine, reported that appellant presented to urgent care after he fell. Appellant recalled walking in the hallway, then his left leg "gave out," causing him to fall forward and strike his face on the floor. Hethought he lost consciousness and stated that there was a witness to the fall who left soon after VA staff was summoned. Appellant was dizzy and stayed on the floor for about 10 minutes. He reported a history of muscle weakness and numbness in the left lower extremity which sometimes caused him to trip while walking. A computerized tomography scan of the brain showed no acute intracranial abnormalities and x-rays revealed no fractures. Dr. Chee diagnosed trauma to the face, mouth and teeth, noting that appellant had several loose teeth. After returning from radiology, appellant was missing tooth 8 and part of 7 and 10.He

reported that he sneezed and the tooth flew out. Dr. Chee noted that the other teeth were loose but remained in place and the bleeding had slowed. Appellant was referred to VA Dental Clinic.

In a March 5, 2012 report, Dr. Georgia K. McDonald, a doctor of dental surgery, reported that appellant presented to the dental clinic for an emergency visit after he fell on the job. Appellant was last seen three years ago by another dentist for a dental extraction for decay. Recently a tooth on the upper right had "fallen out on its own" and the extraction socket was still healing on the upper right in the position of tooth four. Dr. McDonald provided a medical history of osteoarthritis, particularly in the left leg. Appellant stated that he sometimes had difficulty walking when his leg got stiff.

Dr. McDonald noted on clinical examination fracture of tooth 9 with partial exfoliation, crack on root of 10 probable and probable fracture of right porcelain fused to metal bridge on the upper right. Examination and clinical evaluation of radiographs demonstrated chronic generalized advanced periodontitis with poor demonstrated homecare of the teeth in need of restorative repair. Mobility of the upper and lower anterior teeth could not be definitively determined to have been caused by the fall. Dr. McDonald noted that the mobility could be anatomic and pathologic in nature due to the 80 to 90 percent horizontal bone loss and attachment loss on those teeth.He reported fractured facial aspects and loose bridge from number eight to six.Dr. McDonald also noted residual root tip on nine which was probably a result of fracture from the fall. Appellant stated that he just "spit the tooth out"and couldnot find it. Radiographs show periapical infection on 14 and 8, which would have been there before today. Dr. McDonald also noted semilunar lip laceration approximately three-fourths of an inch. He recommended that tooth 6, 8, 9 and 10residual root tip be removed.

By decision dated April 20, 2012, OWCP denied appellant's claim finding that the evidence of record failed to establish that his diagnosed conditions were caused by the accepted March 5, 2012 employment incident.

By letter dated August 8, 2012, appellant requested reconsideration of OWCP decision.

In an August 21, 2012 narrative statement, appellant reported that he informed his supervisor Mr. St.Clair that he tripped three consecutive times during his periods of questioning and visitations. He stated that his impediment should not be an issue, as well as whether or not the floor was dry. Appellantstated that Mr. St.Clair misunderstood the terminology of the word "slipped."He stated that because he cannot walk or move in a smooth sliding motion, he was referring to moving quickly and as cautiously as possible so as not be late for work. Appellantstated that the floor was dry. He reported that temperature change was an ongoing issue on floor 10G and patients did not have access to that portion of the hospital with staff having only limited access. Appellant reiterated that as noted in the witness statement, the floor was dry. In response to Mr. Smith's March 6, 2012 statement, he reported that though the floor may have been free of spills, that did not mean that it was free of moisture. Appellantnoted that Mr. Howard[2] self-diagnosed his impediment and attributed it to his leg giving out.

[2] The Board notes that it is unclear who appellant is referring to as Mr. Howard has not been identified in the record.

By decision dated September 17, 2012, OWCP affirmed its April 20, 2012 decision, as modified, finding that the evidence of record failed to establish that the March 5, 2012 employment incident occurred at the time, place and in the manner alleged.

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 filed within the applicable time limitation; that an injury was sustained while 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.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[5] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

When an employee claims that he or she sustained an injury in the performance of duty he must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He or she must also establish that such event, incident or exposure caused an injury.[6] Once an employee establishes that he or she sustained an injury in the performance of duty, he or she has the burden of proof to establish that any subsequent medical condition or disability for work, for which he or she claims compensation is causally related to the accepted injury.[7]

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. In determining whether a case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on

[3] *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[4] *Michael E. Smith*, 50 ECAB 313 (1999).

[5] *Elaine Pendleton*,*supra* note 3 at 1143.

[6] *See generally John J. Carlone*, 41 ECAB 354 (1989); *see also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined). *See Victor J. Woodhams*, 41 ECAB 345 (1989) regarding a claimant's burden of proof in an occupational disease claim.

[7] *Supra* note 4.

the employee's statements. The employee has not met his burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[8]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[9] An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[10]

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.[11] 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.[12] 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.[13]

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such a causal relationship.[14] The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of

[8] *Betty J. Smith*, 54 ECAB 174 (2002).

[9] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[10] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[11] *See Carol A. Lyles*, 57 ECAB 265 (2005).

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

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

[14] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

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.[15]

ANALYSIS

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

Appellant must establish all of the elements of his claim in order to prevail. He must prove his employment, the time, place and manner of injury, a resulting personal injury and that his injury arose in the performance of duty. In its September 17, 2012 decision, OWCP found that appellant did not establish that the March 5, 2012 employment incident occurred as alleged. The Board finds, however, that the evidence of record is sufficient to establish that the March 5, 2012 employment incident occurred, as alleged.

On his March 5, 2012 Form CA-1, appellant stated, "I was walking down the hall on 10G and slip down and hit my face on the floor."He notified Mr. St.Clairand sought medical attention on that same date. In a March 5, 2012 narrative statement, Mr. St.Clair stated that at approximately 7:28 a.m. on March 5, 2012, he exited the elevator on the 10th floor and entered the hallway to find appellant on the floor bleeding from the mouth surrounded by nurses. At that time, appellant told Mr. St.Clairhe had tripped. Mr. St.Clair checked in on appellant after being taken to urgent care and reported that appellant informed him, "I just tripped, the floor was too dry and you know I drag my foot, I just didn't pick it up enough." The following day,he reported that appellant informed him that he slipped. When Mr. St.Clair told him that he was informed he tripped the day before, appellant responded, "Well, I don't remember that but I did trip and I had slipped, there was water on the floor from condensation."

In its September 17, 2012 decision, OWCP found that appellant did not establish that the March 5, 2012 employment incident occurred as alleged because there were various allegations made regarding the mechanism of injury, including that he slipped and hit his face on the floor, he was walking when his leg gave out and his right foot stuck on the tile flooring. The Board finds, however, that his statements have sufficiently established that the March 5, 2012 employment incident occurred as alleged. Whether appellant tripped or slipped or whether the floor was dry or wet. It has been established that he suffered a fall on the morning of March 5, 2012. Though there are reports that appellant's foot stuck on the tile and his leg gave out, this does not negate the fact that the incident resulted in a fall on the floor. The Board has held that a claimant's statement that an injury occurred at a given time, place and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[16]

The Board further notes that an injury resulting from an idiopathic condition is not compensable. 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

[15] *James Mack*, 43 ECAB 321 (1991).

[16] *Thelma Rogers*, 42 ECAB 866, 869-70 (1991).

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.[17]

The factual evidence of record is insufficient to establish that appellant's fall was idiopathic.[18] Witnesses confirmed that appellant did, indeed, fall as alleged at the time, place and in the manner alleged. Mr. St.Clair, stated that on March 5, 2012 he exited the elevator on the 10th floor and entered the hallway to find appellant on the floor bleeding by the mouth surrounded by nurses after he fell. As noted, an injury resulting from an idiopathic fall is not compensable.[19] OWCP has the burden of proof to submit 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. The fact that the cause of a particular fall cannot be determined does not establish that it was due to an idiopathic condition.

Themedical evidence in this case does not clearly establish that appellant's fall was idiopathic, *i.e*., due to a personal, nonoccupational pathology.[20] Dr. Chee's report noted that appellant's "leg gave out."He did not, however, provide information regarding the cause of the fall. While appellant reported a history of muscle weakness and numbness in the left lower extremity which sometimes caused him to trip while walking, the medical evidence does not establish that his fall was a result of this preexisting condition. The remaining medical evidence also fails to shed light on the cause of his fall or a preexisting idiopathic condition. Based on the contemporaneous medical evidence, the Board finds there is no conclusive evidence regarding the cause of the fall. Consequently it must be considered an unexplained fall that occurred in the performance of duty.[21]

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 March 5, 2012 fall at work was sustained in the performance of duty within the meaning of FECA.

[17] *P.W.*, Docket No. 13-170 (issued March 15, 2013).

[18] *Id.*

[19] *R.C.*, 59 ECAB 427 (2008).

[20] *H.B.*, Docket No. 12-840 (issued November 20, 2012).

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

ORDER

IT IS HEREBY ORDERED THAT the September 17, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: September 4, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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