United States Department of Labor
Employees' Compensation Appeals Board

T.S., Appellant	)	
	)	**Docket No. 13-1608**
and	)	**Issued: April 17, 2014**
U.S. POSTAL SERVICE, MAIN POST OFFICE, Los Angeles, CA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., 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 June 27, 2013 appellant, through his attorney, filed a timely appeal from a February 28, 2013 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 established a right leg injury in the performance of duty on June 11, 2012, as alleged.

On appeal, counsel contends that OWCP's February 28, 2013 decision is contrary to fact and law.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 21, 2012 appellant, then a 47-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on June 11, 2012 he fractured his right leg in four places when he hit his leg and fell in a restroom stall at work as he attempted to stand up after using the toilet. After discovering that he could not put any weight on his right leg to stand up, he used his cellphone to call Darryl Goodman, a coworker, for help. Appellant was transported by ambulance to a hospital where he stayed until June 15, 2012. He stopped work on the date of injury. Appellant was placed in a cast for 8 to 12 weeks.

On the claim form, Claudia Zimmerman, a supervisor of distribution operations, contended that appellant was not injured in the performance of duty. Appellant was sitting on the toilet when he tried to get his bearings and passed out. He was unconscious for 40 minutes due to his high blood sugar level before his fall which injured his leg. Paramedics responded to a 911 telephone call and advised that appellant's blood sugar was over 500. Appellant was hospitalized for five days in an intensive care unit to stabilize his blood sugar levels before his leg could be placed into a cast. In an e-mail dated June 18, 2012, Marc D. Starks, a supervisor of distribution operations, provided a history that on the date of injury appellant fell in a restroom and broke his leg after passing out as a result of not properly taking his medication. He did not believe the injury was work related. In another e-mail dated June 18, 2012, Sandra R. Smith, a health resource management manager, stated that according to appellant, he fell in a restroom on June 11, 2012.

By letter dated July 18, 2012, OWCP advised appellant that initially his injury appeared to be a minor one that resulted in minimal or no lost time from work. Because the employing establishment did not challenge the merits of the case, payment of a limited amount of medical expenses was administratively approved and the merits of the claim for medical treatment had not been formally considered. The claim was reopened for consideration because OWCP received an indication that appellant had not returned to work in a full-time capacity and the employing establishment had challenged the claim. OWCP informed him that the evidence submitted was insufficient to establish his claim. It requested that appellant submit factual and medical evidence. OWCP also requested that the employing establishment submit any medical evidence regarding treatment he received at its medical facility and factual evidence regarding his claim.

In a June 11, 2012 work status report, Dr. Sang-Hee Choi, a Board-certified internist, advised that appellant had right heart failure due to pulmonary hypertension, hematemesis, fracture of the tibia and heart failure with left ventricular ejection fraction (LVEF) that was less than or equal to 30 percent. He placed appellant off work through June 24, 2012. In a June 15, 2012 hospital discharge summary report, Dr. Choi noted that appellant had a history of diabetes mellitus, hypertension, dilated cardiomyopathy that was diagnosed in 2004 and pulmonary hypertension. He provided a history that on June 11, 2012 appellant was brought into the hospital by paramedics with a syncopal episode. Appellant was at work when he vomited a small amount of coffee ground material. He felt dizzy as he got up from the toilet. Appellant's legs gave way and he landed with all his weight on the right knee. He was admitted with syncope, hematemesis and right tibial fracture. Dr. Choi's principal diagnoses upon discharge were syncope, right-side heart failure due to severe pulmonary hypertension, gastrointestinal

bleeding due to gastritis and fracture of the tibia. He stated that the syncope was probably a combination of orthostatic hypotension and/or vasovagal reaction. Dr. Choi advised that at discharge, appellant's syncope had resolved. His secondary diagnoses, which were present on appellant's admission to the hospital, included essential hypertension, presence of biventricular acid, type 2 diabetes mellitus with diabetic gastroparesis with automatic neuropathy and heart failure with LVEF that was less than or equal to 30 percent. Dr. Choi decreased appellant's blood pressure medications due to his episode of hypotension.

In a July 12, 2012 work status report, Dr. D. Ron Anderson, a Board-certified orthopedic surgeon, advised that appellant had a traumatic fracture of the lower leg. He placed appellant on modified activity at work and home from June 26 through July 31, 2012. Dr. Anderson stated that if the employing establishment could not accommodate such activity, then appellant was temporarily and totally disabled from his regular work for the designated time. Appellant was placed in a cast and restricted from nonweight bearing with his right lower extremity.

An unsigned report dated July 17, 2012 contained the typed name of Zackry C. Ellis, a physician's assistant. The report stated that appellant had a nondisplaced right proximal third tibia fracture.

In a July 19, 2012 industrial work status report, Dr. Xing Yang, Board-certified in occupational medicine, advised that appellant had a fractured tibia. He was restricted to modified activity at work and home through August 9, 2012. Dr. Yang stated that if the employing establishment could not accommodate such activity then appellant was temporarily and totally disabled from his regular work for the designated time. He directed appellant to use a wheelchair. In a July 20, 2012 Kaiser Permanente form report, Dr. Yang obtained a history that on June 11, 2012 appellant fell at work. He reiterated his prior diagnosis of a fractured tibia. Dr. Yang responded "yes" that his findings and diagnosis were consistent with appellant's account of injury or onset of illness. In a July 20, 2012 narrative report, Dr. Yang stated that appellant reported that on June 11, 2012 he felt dizzy and collapsed to the ground in a restroom at work. His right leg hit the floor directly. Appellant denied loss of consciousness. He called his coworkers. Appellant arrived in a wheelchair at an emergency room. Dr. Yang noted that he had no complaints. Appellant had a history of type 2 diabetes mellitus. He reported to Dr. Yang that his diabetes mellitus medication was adjusted and reviewed by his primary care physician after his injury. Appellant did not experience any new dizziness episodes after his injury. Dr. Yang listed findings on physical examination. He concluded that based on the described history, mechanism of injury, review of medical records and physical examination findings, appellant's tibia fracture resulted from the June 11, 2012 industrial incident, which arose out of his employment. Dr. Yang reiterated his prior findings regarding appellant's work capacity and disability status.

In an August 24, 2012 decision, OWCP denied appellant's claim, finding that the factual and medical evidence was insufficient to establish that he sustained a right leg injury on June 11, 2012 while in the performance of duty. It explained that appellant sustained an injury from an idiopathic fall because his dizziness was due to his preexisting diagnosed medical condition and he "did not strike an intervening object on the way down." OWCP further explained that he did not submit any medical evidence to establish that he had a diagnosed medical condition causally related to the work injury or event.

By letter dated September 5, 2012, appellant, through his attorney, requested a telephone hearing with an OWCP hearing representative.

In an August 21, 2012 work status report, Dr. Kent R. Jackson, a Board-certified orthopedic surgeon, advised that appellant had a traumatic fracture of the lower leg. He placed appellant on modified activity at work and home through September 11, 2012. Dr. Jackson stated that if such activity could not be accommodated by the employing establishment, then appellant was temporarily totally disabled from his regular work for the designated time. He advised that appellant could return to work at full capacity on September 12, 2012.

In a February 28, 2013 decision, an OWCP hearing representative affirmed the August 24, 2012 decision. She found that the medical evidence established that appellant's fall was caused by his preexisting diagnosed medical conditions and not due to an unknown reason.

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.[2] 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.[3]

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.[4] 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.[5] 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

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

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

[4] *Elaine Pendleton*, *supra* note 2 at 1143.

[5] *John J. Carlone*, 41 ECAB 354 (1989).

establish that any subsequent medical condition or disability for work, for which he or she claims compensation, is causally related to the accepted injury.[6]

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 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.[7]

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.[8] 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.[9]

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.[10] 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.[11] 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.[12]

---

[6] *See supra* note 2.

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

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

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

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

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

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

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.[13] 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 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.[14]

ANALYSIS

The Board finds that appellant's fall on June 11, 2012 occurred in the performance of duty. The Board 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 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.[15]

The factual evidence of record is insufficient to establish that appellant's fall was idiopathic, *i.e.*, due to a personal nonoccupational pathology.[16] On his June 21, 2012 Form CA-1, appellant stated that he fell in a restroom stall at work as he attempted to stand up after using the toilet. The employing establishment contended that his fall was not work related. On the claim form, Mr. Zimmerman attributed appellant's fall to his high blood sugar level as he was informed by paramedics who responded to the incident that his blood sugar level was over 500. In a June 18, 2012 e-mail, Mr. Starks contended that appellant's fall was due to his failure to properly take his medication. The record, however, does not contain any evidence to support either Mr. Zimmerman's or Mr. Starks' contention. Further, the Board notes that no one actually witnessed the June 11, 2012 incident. 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.[17]

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.

---

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

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

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

[16] *Id.*

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

The medical evidence in this case does not clearly establish that appellant's fall was idiopathic. Dr. Choi's June 15, 2012 discharge summary report recorded that appellant told him that on June 11, 2012 he began vomiting a small amount of coffee ground material and then felt dizzy as he got up from a toilet. Appellant further related that his legs gave way and he landed on his right knee. Dr. Choi noted his history of diabetes mellitus, hypertension, dilated cardiomyopathy and pulmonary hypertension. He stated that upon admission to the hospital, appellant had essential hypertension, biventricular acid, type 2 diabetes mellitus with diabetic gastroparesis with automatic neuropathy and heart failure with LVEF that was less than or equal to 30 percent. Dr. Choi opined that he had syncope which was "probably" a combination of orthostatic hypotension and/or vasovagal reaction. The speculative nature of Dr. Choi's opinion lacks the reasonable medical certainty required to establish the cause of appellant's fall.[18] Dr. Yang's July 20, 2012 Kaiser Permanente form and narrative reports noted appellant's history of type 2 diabetes mellitus. He stated that appellant reported that on June 11, 2012 he felt dizzy and collapsed to the ground in a restroom at work. While Dr. Yang listed appellant's preexisting condition and history of injury related to him by appellant, he did not provide an independent medical opinion addressing the cause of the fall at work. The remaining medical reports from Drs. Choi, Yang and Anderson and unsigned report that contained Mr. Ellis' printed name also fail to shed light on the cause of appellant's fall or a preexisting idiopathic condition. Based on the contemporaneous medical evidence, the Board finds that 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.[19]

The Board, however, finds that the medical evidence does not establish that appellant sustained an injury or medical condition as a result of the June 11, 2012 fall. Dr. Choi's June 11, 2012 work status and June 15, 2012 hospital summary discharge reports found that appellant had right heart failure due to severe pulmonary hypertension, hematemesis, fracture of the tibia, heart failure with LVEF that was less than or equal to 30 percent and gastrointestinal bleeding due to gastritis. He did not provide a medical opinion addressing whether the diagnosed conditions were causally related to the established employment incident. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[20] Similarly, the work status reports from Drs. Yang, Anderson and Jackson are of diminished probative medical value in establishing that appellant sustained a medical condition due to the June 11, 2012 employment incident. None of the physicians offered an opinion regarding the causal relationship between appellant's diagnosed traumatic fracture of the lower leg and work capacity and the established employment incident. While Dr. Yang's July 20, 2012 Kaiser Permanente form and narrative reports found that appellant's fractured tibia resulted from the June 11, 2012 employment incident, he failed to adequately explain how the established employment incident caused the diagnosed condition. As Dr. Yang failed to provide a sufficient

[18] *Frank Luis Rembisz*, 52 ECAB 147 (2000).

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

[20] *See K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, *supra* note 3.

explanation as to the mechanism of injury, his general statement that appellant sustained a work-related injury is of limited probative value.[21]

The unsigned report that contained the printed name of Mr. Ellis, a physician's assistant, has no probative medical value in establishing that appellant sustained a right tibia fracture causally related to the June 11, 2012 employment incident as a physician's assistant is not considered to be a physician as defined under FECA.[22]

The opinion of a physician needed to establish causal relationship must be of reasonable medical certainty and must be supported by medical rationale explaining causal relationship.[23] The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a right leg injury causally related to the June 11, 2012 fall. Appellant did not meet his burden of proof.[24]

On appeal, appellant's attorney contended that OWCP's February 28, 2013 decision is contrary to fact and law. For reasons stated above, the Board finds that although the evidence establishes that appellant sustained an unexplained fall on June 11, 2012 that occurred in the performance of duty, the weight of the medical evidence does not establish that he sustained a right leg injury causally related to the established employment incident.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant failed to establish that he sustained a right leg injury in the performance of duty on June 11, 2012.

[21] *S.W.*, Docket No. 08-2538 (issued May 21, 2009).

[22] *See* 5 U.S.C. § 8101(2); *Allen C. Hundley*, 53 ECAB 551 (2002).

[23] *K.W.*, *supra* note 20.

[24] *Gary J. Watling*, *supra* note 2.

ORDER

IT IS HEREBY ORDERED THAT the February 28, 2013 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: April 17, 2014
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