

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

K.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Front Royal, VA, Employer**

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**Docket No. 14-832
Issued: July 8, 2014**

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, Acting Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 4, 2014 appellant, through her attorney, filed a timely appeal from the January 13, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied her injury claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on January 6, 2012.

FACTUAL HISTORY

On January 17, 2012 appellant, a 41-year-old temporary city carrier, filed a traumatic injury claim alleging that she sustained a head injury on January 6, 2012 when she passed out

¹ 5 U.S.C. § 8101 *et seq.*

and fell face first to the floor while on medications for an aggressive tooth infection. “I had passed out hitting the concrete floor, no other objects were involved.”

A witness confirmed that appellant fell to the floor. As appellant walked by the witness’ case, appellant took a normal step followed by two “zombie-like” steps, which were kind of slow and “dragging.” Then she fell forward “flat on her face.” It looked like appellant was crying or shaking as she lay face down on the floor. The witness got to her quickly. Appellant was moaning and barely conscious.

Appellant explained that she had half of a root canal on the evening of January 4, 2012 and was on antibiotics for an infection. She was not feeling well on the morning of January 6, 2012. Appellant told the postmaster that she was sick. She started feeling weak and dizzy and sweating. Appellant walked to the locker room to sit down for a minute, then went to the break room to look for bottled water, but there was none. She walked out of the break room “and the next thing I remember was that there were carriers looking down at me saying my name and yell call 911!” As appellant was being transported to Winchester Medical Center, she was told that she passed out due to low blood sugar.

Appellant had told her supervisor that her mouth was sore due to a prior dental procedure: “the dentist has me on 3 antibiotics and he calls me every day when I get up to see how I am doing.” She advised that the dentist had hit a nerve and caused an infection, which was the reason she was talking funny and her mouth was swollen. Appellant told her supervisor that she had not eaten for a week except a little bit of mashed potatoes and plenty of fluids. The supervisor stated that appellant looked pale and her face was swollen. She was talking out of the right side of her mouth, which appeared to be drooping.

Dr. Erich W. Bruhn, a Board-certified surgeon, listed an admission diagnosis of complex mandibular fracture and “syncopal episode presumed related to medications and decreases *p.o.* [*per orem*, or by mouth] intake.” Appellant felt lightheaded, “and it was felt because of *p.o.* intake because of an alveolar ridge abscess.” After noting that her syncope workup was essentially negative, the discharge summary advised that “this was felt secondary to her medications because of her recent alveolar surgery.”

Dr. Katherine G. Thomas, appellant’s dentist, advised that appellant underwent root canal treatment on January 4, 2012, two days before her fall at work. She was placed on an antibiotic. Dr. Thomas advised that neither would interfere with her ability to work.

In a decision dated June 4, 2013, OWCP denied appellant’s injury claim. It noted Dr. Bruhn’s conclusion that the syncope episode was secondary to medications because of recent oral surgery, a condition not related to appellant’s employment.

On January 13, 2014 an OWCP hearing representative affirmed the June 4, 2013 decision. She found that Dr. Bruhn’s opinion was sufficient to establish that appellant’s fall was a result of a preexisting nonoccupational condition.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim.³

It is a general rule of workers' compensation law that an injury occurring on the industrial premises during working hours is compensable unless the injury is established to be within an exception to the general rule.⁴

One exception applies to falls in the workplace: When 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 the employment, the injury is not a personal injury while in the performance of duty as it does not arise out of a risk connected with the employment.⁵ When the fall is unexplained and, therefore, attributable neither to the employment nor to the claimant personally, the risk is neutral, and an injury arising in the course of employment from a neutral risk is compensable.⁶

ANALYSIS

Because appellant's injury occurred on the industrial premises during working hours, a presumption arises that the injury is compensable. The question becomes whether the injury falls within an exception to the general rule of coverage. More specifically, as appellant struck the immediate supporting surface, and there was no intervention or contribution by any hazard or special condition of the employment, the question is whether appellant's fall was attributable to a personal, nonoccupational pathology or whether it was truly an unexplained fall.

The record establishes that appellant was not feeling well when she went to work on January 6, 2012. She had undergone a partial root canal on the evening of January 4. Appellant indicated that her dentist had struck a nerve and caused an infection, which she described as aggressive. She was taking antibiotics and her mouth was sore and swollen. When appellant arrived at work on January 6, 2012 she told her supervisor she was sick. She indicated that she had not eaten for a week except a little bit of mashed potatoes and plenty of fluids. Shortly after she began work, appellant started feeling weak and a little dizzy and was also sweating. She sat for a minute in the locker room, then looked for water in the break room. When appellant walked out of the break room, she passed out and fell face down onto the concrete floor.

² 5 U.S.C. § 8102(a).

³ *John J. Carlone*, 41 ECAB 354 (1989).

⁴ *Martha G. List*, 26 ECAB 200 (1974).

⁵ *Edward V. Juare*, 41 ECAB 126 (1989).

⁶ *Martha G. List*, *supra* note 3.

The evidence establishes that appellant's fall on January 6, 2012 was due to a personal, nonoccupational cause. As appellant was being transported to the Winchester Medical Center, she was told that she passed out due to low blood sugar. Her admitting diagnosis included a syncopal episode presumed related to her medications and decreased intake of food. Although Dr. Thomas, the dentist, explained that the antibiotic would not interfere with appellant's ability to work, the history of decreased food intake is consistent with appellant's account of having very little to eat due to a sore and swollen mouth. Dr. Bruhn, the surgeon, noted that appellant's lightheadedness was because of reduced food intake due to the recent dental surgery.

The Board finds that the evidence in this case is sufficient to rebut the presumption of coverage. Appellant passed out for reasons that were personal to her without contribution from her employment. There is no question that she did not feel well, and the medical opinion evidence offers a plausible explanation for her lightheadedness. In the Board's opinion, it cannot be said that the fall was unexplained. It is not an event where no one can determine whether she fell for reasons personal to her or for reasons having to do with her employment. Given the way that appellant felt on the morning of January 6, 2012, and the circumstances of her recent oral surgery, it cannot be found that the injury arose from a neutral risk.

Accordingly, the Board finds that appellant has not met her burden to establish that she sustained an injury in the performance of duty on January 6, 2012. The Board will affirm OWCP's January 13, 2014 decision.

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 has not met her burden to establish that she sustained an injury in the performance of duty on January 6, 2012.

ORDER

IT IS HEREBY ORDERED THAT the January 13, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 8, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

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

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