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

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| **G.W., Appellant**<br><br>**and**<br><br>**DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Pittsburgh, PA, Employer** | ) | **Docket No. 14-593**<br>**Issued: June 10, 2015** |

*Appearances:*
*Melissa A. Guiddy, Esq.,* for the appellant
*No appearance,* for the Director

Oral Argument December 10, 2014

## DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

### ***JURISDICTION***

On January 14, 2014 appellant, through counsel, filed a timely appeal from a July 22, 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 met his burden of proof to establish an injury in the performance of duty on September 6, 2012.

On appeal, and at oral argument, counsel asserted that appellant's fall on September 6, 2012 was in the performance of duty and was therefore a compensable injury. She specifically argued that the September 6, 2012 syncopal episode occurred because appellant was not allowed

[1] 5 U.S.C. §§ 8101-8193.

to go on a scheduled break. Thus, appellant was in the performance of duty and his injuries, including concussion and postconcussion symptoms, should be accepted.

## *FACTUAL HISTORY*

On October 4, 2012 appellant, then a 54-year-old transportation security officer (TSO), filed a traumatic injury claim alleging that on September 6, 2012 he sustained a severe concussion and head, neck, and right shoulder pain when he passed out because his supervisor failed to give him a break at 2:00 p.m. as ordered by his physician.

In his statement, appellant, a diabetic, alleged that he had to check his blood level and informed his supervisor that he was not feeling well. Clayton A. Coleman, lead TSO, stated on the claim form (on October 17, 2012) that appellant was on break when appellant "passed out." In another part on the form, Mr. Coleman noted that "appellant was scheduled to go on break but was late being relieved until right before passing out." He further noted, "On my first statement I was under the assumption he had already gone."

By letter dated November 19, 2012, OWCP requested additional information from appellant regarding his claim.

In response to the request for more information, appellant submitted a statement, received by OWCP on December 19, 2012. He noted that it was common knowledge that he needed regular breaks at 2:00 p.m., 4:00 p.m., and 6:00 p.m. Appellant claimed that at 1:55 p.m. he was replaced in the rotation by a Diane Moye. Before rotating to the next position, he walked to the podium and told his supervisor, Thomas Vukich, supervisory TSO, that he felt cold and sweaty and that his sugar was acting up. Mr. Vukich allegedly told appellant he had no one to replace him and that he should go to his next position until he could get someone to relieve him. Appellant claimed that about a half an hour later he still had not been relieved, and he started down the escalator to start the next rotation. He claimed that he was still feeling shaky and was on his way to the podium where the supervisor was located when he sustained his injury. Appellant alleged that he was neither on his break nor on his way to a break at the time. He believed that to leave his post without being relieved would be job abandonment.

An employing establishment incident report, prepared by Mr. Coleman on the date of the incident, noted that an injury occurred at 2:25 p.m. on September 6, 2012 at the main checkout when appellant was walking between Lanes 4 and 5 before passing out at the end of Lane 4. The report indicated that appellant was taking a break just before the incident. Mr. Coleman marked that the injury was not caused by the employment. Appellant reportedly lost consciousness and was transported to the hospital.

Appellant was seen at the Emergency Department of the University of Pittsburgh Medical Center and, in a form report dated September 6, 2012, he was allowed to return to work on September 11, 2012 with no restrictions.[2]

[2] No additional emergency department records were submitted.

In a September 11, 2012 report, Dr. Mark R. Paulos, a Board-certified internist, advised that appellant had recently fainted at work, sustained a closed head injury, and was undergoing further evaluation for the cause of his fainting spells. He reported that appellant also had concussion symptoms and could not work. On September 18, 2012 Dr. Paulos noted that appellant had been evaluated on September 17, 2012 and additional testing was ordered. He advised that appellant could not work. In October 3, 2012 reports, Dr. Paulos reported a history of poorly controlled type 2 diabetes with multiple syncopal episodes over the past year, including a recent one at work. He stated that appellant worked past his break, passed out, and hit his head. Dr. Paulos noted that appellant had been evaluated in an emergency room where a computerized tomography (CT) study was taken and found to be normal. Appellant was discharged with a diagnosis of vasovagal syncope with worsening headaches. Dr. Paulos reported that a second CT study showed only a scalp hematoma. Symptoms of headaches and nausea continued. Dr. Paulos provided examination findings, including a large scalp hematoma on the right with no laceration, and noted significant photophobia and nausea triggered by eye movements. He diagnosed concussion symptoms and advised that he could not work until he was evaluated at a concussion clinic. Dr. Paulos reiterated his findings and conclusions on October 10, 2012.

On October 24, 2012 Dr. Maria F. Twichell, a Board-certified physiatrist, noted that appellant was being evaluated at a concussion program and diagnosed dizziness and balance dysfunction and recommended vestibular rehabilitation. A therapy note dated November 14, 2012 was attached.

In reports dated December 11 and 16, 2012, Dr. Paulos reported that appellant was undergoing a workup for dizziness, concussion, and postconcussion syndrome and could not return to work. He advised that appellant had autonomic neuropathy related to his diabetes which required eating and checking his blood sugars on a regular schedule, and if this schedule was not followed he would become dizzy and would also become dizzy from prolonged standing without a break. Dr. Paulos opined that appellant's "recent episode of syncope leading to a fall and concussion could have been prevented by allowing him regularly scheduled breaks." The record also includes medical reports from Dr. Paulos dated March 24 and August 19, 2011 in which he noted that appellant had diabetes with fluctuating blood sugars and needed to have breaks every two hours to check blood sugars, and have a snack if necessary, and should be allowed adequate time for meals.

The employing establishment controverted the claim and submitted a number of witness statements. In December 6, 2012 correspondence, Jeff Dulaney, an employing establishment human resources and workers' compensation specialist, noted that the employing establishment was challenging the claim as being an idiopathic fall outside the performance of duty as there was no contribution to the injury from the employment. He stated that the employing establishment was well aware of appellant's medical condition and that it had done everything in its control to assist with the medical condition. Mr. Dulaney provided statements from two transportation security managers. These managers dealt with this issue first hand and reference other occasions when appellant had missed his two-hour time frame and did not mind it. Appellant had been advised that it was his responsibility to remind the supervisors of his need for breaks and that appellant fully understood that it was his responsibility to monitor his need for breaks. The employing establishment was aware of several other instances where appellant had

passed out from his medical condition, but appellant had never filed a work-related injury claim due to a fall. Mr. Dulaney stated that the employing establishment had medical reports dating back to 2004 relating to this condition and a previous incident had occurred in 2007. He reported that a video would confirm that appellant did not hit anything when he fell.[3] Mr. Dulaney concluded that it was the employing establishment's position that appellant's fall was idiopathic in nature due to his preexisting medical condition and did not occur in the performance of duty.

In statements dated September 12 and December 5, 2012, Mr. Vukich, reported that at approximately 2:00 p.m. on September 6, 2012 appellant was rotating positions and at approximately 2:05 he stopped at the podium and told Mr. Vukich that he had not had his break. Mr. Vukich related that he told appellant to go on break and that he would send someone else to engage the position. Because the lines were short, less than 20 people, Mr. Vukich decided not to send anyone to engage the position. He stated that he was under the impression that appellant had gone on his break. Mr. Vukich stated that, after appellant collapsed, emergency medical support arrived and he was transported to the hospital. He stated that he did not become aware that appellant had not gone on his break until Transportation Security Manager William Childers informed him of the fact. Mr. Vukich stated that until then he believed appellant had collapsed while returning from his break. He reported that from his vantage point he did not see appellant when he fell.

In a November 13, 2012 statement, Mr. Childers stated that on August 20, 2011 appellant had provided medical documentation stating that, due to his current medical condition, he was required to eat at regular intervals and was to have breaks every two hours to sit, check his blood sugars, and have a snack if necessary. He stated that appellant was informed that the employing establishment would assist to the best of its ability, but that appellant had a responsibility also and was told to remind supervisors if it was getting past two hours.

In a November 27, 2012 statement, Bob Sever, a transportation security manager, reported that one of his duties as supervisor was to ensure that TSOs received their breaks, and that he had been informed that appellant needed to have breaks every two hours due to a medical condition. He indicated that, on occasion, work circumstances prevented him from notifying appellant but that he had made it very clear to appellant to please let someone know if he was past his two-hour break time.

In statements dated September 11 and December 4, 2012, Bruce A. Ferguson, a lead TSO, advised that at 2:45 p.m. on September 6, 2012 he saw appellant pass him with a blank look on his face and shortly thereafter appellant fell forward and hit the floor.

In statements dated September 11 and December 4, 2012, TSO Todd D. Newland reported that at approximately 2:25 p.m. on September 6, 2012 he witnessed appellant fall to the floor. He stated that Mr. Ferguson directed him to follow appellant and he immediately noticed that appellant began to sway and stumble, but he could not catch up to him to break his fall. Mr. Newland stated that by the time he got to appellant he had fallen to the floor and had

[3] On December 14, 2012 Mr. Dulaney indicated that the employing establishment could not release the videotape of the September 6, 2012 incident because it contained sensitive security information, but that it was available for viewing.

bumped his head on the left side and appeared shaky, tremoring, or seizing. He noted that appellant hit his head on the floor and did not hit anything else while falling.

By decision dated January 2, 2013, OWCP denied the claim finding that appellant was not in the performance of duty on September 6, 2012 because his fall was due to his nonwork-related diabetes and was therefore idiopathic. It noted that he had not hit an intervening object when he fell, but rather that he had fallen directly to the floor.

Appellant, through counsel, timely requested a hearing and submitted brief reports from Dr. Paulos dated January 31 and February 6, 2013 in which he noted that appellant was still being treated for dizziness, concussion, and postconcussion syndrome and should remain off work.

In a March 6, 2013 treatment note, Dr. Gary P. Chimes, a Board-certified physiatrist, noted a history that on September 6, 2012 appellant had a low blood glucose level, followed by a syncopal episode when he fell backward and hit his head. He indicated that CT, magnetic resonance imaging (MRI) scans, and magnetic resonance angiogram (MRA) studies had been taken. The CT studies were negative for acute intracranial process and right hypodensity and the MRI scan findings of multiple foci were consistent with chronic small vessel disease. Dr. Chimes reported appellant's complaints of occipital headache, memory trouble, difficulty sleeping, daytime somnolence, tinnitus, and sensitivity to light and sounds, and blurred vision since the September 6, 2012 injury. He reported no history of concussion and provided physical examination findings. Dr. Chimes diagnosed a mild traumatic brain injury (concussion) with symptoms consistent with concussion, including cognitive fatigue, concentration deficits, headaches, sleep cycle and mood dysregulation, and vestibular disorder. He recommended follow-up with the concussion clinic.[4]

On March 29, 2013 appellant's counsel requested subpoenas of agency personnel and agency documents and videotapes. On April 24, 2013 an OWCP hearing representative denied the request.

At the hearing, held on May 20, 2013 appellant testified regarding the circumstances of the September 6, 2012 incident. He stated that he came to work at 12:00 p.m. and was on a floating assignment where he rotated between duty stations every half hour. Appellant repeated that when he asked Mr. Vukich if he could go on break at 2:00 p.m., Mr. Vukich told him that he could not until he was relieved at his next rotation. He stated that at about 2:30 p.m. he radioed Mr. Vukich from his next rotation and was again told he could not go on break. Appellant was on his way to his next rotation and again requested a break from Mr. Vukich when he fell. He stated that he continued to have severe headaches, tinnitus, inner ear imbalance, continuous nausea, and unsteady walking due to the concussion he sustained.

On June 18, 2013 appellant's counsel submitted a pleading asserting that appellant was in the performance of duty when injured on September 6, 2012 because he was not allowed to take breaks ordered by his physician, and that the medical evidence clearly established that he had a

[4] Copies of the diagnostic studies were not found in the case record.

concussion with postconcussion conditions, caused by the September 6, 2012 fall. Statements from coworkers were submitted.

In a February 8, 2013 statement, Coworker Theresa Davis stated that she was positioned at the same checkpoint with appellant. She stated that at approximately 2:00 to 2:30 p.m. on September 6, 2012 she turned around and saw appellant on the floor. Ms. Davis asked someone to run upstairs to get appellant's meter reader from his coat.

In a June 18, 2013 statement, Jeremy Sandy, a coworker, stated that, between 2:00 and 2:30 p.m. on September 6, 2012 when he was returning from his break, he knew it was the time for appellant to have a break. He stated that he overheard a conversation appellant was having with Mr. Vukich over the radio. Mr. Sandy reported that appellant asked Mr. Vukich if he could go on break, that Mr. Vukich informed him that he had no one to replace him, and that appellant could not go on break.

In an undated statement, Ronald W. Warnick stated that, while he had no personal knowledge of the events of September 6, 2012, he did know that over the past several years the checkpoint security supervisor gave appellant breaks at 2:00 p.m., 4:00 p.m., and 6:00 p.m. He noted that he was often appellant's relief person. Mr. Warnick stated that, if there were any allegations that appellant elected to skip his break, he would like to state that appellant was adamant about taking his breaks.

In a March 5, 2013 note, Dr. Paulos indicated that appellant could not return to work, noting that additional studies and consultations were scheduled.

On June 20, 2013 Mr. Dulaney commented on the hearing transcript and reiterated that appellant had not been denied his break. In a June 19, 2013 statement, Mr. Vukich disputed appellant's allegations, noting that he was aware that appellant required a break every two hours, and that on September 6, 2012 he told appellant to go on his break when appellant approached him at the podium. He stated that he assumed that appellant had taken his break and that appellant had not told him he was sick because, if so, he would have offered medical attention as he has done with other employees in the past. He denied that appellant had called him on the radio regarding his break or medical condition. Mr. Vukich stated that, if appellant had called him on the radio, he stated that he would have known that appellant had not gone on break and he would have told him to go on his break.

A July 24, 2007 report of Dr. Paulos was submitted which diagnosed a closed-head injury and concussion and cleared appellant to return to full duty. A July 26, 2007 medical report with an illegible signature indicated that appellant needed to wear a hat to block light at work to avoid headaches due to a head injury.

In a February 25, 2013 report, Dr. Neal L. Presant, Board-certified in family and occupational medicine, advised that he had reviewed medical documentation and discussed appellant's case with Dr. Paulos. He reported that appellant had suffered several attacks of syncope both at work and at home over the past several years, which Dr. Paulos indicated was due to damage to appellant's autonomic nervous system because of his diabetes, and this had

been in very poor control for an extended period. Dr. Presant indicated that individuals with frequent episodes of syncope were disqualified for the TSO position.

In a July 10, 2013 statement, appellant disagreed with Mr. Dulaney's assertions and again maintained that he was told by Mr. Vukich that he could not go on break until relieved.

By decision dated July 22, 2013, an OWCP hearing representative affirmed the January 2, 2013 decision. He found that whether appellant was provided a break was not relevant to the underlying issue of performance of duty. Appellant fell due to a nonoccupational medical condition, *i.e.*, diabetes. He fell directly onto the floor and did not strike any furniture or other object as he fell. This was an idiopathic fall and the concussion sustained on September 6, 2012 did not occur in the performance of duty.

## ***LEGAL PRECEDENT***

It is a general rule that where an injury arises in the course of employment, occurs within the period of employment, at a place where the employee reasonably may be, and takes place while the employee is fulfilling his or her duties or is engaged in doing something incidental thereto, the injury is compensable unless it is established to be within an exception to the general rule. One of the exceptions to the general rule is an idiopathic fall.[5]

It is a well-settled principle of workers' compensation law 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. Such an injury does not arise out of a risk connected with the employment and is, therefore, not compensable. However, 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 proven that a physical condition preexisted and caused the fall.[6]

To properly apply the idiopathic fall exception to the premises rule, there must be two elements present: a fall resulting from a personal, nonoccupational pathology, and no contribution from the employment.[7] OWCP has the burden of proof to establish existence of a personal, nonoccupational pathology if it chooses to argue that a fall was idiopathic in nature. If the record does not establish the fall was due to an idiopathic condition, it must be considered as merely an unexplained fall, which is covered under FECA.[8]

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[5] *Roger Williams*, 52 ECAB 468 (2001).

[6] *M.M.*, Docket No. 08-1510 (issued November 25, 2008).

[7] *N.P.*, Docket No. 08-1202 (issued May 8, 2009).

[8] *Jennifer Atkerson*, 55 ECAB 317 (2004).

## ***ANALYSIS***

Appellant alleged an injury due to a fall at work on September 6, 2012. OWCP held that it was an idiopathic fall, outside the performance of duty. The Board finds that OWCP met its burden of proof to establish the existence of a personal, nonoccupational pathology which was the cause of the idiopathic fall, and that appellant was outside the performance of duty at the time of the injury.

The evidence in this case clearly establishes that appellant had a long-standing diabetic condition. Reports dated March 23 and August 19, 2011, predating the incident, establish his preexisting diabetic condition. Dr. Paulos noted that appellant had diabetes with fluctuating blood sugars. The reports following the incident also verify the severity of the diabetes condition. On October 3, 2012 Dr. Paulos reported that appellant had a history of poorly controlled type 2 diabetes and multiple syncopal episodes over the past year. By report dated December 16, 2012, he noted that appellant suffered from brittle diabetes and autonomic neuropathy related to his diabetes. "If [appellant] did not have regularly scheduled breaks to eat and to check his blood sugars his blood sugars fluctuate and cause him to become dizzy. If he is standing for a prolonged period of time without a break he will also become hypotensive and dizzy." The Board finds this evidence sufficient to meet OWCP's burden of proof that the fall was due to the personal, nonoccupational condition of diabetes and was thus idiopathic in nature.

"Injuries due to idiopathic falls can be divided into two categories. In the first, a personal, nonoccupational pathology causes the employee to collapse and to suffer injury upon striking the immediate supporting surface. There occurs neither intervention nor contribution by any hazard or special condition of the employment. The initiating condition, in such level-floor 'idiopathic' falls, commonly is a heart attack, fainting spell, or epileptic fit. Since no employment relationship exits, the weight of accumulated authority and the trend of recent decisions both deny compensability."[9] "In the second class, though the cause of the fall is clearly idiopathic, some job circumstance or working condition intervenes in contributing to the incident or injury; for example, the employee falls onto, into, or from an instrumentality of the employment. Thus where, instead of simply falling directly to the floor on which he has been standing, the employee drops into a pit, strikes against or gets tangled in a machine, or tumbles off a platform, ladder or down the office stairs, compensation is generally awarded."[10]

The Board also finds that the evidence is insufficient to establish that appellant experienced an intervention or contribution by any hazard or special condition of employment, such as striking an intervening object when he fell. Appellant has not alleged that he hit anything before he landed on the floor and both Mr. Ferguson and Mr. Newland, who witnessed the fall, reported that appellant hit his head on the floor and nothing else. The Board concludes that appellant did not strike any object other than the floor, during the course of his fall at work.

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[9] *Rebecca C. Daily*, 9 ECAB 255 (1957). (The decision cites to 1 Larson, Workmen's Compensation Law, section 12.14, which is quoted herein.)

[10] *Id*.

The incident, therefore, without any further intervention or contribution by the employing establishment was an idiopathic fall and would not be compensable.[11]

In order to find this incident to be within the performance of duty, appellant must establish that there was contribution from the employment in the injury resulting from the idiopathic fall. Counsel contends that the refusal to allow him to take a regular break, as required by his physicians, was sufficient contribution by the employer to warrant coverage of this incident under FECA. The evidence of record regarding this allegation is contradictory. In a November 13, 2012 statement, Mr. Childers indicated that on August 20, 2011 appellant had provided medical documentation stating that, due to his current medical condition, he was required to eat at regular intervals and was to have breaks every two hours to sit, check his blood sugars, and have a snack if necessary. He stated that appellant was informed that the employing establishment would assist to the best of its ability but that he had a responsibility also and was told to remind supervisors if it was getting past two hours.

In his November 27, 2012 statement, Mr. Sever indicated one of his duties as supervisor was to ensure that TSOs received their breaks, and that he had been informed that appellant needed to have breaks every two hours due to a medical condition. He indicated that on occasion, work circumstances prevented him from notifying appellant and that he had made it very clear to appellant to please let someone know if he was past his two-hour break time. In December 6, 2012 correspondence, Mr. Dulaney indicated that the employing establishment did everything within its control to assist appellant with the needs of his medical condition and maintained that the responsibility was with the employee to ensure that he had the needed breaks.

Regarding the events of September 6, 2012, appellant asserted that he passed out because his supervisor failed to give him a break at 2:00 p.m. as ordered by his physician. He noted that he was a diabetic and had to check his blood level and informed his supervisor that he was not feeling well. Appellant recalled that he reported for work at 12:00 p.m. on September 6, 2012 and was on a floating assignment that day where he rotated between duty stations every half hour. He stated that at approximately 1:55 p.m., as he was rotating to his next position, he went to speak with Mr. Vukich and told him that his sugar was acting up and he felt cold and sweaty. Appellant stated that Mr. Vukich told him he could not go on break until someone could relieve him from his next position. He indicated that he went upstairs to his next rotation and was not relieved and was feeling shaky so he returned downstairs about a half hour later and was on his way to the podium to ask for his break when he fell and was injured.

Appellant also testified at the May 20, 2013 hearing that at about 2:30 p.m. he radioed Mr. Vukich and was again told he could not go on break. In support of this contention, he submitted a June 18, 2013 statement from Mr. Sandy, a coworker, who indicated that between 2:00 and 2:30 p.m. on September 6, 2012, as he was walking past appellant, he overheard a conversation he was having with Mr. Vukich over the radio. Mr. Sandy indicated that appellant asked Mr. Vukich if he could go on break, and Mr. Vukich informed him that he had no one to replace him, and that appellant could not go on break.

[11] *R.C.*, Docket No. 07-651 (issued July 6, 2007).

Mr. Vukich disagreed with appellant's assertions. In statements dated September 12 and December 5, 2012, he indicated that at approximately 2:00 p.m. on September 6, 2012 appellant was rotating positions and at approximately 2:05 p.m. he stopped at the podium and told Mr. Vukich that he had not had his break. Mr. Vukich related that he told appellant to go on break and he would send someone else and thought that appellant had gone on his break. He stated that on September 12, 2012 Mr. Childers informed him that appellant did not go on his break. Mr. Vukich stated that until then he believed appellant collapsed after returning from his break. He reported that from his vantage point he did not see appellant when he fell. On June 19, 2013 Mr. Vukich disputed appellant's allegations, noting that he was aware that appellant required a break every two hours, and that on September 6, 2012 he told appellant to go on his break when appellant approached him at the podium. He stated that he assumed that appellant then took his break and that appellant did not tell him he was sick because if so, he would have offered medical attention. Mr. Vukich further indicated that appellant did not radio him regarding his break or medical condition.

The Board finds the allegation that appellant radioed Mr. Vukich at about 2:30 p.m. on September 6, 2012 and that this was overheard by Mr. Sandy of diminished probative value. In his earlier statements, appellant did not indicate that he had radioed Mr. Vukich, but rather that at about 2:30 p.m. he was on his way to again ask Mr. Vukich for a break when he collapsed and fell. Appellant did not indicate that he radioed Mr. Vukich until the May 20, 2013 hearing, and Mr. Sandy's statement is dated June 18, 2013, a full eight or nine months after the September 6, 2012 fall. The employing establishment was aware of appellant's diabetic history and his need for breaks and the evidence clearly establishes that appellant's condition had been adequately accommodated by the employing establishment for many years. The Board finds Mr. Vukich's statements more credible regarding the events of September 6, 2012.

The Board finds that appellant had an idiopathic fall and appellant failed to establish any intervention or contribution by the employing establishment to bring the fall within the performance of duty. Accordingly, OWCP properly denied his claim.

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 an injury in the performance of duty on September 6, 2012.

***ORDER***

**IT IS HEREBY ORDERED THAT** the July 22, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 10, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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