United States Department of Labor
Employees' Compensation Appeals Board

L.B., Appellant	)	
and	)	**Docket No. 15-761**
	)	**Issued: June 4, 2015**
DEPARTMENT OF THE ARMY,	)	
Fort Bragg, NC, 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
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 18, 2015 appellant, through counsel, filed a timely appeal from a January 6, 2015 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 the case.

ISSUE

The issue is whether appellant's collapse at work and cardiac arrest on October 16, 2012 was in the performance of duty within the meaning of FECA.

On appeal counsel asserts that in its January 6, 2015 decision OWCP improperly concluded that an expert opinion regarding appellant's cardiac arrest was equivocal.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

This case has previously been before the Board. In a March 21, 2014 decision, the Board found that appellant had not sustained an injury in the performance of duty on October 16, 2012 and that she had not established a stress-related condition due to the accepted employment factor, that her job duties as a dispatcher included interacting with the public in emergency and stress situations.[2]

On November 18, 2014 appellant, through counsel, requested reconsideration and submitted an undated correspondence report from Dr. Rommel, an attending Board-certified internist.[3] In that report he stated that he had been treating appellant since October 17, 2012 following her cardiac arrest at work. Dr. Rommel noted that after testing she was found to have a prolonged QT and genetic testing demonstrated a mutation consistent with congenital long QT syndrome. He advised that the mutation was associated with increased cardiac events, especially with exercise and auditory stimulation. Dr. Rommel concluded that it was reasonable to assume that appellant's cardiac arrest was due to an undiagnosed genetic abnormality, and that "her arrest could have come from an auditory stimulation while at work." He advised that she remained at increased risk for a cardiac event due to her genetic condition.

In a merit decision dated January 6, 2015, OWCP found Dr. Rommel's opinion speculative and denied modification of prior decisions.

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 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.[4]

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

[2] Docket No. 13-1640 (issued March 21, 2014). On October 16, 2012 appellant, a public safety dispatcher, fell while walking from the break room and went into cardiac arrest. She was resuscitated and transported to Womack Army Medical Center where she was stabilized. On October 17, 2012 appellant was transferred to University of North Carolina Health Care, where she was diagnosed with long QT syndrome. She was discharged on October 25, 2012. Appellant was treated by Dr. John Rommel, a Board-certified internist. Dr. Rommel advised that appellant's genetic cardiac condition could be triggered by stress and being startled.

[3] Appellant had also submitted medical evidence describing a left shoulder and left knee condition, not relevant to the instant appeal.

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

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.[5] 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.[6] 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.

While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.[7]

ANALYSIS

In its March 21, 2014 decision, the Board found that appellant had failed to establish a stress-related condition causally related to the accepted factor of employment.[8] Because appellant had not provided evidence regarding this issue with the November 18, 2014 reconsideration request, and because OWCP had not addressed it in the January 6, 2015 decision, the matter is *res judicata* and not subject to further review by the Board absent further review by OWCP.[9] The remaining issues remain before the Board.

The Board finds that appellant failed to establish that her collapse on October 16, 2012 at work were in the performance of duty within the meaning of FECA. In the report submitted on reconsideration, Dr. Rommel found that appellant had genetic markers consistent with congenital long QT syndrome and that this condition is associated with increased incidence of cardiac events. He went on to surmise that appellant's cardiac arrest was due to an undiagnosed genetic abnormality and added that it was "reasonable that her arrest could have come from an auditory stimulation at work." This supposition is insufficient to meet her burden of proof. First, Dr. Rommel couched his opinion in speculative terms, and the opinion of a physician supporting causal relationship must not be speculative or equivocal. To be probative, an opinion should be expressed in terms of a reasonable degree of medical certainty.[10] Second, the record contains no evidence that at the time of appellant's cardiac arrest on October 16, 2012 she had been subjected to any auditory stimulus. In fact, the witness statements indicate that she was walking from the break room when she collapsed.[11]

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

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

[7] *Ricky S. Storms*, 52 ECAB 349 (2001).

[8] *Supra* note 2.

[9] *David E. Newman*, 48 ECAB 305 (1997); *Hugo A. Mentink*, 9 ECAB 628 (1958). A decision of the Board is final upon the expiration of 30 days from the date of the decision. 20 C.F.R. § 501.6(d).

[10] *Supra* note 8.

[11] *Supra* note 2.

Dr. Rommel's opinion lacks the probative value to establish that a work factor caused appellant's collapse and cardiac arrest on October 16, 2012. Moreover, there is no indication that appellant struck anything while falling. Her fall on October 16, 2012 is idiopathic and therefore noncompensable.

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 did not sustain an injury in the performance of duty on October 16, 2012.

ORDER

IT IS HEREBY ORDERED THAT the January 6, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 4, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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