

injury. Appellant argues that because of her prior employment-related fall and the resulting vertigo, she fell on February 25, 2015, causing her to have a concussion with a postconcussive syndrome.

FACTUAL HISTORY

On March 25, 2014 appellant, then a 67-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on February 25, 2014 she fell on the floor after experiencing vertigo. She contended that the vertigo was related to her prior employment injury of September 10, 2011.² Appellant listed the nature of her injury as concussion.

In a March 25, 2014 incident report, appellant's supervisor indicated that she called to ask appellant a question, that appellant did not respond, and that when she went across the hall from her office she found appellant lying on the floor behind her desk. She noted that appellant was responsive but incoherent. Appellant's supervisor noted that emergency personnel responded promptly and took appellant to the emergency department.

In support of her claim, appellant submitted charts from a visit to the Emergency Department at Memorial Hospital of Rhode Island on February 25, 2015. She was treated by Dr. Michael Siclari, a Board-certified internist, who diagnosed syncope/collapse. The hospital notes indicate that appellant was at work when she fell and that she had no memory of the events before and after the syncopal episode. The hospital notes describe a prior history of chronic neck pain, vertigo, and equilibrium problems.

Appellant was also seen on March 25, 2015 at the employing establishment by Paul Simkowski, a nurse practitioner, who indicated that appellant sustained an employment-related injury and was unable to work for two weeks. In an April 8, 2014 report of emergency treatment, Mr. Simkowski reiterated that appellant had an employment-related injury, stated that she was unable to return to work, and indicated that he would reevaluate her in four weeks. On May 6, 2014 he opined that the fall of February 25, 2014 was more likely than not due to disequilibrium/vertigo from injury originally sustained in September 2011.

By letter of April 29, 2014, OWCP advised appellant that factual and medical evidence was needed to support her claim that she sustained an injury on September 10, 2011 due to vertigo resulting from her prior injury. It allotted her 30 days to submit the requested information.

Appellant submitted progress notes signed by multiple medical personnel at the employing establishment's employee health clinic, including Dr. Stephen T. Mernoff, a Board-certified neurologist, and Dr. Jacob R. Berger, a Board-certified neurologist, dated from June 26, 2013 through February 7, 2014. These notes discuss appellant's prior falls of September 10,

² The record reveals that, under File No. xxxxxx715, OWCP accepted appellant's traumatic injury claim for neck sprain resulting from a backward fall on September 10, 2011 while she was assisting a patient in the performance of duty.

2011 and April 3, 2013,³ the treatment she received related to the falls, and symptoms of ongoing dizziness. Additionally, an April 15, 2013 electromyogram/nerve conduction velocity study (EMG/NCV) was abnormal, revealing mild-to-moderate chronic reinnervation affecting the left triceps and chronic left radial neuropathy or chronic left cervical radiculopathy. There was no electrodiagnostic evidence of a mononeuropathy or cervical radiculopathy affecting the right arm.

By decision dated June 2, 2014, OWCP denied appellant's claim as the evidence was not sufficient to establish that the event occurred as alleged. It also noted that she did not submit medical evidence from a physician establishing that a diagnosed condition or that such a condition was causally related to the alleged employment incident.

On June 27, 2014 appellant requested review of the written record by an OWCP hearing representative. At that time, she responded to questions from OWCP. Appellant noted that at the time of the fall she was standing in the office beside her desk, turned to pick up clipboard, got dizzy, and lost balance. She noted that she fell backwards hitting the left side of her head against the wall where it meets the floor. Appellant stated that the cause of the fall was that she got dizzy and lost her balance. She stated that she has no history of fainting spells and had never experienced any syncopal episodes. Appellant stated that she was not aware of any hazards at the employing establishment that could have contributed to her fall.

In a June 27, 2014 report, Dr. Thomas Jean, a Board-certified internist with the employee health unit, noted that appellant had just returned to work on a light-duty status on February 24, 2014, and the next day, February 25, 2014, she fell at work. He noted that appellant indicated that she had gotten up from her desk to leave her office and does not remember the fall nor does she remember hitting the floor immediately afterward. Dr. Jean indicated that she was taken to the emergency department and was accepted for observation, which was uneventful. He noted that the diagnoses were loss of consciousness secondary to head trauma following episode of vertigo, loss of balance. Dr. Jean noted that appellant had just returned to work due to a history of work-related neck injury that was due to a fall in 2011. He stated that appellant sustained postconcussion syndrome and worsening of occipital neuralgia. Dr. Jean indicated that appellant had vertigo symptoms that occurred daily and had resulted in falls or near falls two to three times a week with "no real precursor." He opined that it was more likely than not that the syncopal episode and fall resulting in the loss of consciousness and the mental status changes were secondary to an episode of vertigo/disequilibrium.

By decision dated January 21, 2015, an OWCP hearing representative found that it had not been factually substantiated that appellant struck an intervening hazard when she fell as that description was inconsistent with the most contemporary medical and factual history. He noted that appellant's vertigo has not been accepted as a work condition under the September 10, 2011 claim. The hearing representative affirmed OWCP's June 2, 2014 decision, finding that appellant's fall was idiopathic in nature. He concluded that she had not established an injury in the performance of duty.

³ On April 3, 2013 appellant presented with complaints of vertigo/dizziness after falling while walking in the hall at work. Further, she related that she fell forward and landed on her knee when she experienced dizziness when leaning forward to talk to someone.

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.⁴

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.⁵

ANALYSIS

Appellant alleged that she was injured in a fall at work on February 25, 2014. OWCP denied her claim finding an idiopathic fall outside of appellant's performance of duty. The Board finds that OWCP met its burden of proof to establish the existence of a prior pathology which caused the fall and that the fall was, in fact, outside the performance of duty.

The evidence establishes that appellant had a history of falls. Medical notes from the employee health clinic note that appellant had experienced falls on September 10, 2011 and April 3, 2013. Appellant was treated by Dr. Siclari on the date of the alleged injury on February 25, 2014, and he noted that appellant had a history of chronic neck pain, vertigo, and equilibrium problems. Dr. Jean noted that appellant had just returned to a light-duty work status on February 24, 2014 when she fell on February 25, 2014, and noted that she had vertigo symptoms daily that had resulted in falls or near falls two to three times a week. The Board finds that the evidence of record is sufficient to meet OWCP's burden of proof that the fall caused by appellant's personal, preexisting condition of vertigo and was thus idiopathic.⁶

To properly apply the idiopathic fall exception to the general compensability created under the premises rule, two elements must be present: first, the fall must be caused by a personal, nonoccupational pathology, and second, there must be no contribution from the

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

⁵ *G.W.*, Docket No. 14-593 (issued June 10, 2015).

⁶ *See G.W.*, Docket No. 14-593 (issued June 10, 2015).

employment.⁷ OWCP has the burden of proof to establish existence of a personal, nonoccupational pathology. 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

The Board finds that the evidence of record does not show that appellant experienced an intervention or contribution by any hazard or special condition of employment. Appellant has consistently reported that she experienced dizziness and fell backward, directly striking the floor on February 25, 2014. She did not relate that she struck her head against the wall prior to falling until she replied to OWCP's questions when she requested a review of the written record. The Board concludes that the most contemporaneous evidence is her claim form and the accompanying medical records. These tend to prove that appellant did not strike any object other than the floor when she fell at work. The incident, therefore, without any further intervention or contribution by the employing establishment was an idiopathic fall and would not be compensable.⁹

The Board finds that appellant suffered an idiopathic fall and that appellant failed to establish any intervention or contribution by the employing establishment to bring the fall within the performance of duty. Accordingly, appellant has not established that she sustained an injury in the performance of duty.

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 establish an injury in the performance of duty on February 25, 2014.

⁷ *Id.*

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

⁹ *R.C.*, Docket No. 07-651 (issued July 6, 2007).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 21, 2015 is affirmed.

Issued: October 26, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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