United States Department of Labor
Employees' Compensation Appeals Board

M.O., Appellant **and** **DEPARTMENT OF VETERANS AFFAIRS, KNOXVILLE COMMUNITY BASED OUTPATIENT CLINIC, Knoxville, TN, Employer**	)	**Docket No. 16-0822** **Issued: August 29, 2016**

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 15, 2016 appellant, through counsel, filed a timely appeal of a January 6, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish an injury on December 4, 2014 in the performance of duty.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 27, 2015 appellant, then a 45-year-old practical nurse, filed a traumatic injury claim (Form CA-1) alleging that on December 4, 2014 she sustained a laceration to her right lateral forehead, a concussion, and head trauma. She alleged that she was found on the floor at the employing establishment. Appellant noted that there was blood on the edge of the medical supply cart as well as on the floor where she was unconscious. On the reverse of the form, appellant's supervisor disputed her allegation that there was blood on the supply cart. The supervisor contended that neither she nor the nurses that cleaned the room after the incident found blood on the supply cart.

In a letter dated February 3, 2015, OWCP requested that appellant provide additional factual and medical evidence in support of her traumatic injury claim. It afforded her 30 days for her response.

In a letter dated February 11, 2015, the employing establishment alleged that appellant had been complaining of chest pains on December 4, 2014 and that she was found on the floor totally unresponsive. When she awoke, appellant reported chest pain on the left. She described that she experienced dizziness in the restroom, which she believed had caused her to fall and strike her head on the floor.

The employing establishment provided a description of the location of the bathroom and the supply cart, noting that the door covered one corner of the cart and that, after her fall, appellant's head was positioned on the floor in the area near the middle of the cart. The distance from the door to the cart was approximately 30 inches. The employing establishment again noted that no blood was found on the supply cart and that based on the locations of appellant, the cart, and the door, she could not have hit her head on the cart. It claimed an idiopathic fall due to chest pains, dizziness, and loss of consciousness. The employing establishment further contended that there was no intervention or contribution by any hazard or special condition of employment such that appellant's fall was considered to have occurred in the performance of duty.

The employing establishment provided a hand-drawn diagram of appellant's location after her fall relative to the bathroom door and the supply cart. This diagram suggested that appellant's head was on the floor 6 to 12 inches from the side of the supply cart and short of the exposed corner of the cart.

In an employing establishment accident report, Dr. Syria Heath, a family practitioner, who is also a coworker, noted that appellant had complained of chest pain earlier on December 4, 2014 and that she advised appellant to seek medical attention. When she found appellant on the floor, with blood on her right temple, appellant was initially unresponsive. Appellant complained of chest pain to her left chest and she was transported to the emergency room.

A coworker, B.S., a nurse, completed a statement on January 23, 2015 and described finding appellant on the floor on December 4, 2014. She alleged that appellant was located between the examination room and the cart with her feet just outside the restroom doorway. B.S. reported appellant's blood sugar was taken and found to be 240. She reported that upon awakening appellant informed Dr. Health that she was coming from the bathroom, was feeling dizzy, and that she fell. B.S. reported that appellant also indicated that she had been

experiencing chest pains all morning. A second coworker, P.S., also a nurse, completed a statement on January 28, 2015 relaying the same facts. She noted that appellant's blood pressure was 225/110. P.S. also reported that she cleaned the room including an area of dried blood on the floor.

In emergency room records from December 4 through 6, 2014, appellant indicated that she fell to the ground and hit her head. She did not remember falling. Appellant reported that she had chest pain and drowsiness before falling. She demonstrated a superficial and clean abrasion over the right side of the forehead with no active bleeding. Appellant noted chest palpitations on December 4, 2014. Her blood pressure was 120/71 when she arrived at the hospital and her glucose level was 174 at 1:24 pm at the hospital.

Dr. Jeffrey Robinson, an internist, described appellant's history noting that she had felt poorly as of December 2, 2014. Appellant was tired and had some left upper chest pain described as squeezing and tightness. She related that while at work she went to the bathroom, washed her hands, threw her paper towel in the trash, and then had a syncopal episode hitting the floor sustaining a small laceration to her scalp. Appellant had just completed a 12-hour drive on December 1, 2014. She was experiencing left-sided weakness. Appellant's preexisting conditions included diabetes mellitus, hypertension, hyperlipidemia, obstructive sleep apnea, kidney stones, anemia, anxiety, and depression. Dr. Robinson hospitalized her due to her syncope with left-sided weakness, chest pain, and low magnesium.

Dr. Albert Robert Blacky, a Board-certified cardiologist, noted appellant's history of malaise and occasional episodes of pain to the center of her chest. He related that on December 4, 2014 she was in the bathroom, washed her hands, and she went to throw the paper towel into the trash when she had a sudden episode of syncope. Appellant denied any precipitation chest discomfort, palpitations, dizziness, or light-headedness. Test results including cardiac enzymes revealed no evidence of acute myocardial infarction, ischemia, or arrhythmia. Appellant's brain computerized tomography scan was negative. She had no evidence of lower extremity deep vein thrombosis, and her magnetic resonance imaging (MRI) scan of the brain also showed no acute infarction. Dr. Blacky diagnosed syncope, chest pain, diabetes, and hypertension. He concluded that the etiology of appellant's syncopal episode was unclear and that her cardiac evaluation was unremarkable. Dr. Blacky also noted that her hypertension was under control with therapy as was her diabetes with oral medication.

Appellant sought medical treatment on December 10, 22, and 27, 2014 from Dr. Dinu C. Nodit, a Board-certified neurologist. Dr. Nodit reported that the previous week she lost consciousness at work, falling face down on the floor. Appellant had a history of headaches and diabetes, but no loss of consciousness or seizures in the past. Dr. Nodit diagnosed left hemiparesis, syncope, neck pain, and numbness.

Appellant experienced a second episode of dizziness on January 14, 2015. Dr. Douglas Holland, a physician Board-certified in emergency medicine, noted that she reported symptoms of light-headedness and weakness. He diagnosed muscle weakness and acute headache. Dr. Jonathan G. Martin, a Board-certified family practitioner, related appellant's history of a headache on January 13, 2015 and left-sided weakness on January 14, 2015. He reviewed her history and found that after her fall at work on December 4, 2014 her tests results were normal.

On February 2, 2015 Dr. Stephen Russell, a physician Board-certified in emergency medicine, examined appellant for an additional episode of syncope and indicated that this incident occurred at home. He diagnosed syncope and possible seizure.

By decision dated March 6, 2015, OWCP denied appellant's traumatic injury claim finding that she had not established that her injury occurred in the performance of duty. It found that she sustained an idiopathic fall, which was not considered to be a personal injury occurring while in the performance of duty. OWCP found that appellant had not established that she struck any object prior to falling to the floor. It, therefore, concluded that her injury was not sustained in the performance of duty.

On March 18, 2015 appellant requested an oral hearing before an OWCP hearing representative. She provided a narrative statement. Appellant denied complaining of chest pains or dizziness. She asserted that her blood pressure and blood sugar were within normal range. Appellant contended that the medical supply cart extended approximately one quarter of the way in front of the bathroom entryway. She hypothesized that she tripped on the cart exiting the bathroom and hit her head on the cart causing the gash on her forehead. Appellant again asserted that blood was found on the corner of the supply cart and that she hit her head on the cart. She noted that she experienced ongoing migraines and seizures following her fall on December 4, 2014.

Dr. Page completed a note on July 24, 2015 describing his observations on December 4, 2014. He noted that appellant was face down on the floor just inside the door. Dr. Page noted that he rolled her over and saw a bleeding laceration and contusion on her head.

Appellant also submitted additional medical records addressing her ongoing conditions following her fall on December 4, 2014.

At the oral hearing on October 15, 2015 before an OWCP hearing representative, appellant described her health prior to her December 4, 2014 incident noting that she was diagnosed with diabetes which was controlled. She described the events of December 4, 2014 as using the restroom to wash her hands, throwing the paper towels away, and turning to walk out of the bathroom. Appellant alleged that she tripped on the wheel of the supply cart which was sticking about half way out into the doorway of the bathroom, struck her head on the far edge of the cart and hit the floor landing in front of the closed examination room door. She noted that she visited the emergency room and received a cardiac examination and testing which was negative. Appellant believed that she had a concussion and sought further treatment from her primary care physician and a neurologist. She has currently been diagnosed with petit mal seizures and migraines. Appellant experienced eight more concussions, permanent nerve damage to her eyes, utilizes anti-seizure medication, and is no longer allowed to drive. She alleged that the employing establishment had informed her that there was blood on the cart. Appellant further asserted that she was not dizzy and did not experience chest pain on December 4, 2014 or any other day. She denied that her blood sugar was elevated.

The employing establishment responded and disagreed with appellant's description of events again denying that there was blood on the supply cart. It also asserted that the bathroom door covered the supply cart wheel such that she could not have tripped over it. The employing establishment reiterated that appellant had reported dizziness and chest pain prior to her fall on December 4, 2014.

Appellant reviewed the admission notes from her December 4, 2014 hospitalization and disagreed with the facts as presented. Her spouse submitted a statement supporting appellant's allegations.

By decision dated January 6, 2016, OWCP's hearing representative found that appellant had sustained an idiopathic fall, which was not considered to have arisen in the performance of duty. She found that appellant's blood pressure and blood sugar levels were elevated following the event and that appellant had a preexisting diabetic condition.

LEGAL PRECEDENT

Congress, in providing for a compensation program for federal employees, did not contemplate an insurance program against any and every injury, illness, or mishap that might befall an employee contemporaneous or coincidental with her employment; liability does not attach merely upon the existence of any employee/employer relation.[3] FECA provides for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[4] The term "in the performance of duty" has been interpreted to be the equivalent of the commonly found prerequisite in workers' compensation law, "arising out of and in the course of employment."[5] "In the course of employment" deals with the work setting, the locale, and time of injury.[6] In addressing this issue, the Board has stated:

> "In the compensation field, to occur in the course of employment, in general, an injury must occur--
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> > (1) at a time when the employee may reasonably be [stated] to be engaged in her master's business; (2) at a place where he may reasonably be expected to be in connection with the employment; and (3) while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto."[7]

This alone is not sufficient to establish entitlement to benefits for compensability. The concomitant requirement of an injury "arising out of the employment" must be shown, and this encompasses not only the work setting but also a causal concept, the requirement being that the employment caused the injury in order for an injury to be considered as arising out of the employment, the facts of the case must show some substantial employer benefit is derived or an employment requirement gave rise to the injury.[8]

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[3] *Christine Lawrence,* 36 ECAB 422, 423-24 (1985); *Minnie N. Heubner (Robert A. Heubner)*, 2 ECAB 20, 24 (1948).

[4] *See supra* note 2.

[5] *James E. Chadden, Sr.*, 40 ECAB 312, 314 (1988).

[6] *Denis F. Rafferty*, 16 ECAB 413, 414 (1965).

[7] *Carmen B. Gutierrez,* 7 ECAB 58, 59 (1954).

[8] *See Eugene G. Chin,* 39 ECAB 598, 602 (1988).

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.[9] 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.[10] 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.[11]

To properly apply the idiopathic fall doctrine, there must be two elements present: a fall resulting from a personal, nonoccupational pathology, and no contribution from the employment.[12] 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.

ANALYSIS

Appellant alleged that she fell at work on December 4, 2014 after washing her hands. OWCP denied the claim after finding that she had a preexisting condition of diabetes.

As noted, an injury resulting from an idiopathic fall is not compensable.[13] If appellant's injury was due to an idiopathic condition, the injury would not arise out of her employment. 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. The fact that the cause of a particular fall cannot be determined does not establish that it was due to an idiopathic condition and if the record does not establish a particular fall was due to an idiopathic condition, it must be considered as merely an unexplained fall, which is covered under FECA.[14]

Appellant has alleged that she sustained an employment incident on December 4, 2014 and she believes that she tripped and fell striking her head on a medical supply cart. The factual evidence establishes that she, through some mechanism, was found on the floor on December 4, 2014. There was no medical evidence in the record at the time that appellant's

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

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

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

[12] *E.C.,* Docket No. 15-0823 (issued February 2, 2016).

[13] *R.C.,* 59 ECAB 427 (2008).

[14] *H.B.,* Docket No. 12-840 (issued November 20, 2012); *M.M.,* Docket No. 08-1510 (issued November 25, 2008); *Jennifer Atkerson*, 55 ECAB 317 (2004).

employment incident on December 4, 2014 was due to an idiopathic condition. Dr. Blacky concluded that the etiology of her syncopal episode was unclear and that it was not related to her cardiac condition. OWCP's hearing representative appears to rely on the findings of appellant's coworkers, nurses, who reported a blood sugar level of 240 shortly after her fall. Healthcare providers such as nurses, acupuncturists, physicians assistants, and physical therapist are not considered physicians under FECA and their reports and opinions do not constitute competent medical evidence to establish a medical condition, disability or causal relationship.[15] As these statements from Nurses B.S. and P.S. do not constitute medical evidence, these statements cannot establish that appellant's fall was idiopathic. The medical records do not provide a cause for the event of December 4, 2014. Based on the medical evidence of record, the Board finds that appellant's fall on December 4, 2014 was an unexplained fall. As an unexplained fall while appellant was engaged in activities incidental to her employment duties, an injury resulting from this fall is compensable.

The case, therefore, will be remanded for OWCP to determine if appellant sustained an injury due to her fall on December 4, 2014.

CONCLUSION

The Board finds that the case is not in posture for a decision. Following any further necessary development, it shall issue a *de novo* decision.

[15] 5 U.S.C. § 8101(2); *see also G.G.,* 58 ECAB 389 (2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White,* 34 ECAB 515 (1983).

ORDER

IT IS HEREBY ORDERED THAT the January 6, 2016 decision of the Office of Workers' Compensation Programs is set aside and remanded for further proceedings consistent with this opinion of the Board.

Issued: August 29, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board