United States Department of Labor
Employees' Compensation Appeals Board

T.S., Appellant	)	
and	)	**Docket No. 16-0113**
	)	**Issued: May 3, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Saginaw, MI, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 26, 2015 appellant, through counsel, filed a timely appeal from a September 30, 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 this case.

ISSUE

The issue is whether appellant met his burden of proof to establish an injury on April 2, 2014 in the performance of duty.

FACTUAL HISTORY

On May 20, 2014 appellant, then a 60-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on April 2, 2014 he dislocated his right little finger in the

[1] 5 U.S.C. § 8101 *et seq.*

performance of duty. The employing establishment controverted the claim noting that he injured his finger after he had a seizure and fainted.

Appellant also filed an occupational disease claim (Form CA-2a), assigned file number xxxxxx590, alleging that he sustained stress causally related to factors of his federal employment. He related that stress caused a seizure which resulted in the dislocation of his right finger and experiencing pain in his back, knee, and leg.

In a disability certificate dated April 7, 2014, received in file number xxxxxx590, Dr. Ali H. Mahmood, a Board-certified surgeon, diagnosed a dislocated right little finger and found that appellant could not work with his right hand for four weeks.

On May 9, 2014 Dr. Mahmood diagnosed a seizure, a right hand fracture, and low back and leg pain. He advised that appellant could not drive or operate machinery and would require medical clearance before returning to work. In a form report dated May 14, 2014, Dr. Mahmood noted a history of a seizure at work and diagnosed a fracture/dislocation of the right little finger.

In a report dated May 21, 2014, submitted in file number xxxxxx590, Dr. Iftikhar A. Khan, a Board-certified neurologist, noted that appellant had a history of seizures. He related, "There was reportedly a seizure at work where he fell and dislocated one of the digit[s] of the right hand and has a cast on his hand. Dr. Khan verbalized his concern that this event happened because he was working under stress as there is too much workload and so on." He noted that appellant described a history of approximately 20 seizures over the past 15 years. Dr. Khan found that it was unclear whether the described incidents were seizures or syncopal events. He recommended an electroencephalogram (EEG) and a tilt-table study.

In a form report dated May 31, 2014, Dr. Ramotsumi Makhene, a Board-certified plastic surgeon, diagnosed a dislocated right small finger and noted that the injury "happened at work." He found that appellant could not perform heavy lifting or use power tools.

By letter dated June 3, 2014, OWCP requested that appellant submit additional information regarding the cause of his seizure and a detailed medical report addressing the causal relationship between any diagnosed condition and the identified work incident.

On June 6, 2014 Dr. Mahmood related that on April 2, 2014 appellant "felt overwhelmed by [his] load of work" and later that day had a seizure, fracturing his right little finger. He opined that stress could trigger a seizure and was "a contributing factor in [his] seizure on April 2, 2014."

In a June 6, 2014 disability certificate, Dr. Makhene diagnosed a dislocated right small finger and found that appellant was disabled for around six weeks. On June 13, 2014 he provided work restrictions.

In a June 11, 2014 response to OWCP's request for additional information, appellant related that he fell on his way to the water fountain due to a seizure caused by stress.

On June 23, 2014 Dr. Liaqat Zaman, a Board-certified internist, performed a tilt-table test to determine the etiology of appellant's history of syncope. He found that the tilt-table test was

positive and diagnosed neurocardiogenic syncope. Dr. Zaman recommended that appellant drink ample liquids and lie down if he felt the onset of symptoms of a future syncope.

By decision dated July 17, 2014, OWCP denied appellant's claim as the evidence of record did not establish that he was in the performance of duty at the time of the April 2, 2014 incident. It found that he had failed to establish that stress from the employment had caused his seizure and that there was no evidence that he struck anything when he fell.

On July 17, 2014 OWCP indicated that it had combined the current claim number xxxxxx809 into file number xxxxxx590, the occupational stress claim.

On August 11, 2014 appellant requested an oral hearing. He submitted the first page of a medical report dated November 7, 2014 from a cardiologist.

In a report dated September 15, 2014, Dr. Khan advised that appellant had a history of normal EEGs but almost passed out after a decrease in blood pressure during a tilt-table test. He related, "Therefore, it seems like he is at risk for syncopal event and it is likely that previously reported event of suspected seizure, were likely syncopal events." Dr. Khan noted that one event "happened when he was aggravated with stress, agitation at work, and therefore that suggest[s] probably a neurodepressive event." He found that appellant did not have work restrictions.

In a report dated November 3, 2014, received in file number xxxxxx590, Dr. Khan again noted that appellant had normal EEG's and a positive tilt table test. He opined that appellant had no neurological condition and did not require seizure medication. Dr. Khan referred him to a cardiologist to determine work restrictions.

One page of a form report from the employing establishment health unit dated December 19, 2014 was received in the record, but there is no indication as to who provided the responses.

In a report dated January 7, 2015, received in file number xxxxxx590, Dr. Khan diagnosed syncopal events and found that appellant should sit down if he felt dizzy. He found no work restrictions due to a neurological condition.

In a report dated February 4, 2015, received in file number xxxxxx590, Dr. Carrie Selvaraj, a Board-certified cardiologist, noted that appellant related that he fainted in April and October after he experienced dizziness. Appellant was "somewhat upset at the time." Dr. Selvaraj indicated that a tilt-table test showed vasodepressor syncope. She diagnosed vasovagal syncope and signed under a paragraph on the form indicating that the work activities described caused the diagnosis.

By letter dated June 29, 2015, OWCP advised that the denial of appellant's occupational disease claim in file number xxxxxx590 was currently scheduled for a hearing. It noted that he had filed a traumatic injury claim under file number xxxxxx809 identifying identical work factors and that the claims had been combined.

At the telephone hearing, held on July 14, 2015, appellant related that he experienced syncope when he was stressed. He attributed his fall to a vasovagal syncope after he did not

receive help at work and could not keep up with his tasks. Appellant related that no one witnessed his fall. His counsel advised that there was medical evidence relevant to the claim contained in file number xxxxxx590. The hearing representative noted that in file number xxxxxx590 appellant's supervisor indicated that it was his third or fourth seizure at work.

By decision dated September 30, 2015, an OWCP hearing representative affirmed the July 17, 2014 decision. She found that appellant had not established that stress due to work factors caused his seizure on April 2, 2014 and did not show that he fell due to a hazardous condition or struck an object during to his fall to the ground.

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 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.[2]

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.[3] 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 proved that a physical condition preexisted and caused the fall.[4]

To properly apply the idiopathic fall exception to the premises rule, two elements must be present: a fall resulting from a personal, nonoccupational pathology and no contribution from the employment.[5] 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.[6]

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

[3] *See A.B.*, Docket No. 14-0522 (issued November 9, 2015); *Carol A. Lyles*, 57 ECAB 265 (2005).

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

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

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

ANALYSIS

Appellant alleged that he sustained an injury in the performance of duty when he fell on April 2, 2014 and dislocated his right little finger. At the time of his fall, he was on the premises of the employing establishment during his hours of employment. As a general rule, an injury occurring on the industrial premises during working hours is compensable unless it falls within an exception to the general rule.[7] OWCP determined, however, that appellant's fall resulted from an idiopathic condition with no contribution from employment and thus did not occur in the performance of duty. As discussed, to apply the idiopathic fall exception, the fall must result from a personal, nonoccupational pathology with no contribution from employment.[8]

The Board finds that the evidence of record establishes that appellant's fall on April 2, 2014 resulted from an underlying condition. In a report dated May 21, 2014, Dr. Khan noted that appellant described a seizure at work following stress and found that he was either having seizures or syncopal events. He referred appellant for diagnostic testing, noting that he related a history of 20 seizures over 15 years. A June 23, 2014 tilt-table test was positive for neurocardiogenic syncopal events. On September 15, 2014 Dr. Khan noted that appellant had normal EEG's but a positive tilt-table test. He found that he was at risk for syncope and that previously reported seizures were actually episodes of syncope. Dr. Khan indicated that one of appellant's syncope episodes occurred after stress at work and concluded that it was most likely "a neurodepressive event." On February 4, 2015 Dr. Selvaraj noted appellant's history of fainting in April and October and diagnosed vasovagal syncope, noting that a tilt-table test was positive. The weight of the evidence establishes that appellant's fall was due to a personal, nonoccupational condition of neuordepressive syncope and thus was idiopathic in nature.

While the evidence shows that appellant has a condition resulting from a personal, nonoccupational pathology, this is not enough to show that the fall is not compensable. The idiopathic fall must have occurred with no contribution from employment.[9] Appellant did not allege that he struck any object related to his employment when he fell to the floor. Instead, he maintained that stress caused his fall because he did not receive assistance performing his job duties. Appellant asserted that he did not receive help at work but did not submit sufficient evidence supporting this allegation. Further, the medical evidence is insufficient to show that the syncope resulted from stress. On April 7, 2014 Dr. Mahmood diagnosed a dislocated right little finger. On May 9, 2014 he diagnosed a seizure and right hand fracture and found that appellant could not work. On May 31, 2014 Dr. Makhene diagnosed a dislocated right small finger and indicated that the injury occurred at work. He addressed the extent of appellant's disability in reports dated June 6 and 13, 2014. On November 3, 2014 Dr. Khan indicated that appellant had normal EEG's and a positive tilt-table test. He found that appellant did not have a neurological condition and referred him to a cardiologist. In these reports, the physicians failed to address

[7] *Dora J. Ward*, 43 ECAB 767 (1992).

[8] *See supra* note 5.

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

whether appellant's employment contributed to his fall on April 2, 2014 and thus their opinions are of little probative value.[10]

In a report dated May 21, 2014, Dr. Khan discussed appellant's concern that stress at work from overwork caused a seizure. He diagnosed a possible seizure or syncope. Dr. Khan, however, did not attribute the seizure or syncope to stress at work, but instead merely discussed appellant's belief. A physician's report is of little probative value when it is based on a claimant's belief rather than the doctor's independent judgment.[11]

On June 6, 2014 Dr. Mahmood related that appellant "felt overwhelmed" by his work on April 2, 2014 and had a seizure that same day. He opined that stress contributed to the seizure on April 2, 2014. Diagnostic studies, however, reveal that appellant experienced a syncopal event rather than a seizure, and thus Dr. Mahmood's report is based on an inaccurate history of injury.[12] He further did not provide any supporting rationale for his conclusion.[13]

On September 15, 2014 Dr. Khan discussed appellant's history of syncope events, including an episode at work that occurred after stress and was likely neurodepressive in origin. He opined that a syncope at work occurred when appellant was stressed but did not specifically discuss the events of April 2, 2014 or otherwise explain how stress resulted in syncope, and thus his opinion is of diminished probative value.

The Board finds that appellant had an idiopathic fall and failed to establish any intervention or contribution by the employing establishment to bring the fall within 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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury on April 2, 2014 in the performance of duty.

[10] *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

[11] *Earl David Seale*, 49 ECAB 152 (1997).

[12] *See M.W.*, 57 ECAB 710 (2006); *James A. Wyrick*, 31 ECAB 1805 (1980) (medical opinions based on an incomplete or inaccurate history are of diminished probative value).

[13] *See G.M.*, Docket No. 15-1288 (issued September 18, 2015); *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

ORDER

IT IS HEREBY ORDERED THAT the September 30, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 3, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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