United States Department of Labor
Employees' Compensation Appeals Board

E.C., Appellant	)	
	)	
and	)	**Docket No. 16-1334**
	)	**Issued: February 8, 2017**
DEFENSE LOGISTICS AGENCIES,	)	
Fort Belvoir, VA, Employer	)	
	)	

Appearances:
Capp P. Taylor, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On June 14, 2016 appellant, through counsel, filed a timely appeal from a May 12, 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 over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish a traumatic injury in the performance of duty on May 19, 2014.

[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 May 29, 2014 appellant, then a 55-year-old supply systems analyst, filed a traumatic injury claim (Form CA-1) alleging that on May 19, 2014 she experienced dizziness, difficulty standing up, and throbbing in her head when her chair rolled back and the chair hit the top of her head. She explained that she was sitting in her chair and she bent over to tie her sneakers when the chair rolled onto plexiglass and flipped her onto the floor. Appellant related that she fell onto her hands and knees on the floor and the top part of the chair hit the back of her head. She stopped work on May 19, 2014.

A May 29, 2014 accident incident report indicated that on May 19, 2014 appellant was sitting in her chair, leaning forward to tie her shoes, when she fell forward. She landed on the floor and the chair struck the back of her head. Appellant noted that she experienced dizziness and confusion. It was reported that a plastic floor mat was underneath her seat, which may have caused the chair to slip. Appellant's supervisor removed the plastic floor mat and advised appellant to seek medical treatment in the emergency room. The accident report indicated that appellant was diagnosed with a head injury, dizziness, and hypoglycemia, which was a preexisting condition.

Appellant was treated in the emergency room by Dr. Daniel E. Angeli, Board-certified in emergency medicine, who noted in hospital records dated May 19, 2014 that she was examined for complaints of head injury, dizziness, and hypoglycemia after a near syncopal episode at work. Dr. Angeli described that she leaned forward in her chair to tie her shoes when her chair slipped out from underneath her and the back of the chair hit her in the back of her head. He noted that appellant experienced pain in her knees, chest, and head, and headaches and dizziness. Dr. Angeli reviewed her medical history and conducted an examination. He reported that a computed tomography (CT) scan of the head revealed no acute traumatic injury. Dr. Angeli noted that appellant's blood chemistry was abnormal and diagnosed headache, muscle pain, and possible hypoglycemia. He related that the "injury mechanism was a fall."

Dr. Sara S. Breeden, a Board-certified family practitioner also treated appellant and indicated in examination notes dated May 22 and 27, 2014 that appellant was examined for follow-up after being treated in the emergency room. She related that appellant fell down on the floor at work when she was bending over and that a chair hit her on the back of the head. Appellant experienced headaches, dizziness, abdominal pain, and sharp left arm and knee pain afterwards. Dr. Breeden mentioned that appellant's sugar level was 114 when tested in the emergency room. She reviewed appellant's history and reported that neurologically appellant was alert and oriented. Deep tendon reflexes were positive in all four extremities. Dr. Breeden diagnosed low blood sugar, unspecified hypertension, head injury, and abdominal pain. In work status notes, she requested that appellant be excused from work from May 19 to June 1, 2014.

Appellant was treated by Dr. Richard E. Waller, a Board-certified neurologist, who indicated in progress notes dated June 11 to July 10, 2014 that he examined her for complaints of neurologic symptoms following a head injury. Dr. Waller related her history of injury regarding the chair roll and fall and noted that she immediately experienced headaches and dizziness and was transported to the emergency room. He related that since then appellant complained of daily headaches, stabbing pains in her scapula, arms, legs, feet, and stomach. Dr. Waller reviewed her

medical history and conducted a physical examination, which found that her range of motion of the neck was decreased in all directions. In a July 10, 2014 progress note, he related that a magnetic resonance imaging scan of the cervical spine revealed multilevel degenerative changes. Dr. Waller diagnosed postconcussion syndrome, cervical spondylosis, glucose intolerance, sleep apnea, and hypertension. In a June 18, 2014 work status note, he indicated that appellant could return to work half-days.

On July 8, 2014 appellant was examined by Dr. Vicki B. Latham, a Board-certified internist, who reviewed appellant's history of injury and provided physical examination findings. Dr. Latham diagnosed foot and knee pain. She noted that appellant could return to work on July 11, 2014.

By letter dated July 18, 2014, a senior human resources (HR) specialist at the employing establishment requested that OWCP develop appellant's traumatic injury claim. She asserted that appellant's underlying, preexisting, or degenerative medical conditions may have contributed to her fall and should not be associated with the claim. The HR specialist listed the medical reports she requested OWCP review and noted that these specific records noted abnormal blood sugar and essential hypertension. She asked that OWCP review these medical records and determine whether appellant's underlying medical conditions were related to appellant's traumatic injury claim.

Appellant received medical treatment from Dr. Howard F. Duke, a Board-certified podiatrist and foot surgeon, who related in examination notes dated August 7 and 11, 2014 that she complained of Achilles tendinitis, edema, ankle and heel pain, numbness, and burning in her feet. Dr. Duke related that she bent over in a chair at work to tie her shoes when the chair tipped over. Appellant landed on her hands and knees and was hit in the back of the head by the chair. Upon examination, Dr. Duke observed palpable dorsalis pedis and posterior tibial pulses and no apparent varicosities. He diagnosed pain in limb, fasciitis, tendinitis, Achilles pain, edema, hammertoe deformity, and neuropathy. Dr. Duke indicated that appellant would be unable to work from August 7 to 8, 2014 due to surgery. On August 7, 2014 appellant underwent rigid mallet toe deformity.

In a September 15, 2014 note, Kenn Shirley, a hospital clinical care manager, indicated that appellant was admitted to the hospital on September 11, 2014 and was discharged on September 15, 2014. He related that she was not cleared for work until September 29, 2014.

Dr. William C. Walker, Board-certified in physical medicine and rehabilitation, also treated appellant. In reports dated October 20 and November 17, 2014, he related her history of injury and discussed the medical treatment she received. Dr. Walker related that appellant currently complained of trouble with memory and emotions and was taking medication for depression. Upon neurological examination, he reported normal sensory and motor function. Deep tendon reflexes were positive. Dr. Walker diagnosed sleep apnea, depression, postconcussion syndrome, post-traumatic headache, and cognitive disorder symptoms.

In an October 24, 2014 letter, Dr. Joy A. O'Grady, a clinical psychologist, reported that appellant was struck on the head at work on May 19, 2014 and described the medical treatment she received. She reported that, since the head injury, appellant had frequent headaches, was

forgetful, and was slower to process information. Dr. O'Grady conducted a neurological and psychological evaluation. She reported that appellant's neuropsychological profile reflected a mix of strengths and weaknesses. Dr. O'Grady observed that simple cognitive processing speed and verbal fluency were within normal limits, but impairments were noted in learning and simple cognitive processing speed. She explained that appellant's neuropsychological profile reflected weaknesses in memory and executive skills. Dr. O'Grady diagnosed postconcussion syndrome and adjustment disorder with mixed emotional features.

In a letter dated December 22, 2014, OWCP informed appellant that her claim was initially accepted as a minor injury, but was now being reopened on the merits. It advised her that the medical evidence on the record was insufficient to establish that she sustained a diagnosed condition as a result of the May 19, 2014 employment incident. OWCP requested that appellant submit additional evidence to establish her claim. Appellant was afforded 30 days to submit the additional evidence.

Dr. Breeden related in a January 21, 2015 note that she had treated appellant for an injury that occurred on May 19, 2014. She reiterated appellant's history of injury and reported that appellant experienced symptoms of dizziness and headache.

In a January 22, 2015 statement, an internal review supervisor at the employing establishment explained that on the morning of May 19, 2014 she was making copies when appellant walked by out of the office. When she asked appellant if she was okay, appellant told her that she was bending over in her chair to tie her shoes when the chair hit her in the back of the head. The supervisor advised appellant to sit down and instructed another employee to call emergency medical services. She reported that appellant was in and out of the office from May to June 2014. The supervisor noted that appellant still complained that she was not able to read documents or concentrate on any projects.

On January 27, 2015 OWCP received a letter from an HR specialist at the employing establishment, requesting that it conduct a review of all the medical documentation submitted by appellant in order to determine if there was a causal relationship between the work-related incident and her diagnosed psychological conditions. The HR specialist asserted that she had some possible underlying, preexisting, or degenerative medical conditions, which may have contributed to her fall at work on May 19, 2014. He reported that the employing establishment was unaware of any possible connection between the head contusion suffered by appellant and her present memory loss or any psychological condition as a result of her falling out of the chair at work. The HR specialist noted that medical documentation seemed to indicate that she suffered from low blood sugar and hypertension. He explained that a witness was within close proximity to appellant when the alleged fall from chair occurred and the witness did not hear or see the fall. The HR specialist requested that OWCP review all the evidence and make a determination.

A February 2, 2015 statement from appellant's coworker related that she sat three cubicles over from appellant, which was less than 10 feet away, and did not hear or see appellant falling out of her chair.

On February 19, 2015 appellant retired due to disability.

OWCP denied appellant's claim in a decision dated May 5, 2015. It found that the May 19, 2014 incident occurred as alleged and that she was diagnosed with postconcussion syndrome, low blood sugar, and hypertension. OWCP denied appellant's claim, however, finding that the injury did not occur in the performance of duty because her fall was idiopathic and not related to factors of appellant's employment.

On April 25, 2016 OWCP received appellant's request, through counsel, for reconsideration of her claim based on a new legal argument. Counsel asserted that OWCP erred because it did not consider whether certain objects involved in the event were factors of employment as required pursuant to *Albert E. Hermann, Jr.*, 35 ECAB 167 (1983). He alleged explained that the wheeled desk chair and the vinyl chair mat contributed to the chair rolling backwards, which caused appellant to fall forward onto the floor. Counsel argued that the fact that her low blood sugar may have caused her to initially lose her balance did not detract from the fact that the desk chair and vinyl mat also contributed to the accident. He noted that appellant had identified factors of employment that contributed to the fall, and therefore, the claim should be found compensable.

By decision dated May 12, 2016, OWCP denied modification of the May 5, 2015 denial decision. It found that counsel's submission was insufficient to establish that appellant sustained a traumatic injury in the performance of duty. OWCP determined in its May 12, 2016 decision, that counsel did not demonstrate that any incidents or factors of employment intervened or contributed to her alleged injury other than an idiopathic fall.

LEGAL PRECEDENT

As a general rule, an injury is considered to occur in the course of employment if it occurs at a time when the employee may reasonably be stated to be engaged in her master's business, at a place when she may reasonably be expected to be in connection with her employment and while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto.[3] One exception to the general rule is if the injury was a result of an idiopathic fall.[4]

It is a well-settled principle of workers' compensation law and the Board has held that an injury resulting from an idiopathic fall -- where a personal, nonoccupational pathology causes an employee to collapse and 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 the coverage of FECA.[5] 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

[3] *T.F.*, Docket No. 08-1256 (issued November 12, 2008); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Eugene G. Chin*, 39 ECAB 598 (1988).

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

[5] *See Albert E. Hermann, Jr.*, 35 ECAB 167 (1983); *Stanley H. Dunihue, Jr.*, Docket No. 05-1418 (issued September 16, 2005).

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.[6] To be considered an idiopathic fall, two elements must be present: a fall resulting from a personal, nonoccupational pathology, and no contribution from the employment.[7]

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.[8]

ANALYSIS

The record of evidence supports that the May 19, 2014 incident occurred at a place where appellant was reasonably expected to be and took place while she was fulfilling her duties or was engaged in doing something incidental thereto. As such, the alleged injury occurred in the course of her employment and would be considered compensable under the general performance of duty rule.[9]

OWCP found that the alleged May 19, 2014 injury did not occur in the performance of duty because it resulted from an idiopathic fall. It determined that the medical evidence of record established that appellant suffered from low blood sugar and hypertension, which were preexisting conditions, and were not established as causally related to her employment. The Board finds that this case is not in posture for decision.

As previously noted, OWCP bears the burden of proof to establish an idiopathic fall.[10] In *L.J.*,[11] the Board found that OWCP failed to prove that a fall was idiopathic in nature as the medical evidence did not establish that an employee's fall was solely the result of her nonoccupational orthostatic hypotension condition. The Board determined that the medical evidence of record demonstrated that the employee's employment activities of bending over and stooping down, at least partially, contributed to her falling at work.

Similarly, in this case, the Board finds that the medical evidence of record fails to show that appellant's fall was solely the result of a personal, nonoccupational pathology. Various medical records, including Dr. Angeli's May 19, 2014 hospital records, Dr. Breeden's May 22

[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).

[9] *See supra* note 3.

[10] *Id.*

[11] Docket No. 08-1415 (issued December 22, 2008).

and 27, 2014 examination notes, Dr. Waller's June 11 and July 10, 2014 reports, Dr. Duke's August 7 and 11, 2014 reports, and Dr. Walker's October 20 and November 17, 2014 reports all describe how appellant was bending over in her chair to tie her shoes when the chair slipped out from underneath her. Although the medical records also demonstrate that she suffered from preexisting low blood sugar, hypoglycemia, and hypertension, none of the physicians opined that the incident resulted from any of these preexisting conditions. The mere fact that an employee has a preexisting medical condition, without supporting medical rationale to establish that it was the cause of the employment incident, is insufficient to establish that a fall is idiopathic.[12] The medical reports of record demonstrate that appellant was sitting on her chair at her desk in her cubicle at work and bent over to tie her shoes when the fall occurred. Therefore, while the reports are insufficient to meet her burden of proof to establish her claim, they raise an uncontroverted inference that employment factors contributed to the work incident on May 19, 2014.[13]

Moreover, the Board notes that the factual evidence also supported that employment conditions contributed to appellant's fall at work. In the Form CA-1 appellant attributed her fall off the chair to the fact that her wheeled chair rolled onto plexiglass and flipped. She did not allege that she fell because of dizziness but, instead, that she experienced dizziness, difficulty standing up, and throbbing in her head after the alleged fall occurred. The May 29, 2014 accident/incident report furthermore supported appellant's statement. The report noted that a plastic floor mat was underneath her wheeled chair and that it "may have caused the chair to slip." Accordingly, the record does support that conditions of employment did contribute, at least partially, to appellant's alleged fall on May 19, 2014.[14]

If the record does not establish that a 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 preexisting and caused the fall.[15] The Board finds that OWCP has failed to meet its burden to establish that appellant's fall out of her chair was of an idiopathic nature with no contribution or intervention from employment factors.[16] The evidence of record is sufficient to require OWCP to further develop the medical evidence and the case record.[17]

Accordingly, the case will be remanded for OWCP to determine the nature and extent of any injury or disability that resulted from the March 19, 2014 fall. Following this and such further development deemed necessary, OWCP shall issue an appropriate *de novo* decision.

[12] *See Steven S. Saleh*, 55 ECAB 169 (2003).

[13] *See supra* note 7.

[14] *Id.*

[15] *Supra* note 8.

[16] *R.D.*, Docket No. 13-1854 (issued December 23, 2014).

[17] *See Robert A. Redmond*, 40 ECAB 796, 801 (1989).

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the May 12, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: February 8, 2017
Washington, DC

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

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

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