United States Department of Labor
Employees' Compensation Appeals Board

S.K., Appellant	)	
and	)	**Docket No. 16-0970**
	)	**Issued October 3, 2017**
DEPARTMENT OF THE NAVY, JOINT BASE ANACOSTIA-BOLLING, Washington, DC, Employer	)	

Appearances:
Sara Kincaid, Esq. & Debra Hauser, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 6, 2016 appellant, through counsel, filed a timely appeal from a February 1, 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.

[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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish an injury on May 5, 2014 in the performance of duty, as alleged.

FACTUAL HISTORY

On February 5, 2014 R.M., an employing establishment supervisor, filed a traumatic injury claim (Form CA-1) alleging on behalf of appellant, then a 55-year-old security specialist. She asserted that, at 1:45 p.m. that day, appellant "was found on the floor. Appellant stated [to R.M.] that she was dizzy and then found herself on the floor." She told paramedics that she hit her head and that her back hurt. Appellant stopped work on February 5, 2014 and did not return.

R.M. provided a February 5, 2014 statement, asserting that at 9:06 a.m. that day, she asked appellant to meet with her. Appellant refused, saying that she was "stressed." R.M. advised appellant that the meeting was not voluntary. Appellant met with R.M. and a second level supervisor at 1:30 p.m. The meeting was to discuss appellant's attendance and work performance. Appellant had arrived to work at 11:30 a.m. without first informing her supervisor that she would be late. She was already on a performance improvement plan and was required to report to work at 7:00 a.m. Appellant contended that she was unable to report for work that early. The meeting ended at 1:45 p.m. R.M. then went to a second meeting. Approximately, five minutes later, a coworker informed her that appellant had fallen. In a February 6, 2014 statement, the second level supervisor corroborated R.M.'s account of the February 5, 2014 meeting, adding that appellant claimed to be "under stress due to work performance issues and personal issues," including a burst pipe at her home, financial difficulties, and the sale of her home.

In a February 5, 2014 statement, T.H., appellant's coworker, asserted that at 1:45 p.m. that day, she saw appellant return to her desk and bend down to move a fan under her desk. Appellant then stated "oh." T.H. then heard a thump, looked up, and saw that appellant was on the floor.

In a February 6, 2014 statement, a second coworker confirmed that, on February 5, 2014, he heard a loud thud as if something had hit the floor. He got up and saw appellant "lying on the floor next to the round table" where the employees ate lunch. The coworker called 911. Appellant was then transported to the hospital by ambulance.

At the hospital on February 5, 2014, appellant was assessed and treated by several physicians. Dr. Stanislaw Haciski, an emergency medicine physician, noted a two-year history of hypertension, treated with daily prescription medication. He related appellant's account of "syncope at work" after "an argument with boss, was walking to her desk and she felt palpitations and shortness of breath, then she totally passed out for 10 minutes. Appellant contended that she hit the edge of desk, injured her head, and back."

Dr. Amelia Pousson, Board-certified in emergency medicine, opined that appellant experienced a "syncopal event in the context of emotional stress (argument with supervisor)," but with antecedent chest pain and shortness of breath which were of concern for potential

neuro/cardiogenic etiology for syncope given risk factors of age and hypertension. On examination, Dr. Pousson observed a small scalp hematoma on the right occiput.

Dr. Janet F. Lewis, an attending Board-certified cardiologist, noted that appellant had "stress at work and home." A neurologic examination was normal. Dr. Lewis observed a small hematoma at the right occiput without laceration. She stated an impression of a 55-year-old woman with "likely vasovagal episode, mild closed[-]head injury." Dr. Lewis diagnosed chest pain and syncope.[3]

Appellant was discharged on February 7, 2014. Dr. Ty Nichols, an attending emergency medicine physician, held her off work through February 14, 2014. He recommended a psychiatric follow-up. Dr. Nichols indicated that appellant had no dietary or activity restrictions.

Appellant was then followed by Dr. Robert Timothy Pace, an attending family practitioner. In February 10 and 24, 2014 reports, Dr. Pace diagnosed syncope and a concussion. He held appellant off work through March 11, 2014 and continuing due to headaches and nausea.

Dr. Jean-Marc Estime, an attending Board-certified internist, provided reports from February 11 to April 8, 2014 diagnosing "work[-]related stress," headaches with nausea and vomiting, and chronic low back pain. He held appellant off work through May 6, 2014. In an April 16, 2014 report, Dr. Estime opined that she "sustained a syncopal episode on February 5, 2014. [Appellant] has been under a lot of work[-]related stress. When she passed out she suffered a concussion due to head trauma. [Appellant] was taken to [the hospital] by ambulance. Her blood pressure was noted to be very high."

On March 21, 2014 Dr. Bianca Ummat, an attending cardiologist, characterized the February 5, 2014 incident as syncope and elevated blood pressure.[4]

In an April 7, 2014 letter, OWCP advised appellant of the additional evidence needed to establish her claim, including factual corroboration of the events of February 5, 2014, and a report from her attending physician explaining how and why work factors would have caused her to fall. It afforded her 30 days to submit such evidence.

Appellant responded in an April 23, 2014 statement, explaining that, after the meeting with her supervisors on February 5, 2014, she returned to her work space to retrieve work documents from a safe. She did not remember retrieving the documents, but surmised that she "must have tripped on something on the floor," as she believed that her head impacted a steel bolt safe, then struck the "lightly carpeted cement floor." Appellant recalled regaining consciousness while lying between the safe and a lunch table. She submitted medical evidence.

Dr. S. Krishna Nandipati, an attending neurologist, submitted April 14 and 22, 2014 reports relating appellant's account that on February 5, 2014 she "was under a lot of stress as [appellant] was not getting along with her supervisor." Appellant "came out of her meeting and

[3] A February 5, 2014 electrocardiogram was normal. A February 6, 2014 echocardiogram with Doppler study showed mild left ventricular hypertrophy.

[4] A March 24, 2014 computerized tomography scan of appellant's head was normal.

while walking to her work desk, she passed out and hit her head [on] a steel container." Dr. Nandipati diagnosed headache, post-traumatic headache, and post-concussion syndrome.

In an April 21, 2014 letter, Dr. Pace explained that appellant's February 5 to 7, 2014 hospitalization "showed that [appellant's] syncope was likely vasovagal," caused by work stress. Appellant then fell, hitting her head.

By decision dated May 13, 2014, OWCP denied the claim, finding that appellant had not established the events of February 5, 2014 as factual due to inconsistencies in the accounts of record.

In a May 17, 2014 letter, appellant requested an oral hearing before a hearing representative which was held September 8, 2014. At the hearing, she contended that on February 5, 2014 at approximately 1:30 p.m., she rose from her chair to retrieve documents from a safe. Appellant "tripped on a tattered carpet," struck her head on the safe, then on the floor. She contended that she underwent lumbar surgery on July 2, 2014 because she had injured her back in the February 5, 2014 fall.

Following the hearing, appellant submitted her September 27, 2014 statement which reflected her disagreement with R.M.'s assertion on the claim form. She contended that she was dizzy after striking her head on the safe, but was not dizzy prior to falling.

In progress notes from Dr. Pace dated May 27 to September 11, 2014, he indicated that he was holding appellant off work due to the concussion.

In a September 24, 2014 letter, Dr. Robert W. Macht, an attending surgeon, noted that appellant asserted that she had fallen at work on February 5, 2014 because she tripped on a carpet. However, on review of the medical record, he attributed the incident to a "syncopal episode" which caused her to strike her head on the edge of her desk.

On October 22, 2014 the employing establishment submitted comments to the hearing transcript, contending that appellant had not struck her head on the document safe or other surface as she fell more than a foot from any object. Also, the carpeting was in perfect condition, without holes or other defects. The employing establishment provided photographs, diagrams, and measurements of appellant's work area and the area where she fell. These materials show that, based on her location on the floor after she fell, her head was 12 inches from the document safe, and a similar distance from the lunch table. The employing establishment contended that, under those circumstances, it was impossible for appellant to have struck her head on an intervening surface as alleged.

T.H., appellant's coworker, provided a September 8, 2014 statement reiterating that at 1:45 p.m. on February 5, 2014, appellant returned to her desk, saw that a small fan under her desk was lying down, and "bent down to sit it up." Appellant then walked towards the document safe, then exclaimed "Oh!" T.H. then heard a thump, and saw appellant on the floor near the document safe and a table. She rushed to appellant's side, arriving approximately three seconds after she fell. T.H. recalled that appellant was on the floor between the safe and the lunch table, with her head approximately one foot away from the safe, such that she could not have struck her head on it when falling. Emergency responders were then summoned, who took appellant to the

hospital. In an October 22, 2014 statement, T.H. asserted that she had not witnessed appellant injuring her head on February 5, 2014. She noted that, while on the floor, appellant's head was approximately one foot from the safe, and that no document drawers were open. T.H. also explained that the building where she and appellant worked was new construction which had opened in May 2012. The carpet was not torn or tattered and had not been repaired or replaced.

By decision dated December 2, 2014, an OWCP hearing representative affirmed the May 13, 2014 decision as modified, finding that the claim should be denied based on performance of duty rather than fact of injury. He found that the evidence established that appellant fell due to a "vasovagal reaction brought on by stress." Appellant "arose from her chair, experienced a syncopal episode, and fell to the floor without striking any intervening object." As her fall was based on a vasovagal incident, her fall was therefore idiopathic and not unexplained. The hearing representative explained that the photographs and diagrams of appellant's work area ruled out her assertions that she struck her head on the document safe, and that the employing establishment's statements controverted her account of a worn or tattered carpet.

On November 30, 2015 appellant requested reconsideration through counsel. Counsel asserted that the evidence indicated that appellant's February 5, 2014 fall was unexplained rather than idiopathic. She also contended that there was sufficient evidence to establish that appellant struck her head on some intervening surface.

The employing establishment submitted a December 24, 2015 response, asserting that the medical evidence from February 5, 2014 and witness statements shortly thereafter did not establish a head or back injury, or that appellant tripped on a carpet. Instead, the record established that she experienced a vasovagal episode due to stress after being "counseled yet again by [appellant's] supervisor for failure to perform and follow instructions."[5]

In December 8 and 9, 2015 reports, Dr. Pace found appellant disabled for work due to back pain. He contended that she injured her head and aggravated a chronic back condition in the February 5, 2014 fall.

By decision dated February 1, 2016, OWCP affirmed the December 2, 2014 decision. It found that the medical evidence established that the most likely cause of appellant's fall was a vasovagal episode caused by stress. OWCP further found that the medical evidence submitted on reconsideration was insufficient to establish that the February 5, 2014 fall was unexplained rather than idiopathic. It noted that T.H.'s statements established that, from appellant's position on the floor, she could not have struck her head on the safe.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including the fact that the individual is an "employee of the United States" within the

[5] Counsel provided a January 20, 2016 letter acknowledging that appellant had no direct recollection of the February 5, 2014 fall, and therefore may have misspoken about the carpet being tattered.

meaning of FECA and that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[6] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[7]

OWCP defines a traumatic injury as, "[A] condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected."[8] To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.[9] Second, the employee must submit sufficient evidence, generally only in the form a medical evidence, to establish that the employment incident caused a personal injury.[10]

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.[11] 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.[12] 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.[13]

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[6] *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

[7] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[8] 20 C.F.R. § 10.5(ee).

[9] *John J. Carlone*, 41 ECAB 354 (1989).

[10] *J.Z.*, 58 ECAB 529 (2007).

[11] *L.G.*, Docket No. 13-0927 (issued August 27, 2013). *See Carol A. Lyles*, 57 ECAB 265 (2005).

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

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

ANALYSIS

Appellant claimed that she was injured as a result of a fall at work on February 5, 2014. OWCP denied the claim, finding that the medical and factual evidence established that she experienced emotional stress due to an administrative meeting with her supervisor about her work performance. This resulted in vasovagal syncope, causing appellant to fall to the floor. OWCP further found that the factual evidence, including coworker statements, and photographs and diagrams provided by the employing establishment, demonstrated that she did not strike her head on an intervening object when she fell.

The emergency room physicians who treated appellant immediately after the February 5, 2014 attributed her fall to vasovagal syncope precipitated by preexisting hypertension, superimposed on emotional stress from the administrative performance discussion. Dr. Haciski, an emergency medicine specialist, Dr. Pousson, Board-certified in emergency medicine, and Dr. Lewis, a Board-certified cardiologist, all treated appellant in the hospital on February 5, 2014. Each specialist opined that appellant experienced vasovagal syncope after a stressful meeting with her supervisor. Dr. Haciski described a history of preexisting, idiopathic hypertension requiring management with daily medication, while Dr. Pousson elaborated that appellant's hypertension was a risk factor for vasovagal syncope.

Appellant's attending physicians also attributed the February 5, 2014 fall to vasovagal syncope. Dr. Pace, an attending family practitioner, opined on February 10 and April 21, 2014 that appellant experienced an episode of vasovagal syncope on February 5, 2014. Dr. Estime, an attending Board-certified internist, Dr. Ummat, an attending cardiologist, and Dr. Nandipati, an attending neurologist, all characterized the February 5, 2014 fall as a syncopal episode precipitated by stress. Dr. Macht, an attending surgeon, explained on September 14, 2014 that although appellant insisted that she fell because she must have tripped on a torn carpet, the medical record established that she sustained a syncopal episode. The Board finds that the consistent and medically uncontroverted opinions of appellant's many physicians that she fell on February 5, 2014 due to vasovagal syncope establishes that the fall was idiopathic in nature. The medical evidence establishes that appellant fell on February 5, 2014 due to a personal, nonoccupational pathology.

"Injuries due to idiopathic falls can be divided into two categories. In the first, a personal, nonoccupational pathology causes the employee to collapse and to suffer injury upon striking the immediate supporting surface. There occurs neither intervention nor contribution by any hazard or special condition of the employment. The initiating condition, in such level-floor 'idiopathic' falls, commonly is a heart attack, fainting spell, or epileptic fit. Since no employment relationship exists, the weight of accumulated authority and the trend of recent decisions both deny compensability."[14] "In the second class, though the cause of the fall is clearly idiopathic, some job circumstance or working condition intervenes in contributing to the incident or injury; for example, the employee falls onto, into, or from an instrumentality of the employment. Thus, where, instead of simply falling directly to the floor on which [s]he has been

[14] *Rebecca C. Daily*, 9 ECAB 255 (1957). (The decision cites to 1 *Larson*, Workers' Compensation Law, section 12.14, which is quoted herein.) *See also G.W.*, Docket No. 14-0593 (issued June 10, 2015).

standing, the employee drops into a pit, strikes against or gets tangled in a machine, or tumbles off a platform, ladder or down the office stairs, compensation is generally awarded."[15]

Appellant asserts that she sustained a head injury under the second category, alleging that she struck her head on some intervening surface during the February 5, 2014 fall. The Board finds, however, that there is insufficient evidence of record to establish that she struck a supporting surface such that any injury would be covered under FECA.

There are numerous inconsistencies between appellant's statements regarding the fall and the accounts provided by coworkers and employing establishment managers. On April 23, 2014 she acknowledged that she did not remember the events of February 5, 2014, but that she believed that her head struck the metal document safe, then the floor. Appellant reiterated this account at the February 5, 2014 hearing, newly asserting that she sustained a serious lumbar injury as well. However, the photographs and diagrams submitted by the employing establishment, and T.H.'s statements that appellant's head was 12 inches from the safe, demonstrate that she could not have struck her head on the safe. Moreover, on February 5, 2014, appellant told Dr. Haciski and Dr. Nandipati that she struck her head on her desk, not the safe. These inconsistencies cast serious doubt on the reliability of appellant's account of events.

While Dr. Pousson observed a small hematoma of the right occiput on February 5, 2014 examination, she did not identify how appellant sustained the injury. Also, the hospital medical record does not mention or diagnose a concussion. The first mention of a concussion is Dr. Pace's February 10, 2014 report. Coupled with the numerous factual inconsistencies regarding how appellant could have struck an intervening surface when she fell, the Board finds that there is insufficient medical evidence to establish a compensable head injury under FECA.

The Board finds that appellant had an idiopathic fall and that she failed to establish any intervention or contribution by the employing establishment to bring the fall within the performance of duty. Accordingly, appellant has failed to meet her burden of proof.

On appeal counsel contends that OWCP did not meet its burden of proof to show that the medical evidence establishes a personal nonoccupational pathology.[16] She argues that appellant's physicians' statements that the fall was likely due to vasovagal syncope were speculative and of diminished probative value.[17] Counsel contends that the February 5, 2014 fall is therefore unexplained, and any resulting injuries compensable. As set forth above, appellant's physicians overwhelmingly attributed the fall to vasovagal syncope due to emotional stress and hypertension. Their opinions are sufficient to establish that the fall was idiopathic and not unexplained.

Alternatively, counsel argues that the fall is idiopathic, but that OWCP should accept a head injury as compensable,[18] based on the veracity of appellant's factual statements that she

[15] *Id.*

[16] *T.S.*, Docket No. 13-1608 (issued April 17, 2014); *R.D.*, Docket No. 13-1854 (issued December 23, 2013).

[17] *Kathy A. Kelley*, 55 ECAB 206 (2004).

[18] *A.F.*, Docket No. 10-1344 (issued February 11, 2011).

struck her head on an intervening surface during the fall.[19] As set forth above, there are inconsistencies between appellant's assertions of tripping on a tattered carpet and striking her head on a document safe, and the factual evidence showing that the carpet was undamaged and that she could not have struck the safe. Also, appellant initially claimed to have struck her head on her desk, but she was not at her desk when she fell. Additionally, she acknowledged that she did not remember the events immediately preceding the fall. Under these circumstances, appellant statements cannot be viewed as reliable.

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 has not established an injury on February 5, 2014 in the performance of duty, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 1, 2016 is affirmed.

Issued: October 3, 2017
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

[19] *C.C.*, Docket No. 10-2054 (issued July 8, 2011).