

**United States Department of Labor
Employees' Compensation Appeals Board**

M.L., Appellant

and

**DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Kansas City, MO, Employer**

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**Docket No. 17-1095
Issued: October 25, 2017**

Appearances:
Appellant, pro se
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 April 21, 2017 appellant filed a timely appeal from an April 13, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.²

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant timely requested an oral argument before the Board pursuant to section 501.5(b) of the Board's *Rules of Procedure*, 20 C.F.R. § 501.5(b). After exercising its discretion, by order dated August 25, 2017, the Board denied the request for oral argument as the Board did not have jurisdiction over the merits of the case and as the issue on appeal could be fully addressed on the record. *Order Denying Request for Oral Argument*, Docket No. 17-1095 (issued August 25, 2017).

ISSUE

The issue is whether appellant established that her fall on March 2, 2017 occurred in the performance of her federal employment.³

FACTUAL HISTORY

On March 6, 2017 appellant, then a 49-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on March 3, 2017⁴ she was overcome by dizziness and fell on her side. She noted that her knee and elbow hit the floor, which caused pain. Appellant noted that she was taken to the emergency room. She related that in the emergency room a nurse told her that her blood pressure was 160/110. The employing establishment controverted appellant's claim, contending that further investigation was necessary to determine whether appellant was injured in the performance of duty or was injured as a result of an idiopathic fall which would not be compensable.

By letter to appellant dated March 9, 2017, OWCP advised her that further information was necessary to support her claim, including evidence sufficient to support that the incident occurred and medical evidence of a diagnosed condition causally related to the alleged incident. It also provided appellant a questionnaire to complete. Appellant was afforded 30 days to submit the requested information.

In response, appellant submitted unsigned hospital notes indicating that she was seen in the emergency department by Dr. Clifford V. Weith, II, a Board-certified emergency room physician. She was discharged with instructions regarding fainting.

Appellant also submitted copies of employing establishment internal e-mails. In a March 14, 2017 e-mail, she informed employing establishment officials that for five consecutive days, she had endured continuous hostility and harassment by a work leader. Appellant alleged that the work leader stated "don't speak to me," "go back where you came from" and made disparaging remarks about her person as well as the way she dressed. She alleged that this stress caused her heartbeat to accelerate and her blood pressure to elevate. On March 14, 2017 the employing establishment sent appellant information with regard to how to file a workers' compensation claim. In an e-mail dated March 16, 2016, it related that she had resigned that morning.

Appellant also submitted an undated, unsigned, statement from a supervisor indicating that there had been issues between appellant and a back-up lead and that appellant believed that she was working in a hostile environment. The supervisor stated that appellant first mentioned these issues to her on February 3, 2017. She indicated that she never personally witnessed any

³ The Board notes that appellant submitted new evidence on appeal. However, since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider the evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

⁴ Although appellant initially indicated that the fall occurred on March 3, 2017, other evidence establishes that the incident actually occurred on March 2, 2017. *See* discussion *infra*.

conflict, but that after speaking with appellant and the lead, both were instructed that they should not speak to each other, and both complied. The supervisor noted that appellant's last day working in her area was February 10, 2017 and that she was moved to another area on February 13, 2017. She noted that appellant's fall was on March 2, 2017, not March 3, 2017. The supervisor noted that appellant came to her office earlier that morning and indicated that she was stressed about personal issues and also indicated that the job might not have been right for her. She noted that she had not witnessed appellant's fall.

By decision dated April 13, 2017, OWCP determined that appellant had not established that the claimed event occurred as alleged, in the performance of duty. It also noted that she failed to submit medical evidence in support of her claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed, that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established.⁷ There are two components involved in establishing the fact of injury. 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.⁸ Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.⁹ An employee may establish that the employment incident occurred as alleged but fail to show that his or her disability or condition relates to the employment incident.¹⁰

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 where she may reasonably be expected to be in connection with her

⁵ *Supra* note 1.

⁶ R.A., Docket No. 16-0629 (issued October 19, 2016).

⁷ S.P., 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁸ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁹ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ T.H., 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

employment, and while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto.¹¹

One exception to the general rule is if the injury was a result of an idiopathic fall.¹² 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 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.¹³ 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.¹⁴ 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.¹⁵

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.¹⁶

ANALYSIS

OWCP denied appellant's traumatic injury claim, finding that she failed to establish that the March 2, 2017 incident occurred as alleged. It also determined that there was no evidence of a medical diagnosis in connection with the alleged March 2, 2017 incident.

The Board notes that OWCP found that appellant had not established that the fall occurred as alleged, in part, because she indicated on the claim form that the fall occurred on March 3, 2017, however, her supervisor and hospital records clarified that the fall did occur on March 2, 2017. The Board has previously noted that an injury does not have to be confirmed by

¹¹ *T.F.*, Docket No. 08-1256 (issued November 12, 2008); *Roma A. Moretenson-Kindschi*, 57 ECAB 418 (2006); *Eugene G. Chin*, 39 ECAB 598 (1988).

¹² *Roger Williams*, 52 ECAB 468 (2001).

¹³ See *Stanley H. Dunihue, Jr.*, Docket No. 05-1418 (2006); *Eugene G. Chin*, 39 ECAB 598 (1988); *Albert E. Hermann, Jr.*, 35 ECAB 167 (1983).

¹⁴ *M.M.*, Docket No. 08-1510 (issued November 25, 2008).

¹⁵ *N.P.*, Docket No. 08-1202 (issued May 8, 2009).

¹⁶ See *Jennifer Atkerson*, 55 ECAB 317 (2004).

eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.¹⁷

The employing establishment did not dispute that appellant fell at work and there is evidence of record from a hospital emergency room physician that appellant sought medical treatment on March 2, 2017. The only discrepancy of record as to whether appellant's fall occurred is whether the fall occurred on March 2, 2017 or March 3, 2017. This discrepancy can be ascribed to typographic, harmless error.¹⁸ The evidence of record thus establishes that appellant fell at work on March 2, 2017, as alleged.

In addition to establishing that she fell at work, appellant must establish that the fall occurred in the performance of duty. The general rule is that a fall in the performance of duty is an unexplained fall, unless the evidence establishes that the fall was due to a personal nonoccupational pathology. It is not appellant that must show it was an unexplained fall, but OWCP that must show that it was an idiopathic fall that was caused by a nonemployment-related condition.¹⁹

The Board finds that the record in this case does not support a finding that the fall was an idiopathic fall due to a personal, nonoccupational pathology. There is no probative evidence as to the cause of the fall. While appellant has alleged that she was stressed at work, there is no evidence that she fell due to stress. There is evidence that appellant visited the emergency room following a fall on March 2, 2017. As noted, it is OWCP's burden of proof to establish that a fall was idiopathic. If the evidence does not show that the fall was idiopathic, it is a compensable unexplained fall. OWCP has not established that the fall was idiopathic as it has presented no medical evidence that appellant fell due to a preexisting nonoccupational etiology.²⁰

In denying appellant's claim, OWCP also found that appellant had not established an injury as a result of the fall. The employee must submit medical evidence to establish that the employment incident caused a personal injury.²¹ There is no probative, rationalized medical report containing a specific diagnosis of a medical condition addressing with rationale how the condition was caused by her employment incident. By letter dated March 9, 2017, OWCP

¹⁷ *Charles B. Ward*, 38 ECAB 667, 670-71 (1987); *Joseph Albert Fournier, Jr.*, 35 ECAB 1175, 1179 (1984). An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a prima facie case has been established. However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.

¹⁸ *See B.S.*, Docket No. 16-0712 (issued November 7, 2016).

¹⁹ *R.A.*, Docket No. 16-0629 (issued October 19, 2016).

²⁰ *See M.O.*, Docket No. 16-0822 (issued August 29, 2016).

²¹ *J.H.*, Docket No. 11-0933 (issued November 7, 2011).

advised appellant that further medical evidence was necessary to establish a diagnosed condition causally related to the alleged incident. Appellant did not submit medical evidence which addressed this issue. She has therefore not met her burden of proof to establish that she sustained a traumatic injury causally related to the accepted incident.²²

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 established that she fell on March 2, 2017 and that the unexplained fall occurred in the performance of duty. The Board finds, however, that appellant has failed to establish an injury causally related to this accepted incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 13, 2017 is affirmed, as modified.

Issued: October 25, 2017
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

²² *Id.*