

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

P.N., Appellant)	
)	
and)	Docket No. 17-1283
)	Issued: April 5, 2018
)	
U.S. POSTAL SERVICE, POST OFFICE,)	
Plainview, NY, Employer)	
)	

Appearances:
William Bothwell, for the appellant¹
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 24, 2017 appellant, through his representative, filed a timely appeal from an April 4, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 met his burden of proof to establish an injury in the performance of duty on September 8, 2016, as alleged.

On appeal appellant's representative contends that OWCP's decisions are incorrect because they both found that appellant suffered an idiopathic fall.

FACTUAL HISTORY

On September 19, 2016 appellant, then a 54-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 8, 2016 he sustained a head injury when he fell and hit his head on the pavement while unloading a long life vehicle (LLV) on the loading dock at work. He stopped work on the date of injury. On the reverse side of the claim form an employing establishment supervisor contended that appellant suffered from a medical emergency and that he was not in the performance of duty as he had an idiopathic fall due to a nonjob-related condition.

By letter dated September 15, 2016, the employing establishment continued to controvert the claim, reiterating that appellant sustained an idiopathic fall due to a nonwork-related medical condition. It noted that he fell in its parking lot on September 8, 2016. The employing establishment referenced accompanying witness statements from employees, which indicated that, after loading mail, appellant was sitting on the back of his truck when he fell directly to the floor and hit his head. He was seen contorting his face, twisting his arms, and shaking his arms and legs. The employing establishment noted that its investigation of the claimed injury showed that appellant was not in the performance of duty. It maintained that it could be assumed that he suffered a seizure, stroke, or aneurysm prior to his fall based on the accompanying witness statements. In a September 8, 2016 statement, A.S. related that he saw appellant standing at the back of his truck on that day. Both of his hands were twisted and he was shaking before he hit the ground. K.W. indicated, in a September 13, 2016 witness statement, that she saw appellant sitting on the edge of the back of a fully loaded truck. She related that she was playing with him by saying that he looked tired. K.W. noted that appellant got up and made a strange face and then he spun around and fell straight back hitting his head very hard. She screamed loudly for help and twice called 911. K.W. tried talking to appellant, but he did not respond. She noted that, while he was sitting on the back of the LLV truck, his face, arm, and leg movements were contorted and strange. The employing establishment also submitted a city carrier position description.

In a September 8, 2016 Nassau University Medical Center medical report, Dr. Richard J. Batista, a Board-certified general surgeon, noted appellant's chief complaint of trauma with concussion and presenting symptoms of concussion with loss of consciousness less than 30 minutes. Appellant indicated that he was at work with colleagues and went out for a cigarette. He stated that he did not feel well and sat down. Appellant was witnessed shaking and then falling down onto the ground. He related that he had no recollection of the events that occurred. A witness claimed that appellant was unconscious for 10 to 15 minutes. Dr. Batista noted that appellant was able to answer questions, but he was confused and continuously forgot what had occurred. He provided his social history and medical background and discussed examination findings. Dr. Batista assessed "54 M level 2" trauma with seizure then fall with concussion with

loss of consciousness, pneumocephalus, skull fracture, left parietal hematoma, intraparenchymal hemorrhage, left pleural effusion, and respiratory distress.

In a September 22, 2016 development letter, OWCP advised appellant of the deficiencies in his claim. It allowed him 30 days to respond to an attached questionnaire to establish the factual element of his claim and provide additional medical evidence to establish a diagnosed medical condition causally related to his employment. OWCP requested that the employing establishment provide additional witness statements, a copy of appellant's preemployment physical examination, whether appellant had a medical condition that may have contributed to his claimed injury, and a copy of an investigative report. It also requested that the employing establishment respond to several questions regarding such matters as the location of appellant's claimed injury relative to the ownership of the parking lot facilities, whether the public was permitted to use the parking lot, whether appellant was required to use the parking lot and to pay for parking, whether parking spaces were assigned, whether the parking lot was monitored for use by unauthorized cars, and whether appellant was entitled to reimbursement for parking expenses.

OWCP received a September 8, 2016 patient care report in which Robert Mcevoy, an ambulance driver, noted that appellant was found unconscious and seated on the ground by his coworkers status post an apparent fall. Appellant had a large hematoma to the back of his head with bleeding from the right ear. He also had repetitive questioning and an altered mental status. Mr. Mcevoy assessed essentially normal findings on physical examination with the exception of a combative and confused mental state.

On October 18, 2016 appellant responded to OWCP's factual development questionnaire. He related that he was on the back of his truck on the loading dock at the time of injury. Appellant maintained that he was on the employing establishment's premises and performing his regularly assigned duties at the time of injury. He indicated that the parking lot was not owned, controlled, or managed by the employing establishment and that the employing establishment did not require him to park in the lot. Appellant related that it was not his responsibility to pay for parking. He claimed that his fall was caused by losing his balance on pavement that was inclined and cracked as he turned to return to the office. Appellant also claimed that he did not have a history of fainting spells and did not suffer from a heart condition or epileptic seizures. He noted that he had no similar disability or symptoms before his injury.

Appellant submitted an October 18, 2016 Nassau University Medical Center letter in which Dr. Vilma S. Vas, an attending Board-certified internist, noted that appellant was evaluated in the emergency room on September 8, 2016 for level-2 trauma. The letter indicated that he had loss of consciousness, seizure, concussion, pneumocephalus, skull fracture, left parietal hematoma, intraparenchymal hemorrhage, left pleural effusion, and respiratory distress. Appellant was also status post tracheostomy.

By letter dated October 19, 2016, the employing establishment responded to OWCP's inquiries. It noted that a preemployment medical report was not available as it was 22 years old. The employing establishment maintained that it had no knowledge of any medical condition that may have contributed to appellant's alleged injury. It was now aware that he was a heavy smoker and had a very small balance of annual/sick leave at the time of the claimed injury due to prior usage. The employing establishment indicated that it was not privy to a condition for which

appellant had protection under the Family and Medical Leave Act. It related that the Occupational Safety and Health Administration (OSHA) was notified of the incident, but it had not taken any action. The employing establishment believed that OSHA processed this as a nonjob-related incident. It indicated that appellant had loaded his parked vehicle at the back of the employing establishment in his usual daily manner. The employing establishment facility was leased and the parking lot was owned and maintained by the landlord. The lot was used for many years at the facility. The employing establishment noted that all postal vehicles parked in this lot. The only other vehicles that used this area were mailers dropping off mail at the dock area. The employing establishment related that it understood that employees parked their personal vehicles in an area in the regular lot in the front lot of stores. Parking spots were not assigned to employees. The parking area was not monitored on a continual basis, but cars entering the area could not go to other parts of the lot. The employing establishment related that employees did not pay for parking at any of its facilities, and, thus, they were not entitled to reimbursement.

The employing establishment submitted an October 19, 2016 letter from S.C., its health resources management manager. S.C. noted that an investigation of the alleged injury determined that appellant had finished loading his truck with his mail and he was not out on a smoke break as suggested. Appellant was witnessed sitting in the back of his LLV truck prior to standing up, turning around, and falling straight to the ground. He did not strike any objects on his way down. The parking lot was not congested during the time appellant loaded his LLV on the date of injury. S.C. indicated that the ground in the parking lot was not deteriorated, unlevelled, or uneven. It did not show any signs of unevenness that would cause appellant to fall backwards. S.C. related that there were no previous claims filed regarding unsafe factors in the parking lot. She stated that an investigative team videotaped a reenactment of the September 8, 2016 incident, spoke to K.W., and determined that appellant had already finished loading his LLV and was sitting on the ledge of the back of his LLV with the hatch open. Appellant was witnessed as not his usual self while K.W. spoke to him. His eyes were witnessed rolling up and back while he was sitting in the back of his LLV right before he stood up, turned around, and fell back to the ground without striking any objects.

By decision dated October 28, 2016, OWCP denied appellant's traumatic injury claim, finding that his injury did not occur in the performance of duty because his fall was idiopathic and was unrelated to factors of his federal employment.

On November 28, 2016 appellant requested an oral hearing before an OWCP hearing representative. He submitted a November 11, 2016 letter in which Eric Lehnert, a certified family nurse practitioner, reviewed his existing medical records from a prior primary care provider and noted that he had no history of seizure activity.

OWCP received multiple additional medical records from Nassau University Medical Center, including surgical intensive care progress notes and reports dated September 8 to 18, 2016 from physicians and physical therapists who reiterated appellant's history of injury, noting that he was status post fall at work and seizure and sustained head trauma, loss of consciousness, amnesia, and acute respiratory failure.

During the hearing held on February 10, 2017, appellant testified that when he went to turn his leg it would not move. He did not know if his foot was stuck or something else was stuck.

Next thing appellant knew, he was on the ground. He was subsequently hospitalized for six days. Appellant asserted that he did not remember K.W. being at the place where his injury occurred as she loaded her truck on the outside of a fence and not at the place of his injury. He acknowledged that A.S. could have been at the place of injury. Appellant contended that a supervisor who accompanied him to the hospital indicated that there were no witnesses to the incident. He asserted that he had no preexisting condition that would have caused his fall.

In a March 12, 2017 letter, the employing establishment responded to the hearing transcript. It maintained that appellant's description of the incident was now suspect since prior to the hearing he had no recollection of what happened. The employing establishment further maintained that this was exactly what appellant's union representative claimed when he requested continuation of pay for appellant which it controverted. It noted that, throughout this claim and investigation, appellant was unable to tell anyone exactly what happened. Now he remembered what happened, but nothing else. The employing establishment asserted that the investigation showed there was nothing to stop appellant's foot from moving as he now testified. It asserted that he was sitting on the back of his truck when he suddenly had a seizure episode as made clear by a witness to the claimed injury and videotaped reenactment of the injury.

The employing establishment submitted a December 15, 2016 letter from Dr. Nadeem Shabbir, a Board-certified neurologist, who verified that appellant was being followed in the neurology clinic at Nassau University Medical Center since October 2016. Dr. Shabbir provided diagnoses of post-traumatic seizure disorder and vertigo. He related that appellant was on antiepileptic medications and was not allowed to drive or operate any machinery until cleared.

In an April 4, 2017 decision, an OWCP hearing representative affirmed the October 28, 2016 decision. She found that appellant had sustained an idiopathic fall, which was not considered to have arisen in the performance of duty. The hearing representative found that the evidence of record established that he had a seizure prior to his fall.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 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.⁴

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

³ *Supra* note 2.

⁴ *Steven S. Saleh*, 55 ECAB 169 (2003).

within coverage of FECA.⁵ Such an injury does not arise out of a risk connected with the employment and is, therefore, not compensable. However, as 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.⁶

This follows from the general rule that an injury occurring while in the performance of duty is compensable unless the injury is established to be within an exception to such general rule.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.⁸ 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.⁹

ANALYSIS

Appellant alleged that he sustained a head injury in the performance of duty when he fell at work on September 8, 2016. OWCP does not contest that appellant fell while performing his job duties as a letter carrier. The evidence indicated that he had finished unloading a LLV located on the loading dock at the employing establishment's facility when he lost consciousness and fell. OWCP denied the claim after finding that appellant had a seizure.

As noted, an injury resulting from an idiopathic fall is not compensable.¹⁰ If appellant's injury was due to an idiopathic condition, the injury would not arise out of his 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.¹¹

The Board finds that the medical evidence establishes that appellant's fall on September 8, 2016 was due to a personal, nonoccupational pathology without employment contribution. In a September 8, 2016 Nassau University Medical Center report, Dr. Batista noted that appellant described not feeling well at work and that he was witnessed unconscious for 10 to 15 minutes.

⁵ *Carol A. Lyles*, 57 ECAB 265 (2005).

⁶ *See M.M.*, Docket No. 08-1510 (issued November 25, 2008).

⁷ *Dora Ward*, 43 ECAB 767 (1992).

⁸ *P.P.*, Docket No. 15-0522 (issued June 1, 2016); *see also Jennifer Atkerson*, 55 ECAB 317 (2004).

⁹ *John R. Black*, 49 ECAB 624 (1998); *Judy Bryant*, 40 ECAB 207 (1988).

¹⁰ *R.C.*, 59 ECAB 427 (2008).

¹¹ *H.B.*, Docket No. 12-0840 (issued November 20, 2012); *supra* note 6; *supra* note 8.

He found that appellant had “54 M level 2” trauma with seizure then fall with concussion with loss of consciousness, pneumocephalus, skull fracture left parietal hematoma, intraparenchymal hemorrhage, left pleural effusion, and respiratory distress. Other reports from Nassau University Medical Center, including Dr. Shabbir’s December 15, 2016 report, indicated that appellant was status post fall and seizure at work. The reports provided diagnoses of head trauma, loss of consciousness, amnesia, acute respiratory failure, post-traumatic seizure disorder, and vertigo. None of the medical records related the apparent seizure or other diagnosed conditions to appellant’s work duties or conditions. While Mr. Lehnert, a certified family nurse practitioner, noted in a November 11, 2016 report that appellant had no history of seizure activity, his statement does not constitute probative medical evidence and thus cannot establish that appellant’s fall was not idiopathic.¹² The Board finds, therefore, that the evidence of record is sufficient to meet OWCP’s burden of proof that the fall caused by appellant’s personal, condition of seizure and was thus idiopathic.¹³

Further, the Board finds that the evidence of record does not show that appellant experienced an intervention or contribution by any hazard or special condition of employment. Appellant did not allege that he struck any object related to his employment when he fell to the ground. He initially related that he could not recall what happened on September 8, 2016. It was not until he testified at the February 10, 2017 hearing that appellant related that he thought his foot was stuck or something else was stuck prior to his fall. The Board notes that the most contemporaneous evidence includes the employee witness statements and statement from S.C., the employing establishment’s health resources management manager. These tend to prove that appellant did not strike any object other than the floor when he fell at work. A.S. related that he witnessed that both of appellant’s hands were twisted and he was shaking before he hit the ground on September 8, 2016. On that same day K.W. indicated that she witnessed appellant making a strange face before he spun around and fell straight back hitting his head. S.C. reported that an investigation of the September 8, 2016 incident, which included a videotape reenactment of the incident, revealed that appellant had finished loading mail into his LLV and when he got up from sitting in the back of his LLV he turned around and fell straight to the ground. She related that he did not hit any objects as he fell down. S.C. noted that the parking lot where appellant loaded his LLV was not congested and the ground in the parking lot was in good condition. She further noted that no previous complaints had been filed regarding unsafe conditions in the parking lot. S.C. noted the witness statements of A.S. and K.W. Based on these statements, the Board therefore finds that appellant’s fall on September 8, 2016, without any further intervention or contribution by the employing establishment, is considered idiopathic and therefore noncompensable.¹⁴

The Board finds that appellant suffered an idiopathic fall and that appellant failed to establish any intervention or contribution by the employing establishment to bring the fall within

¹² 5 U.S.C. § 8101(2). *See also Paul Foster*, 56 ECAB 208 (2004) (where the Board found a nurse practitioner was not considered a physician under FECA).

¹³ *See G.W.*, Docket No. 14-0593 (issued June 10, 2015).

¹⁴ *L.B.*, Docket No. 13-1640 (issued March 21, 2014); *R.C.*, Docket No. 07-0651 (issued July 6, 2007).

the performance of duty. Accordingly, appellant has not established that he sustained an injury in the performance of duty.

On appeal appellant's representative contends that OWCP's decisions are incorrect because they both found that appellant suffered an idiopathic fall. The evidence of record, as explained above, establishes that appellant's fall on September 8, 2016 was idiopathic and therefore noncompensable.

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 USC § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof to establish an injury in the performance of duty on September 8, 2016, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the April 4, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 5, 2018
Washington, DC

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

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

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