United States Department of Labor
Employees' Compensation Appeals Board

B.P., Appellant	)	
and	)	**Docket No. 17-0580**
	)	**Issued: March 12, 2018**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, North Little Rock, AR, Employer	)	

Appearances:
Appellant, pro se
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 January 18, 2017 appellant filed a timely appeal from a January 9, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] 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 his burden of proof to establish that he sustained an employment-related injury in the performance of duty on January 6, 2016, as alleged.

[1] Appellant timely requested oral argument pursuant to section 501.5(b) of Board's *Rules of Procedure*. 20 C.F.R. § 501.5(b). By order dated July 27, 2017, the Board exercised its discretion and denied the request, finding that the arguments on appeal could adequately be addressed based on the case record. *Order Denying Request for Oral Argument*, Docket No. 17-0580 (issued July 27, 2017).

[2] 5 U.S.C. § 8101 *et seq.*

On appeal appellant asserts that the evidence of record establishes that his fall on January 6, 2016 occurred in the performance of duty.

FACTUAL HISTORY

On January 8, 2016 appellant, then a 54-year-old supervisory contract specialist, filed a traumatic injury claim (Form CA-1) alleging that he was injured when he slipped going down stairs at 3:30 p.m. on January 6, 2016. In an attached narrative statement, he indicated that, on the date of injury, he was wearing a sling on his left shoulder and was carrying his back pack over his right shoulder. Appellant stopped to get water to take a pain pill, took a few steps and slipped. He fell backward, striking his back, hip, and elbow. Coworkers stayed with him until an ambulance arrived. The employing establishment is located in North Little Rock, Arkansas. Appellant lives in the San Antonio, Texas, area when not working.

An employing establishment manager signed the reverse side of the claim form on January 13, 2016. He affirmatively indicated by check mark that the injury was caused by the employee's willful misconduct, intoxication, or intent to injure self or another, stating that a medical diagnosis on an emergency department report showed a diagnosis of drug intoxication. The manager also noted that appellant was instructed not to use the stairs without assistance. Continuation of pay was authorized through February 12, 2016.

Medical evidence submitted included a December 28, 2015 report in which Dr. Patrick Simon, a Board-certified orthopedic surgeon, advised that, due to previous left shoulder surgery, appellant had restrictions of no use of left arm, no walking up the stairs due to balance issues, and no driving. He indicated that appellant could work from home and that the restrictions would be for six weeks.

A summary of hospitalization dated January 6, 2016, from Baptist Health emergency department, noted that appellant was seen by Dr. Dannetta Grisham, Board-certified in emergency medicine. It listed diagnoses of lightheadedness and drug intoxication and included a list of discharge medications and instructions.

In reports dated January 22 and 29, 2016, Dr. Danilo Hoyumpa, Board-certified in family medicine, noted a history that appellant fell down stairs injuring his back, neck, and shoulder. He diagnosed left shoulder strain, cervical strain, low back strain, and advised that appellant could return to restricted duty, but must work from home due to medications and until seen by an orthopedist. Dr. Hoyumpa's reports were accompanied by treatment notes from Mark Wilson, a nurse practitioner, and Mike Hedspeth, a physician assistant, dated January 22 and 29, 2016 respectively.

In a January 27, 2016 letter, the employing establishment controverted the claim, indicating that medical documentation listed diagnoses of lightheadedness and drug intoxication. It noted that appellant had a preexisting history of left shoulder surgery that was not employment related, and maintained that there was no loose tread on the staircase. Pictures of the staircase were enclosed. Documentation regarding appellant's requests for accommodation to telework full time in June and October 2015 were also included. This indicated that appellant had requested to telework full time to accommodate his 100 percent service-connected disability and

was offered some accommodation by the employing establishment that he rejected.[3] Email correspondence from the employing establishment to appellant indicated that he was offered an additional accommodation on January 14, 2016, which he did not accept.

On February 4, 2016 OWCP informed appellant that, when his claim was received, it appeared to be a minor injury that resulted in minimal or no lost time from work and, thus, had not been formally adjudicated at that time, but was now being reopened for formal adjudication. It advised him of the evidence needed to support his claim. OWCP also asked the employing establishment to provide its policy regarding the use of intoxicating substances, prescription or otherwise, while on its premises.

In a February 19, 2016 response, appellant noted that he had been denied accommodations before the January 6, 2016 injury, was forced to climb stairs, had to pay for transportation to and from work, and was never offered assistance from the employing establishment. He stated that he was originally prescribed Hydrocodone by Stephanie Fraser, a nurse practitioner, when pain shots no longer relieved his shoulder and back pain, and that Dr. Simon, his orthopedic surgeon, later prescribed the medication after December 9, 2015 shoulder surgery. Appellant indicated that both Ms. Fraser and Dr. Simon advised that he work from home while on the medication, but no accommodations were made. Appellant noted that coworker E.K. witnessed his fall.

A Department of Veterans Affairs (VA) document indicated that appellant is 100 percent disabled with service-connected right hand burn scars, right knee degenerative arthritis, right little finger burn scars and fracture, left great toe surgical scarring, right great toe degenerative arthritis, lumbar spine spondylosis, right leg radiculopathy, left hip degenerative arthritis, degenerative osteoarthritis of the left foot, bursitis of the right and left elbow and forearm, acromioclavicular (AC) joint separation of the left shoulder, nasal fractures, gout, hypertension, gastrointestinal reflux, obstructive sleep apnea, dysphagia, and tinnitus.

January 6, 2016 records from Baptist Health emergency department indicate that appellant arrived at 4:32 p.m. and was discharged at 7:43 p.m. Dr. Grisham noted appellant's complaints of dizziness and fall at work. She related a history that he slid down approximately 15 steps, and that he recently underwent left shoulder rotator cuff surgery and was wearing a left shoulder immobilizer. Appellant told her that he took 20 mg of Hydrocodone when he got to work, took 20 mg more four hours later, took one more dose after that, and then fell at work because he felt lightheaded. Dr. Grisham indicated that appellant reported that he had no injury from his fall, but took two more 10 mg Hydrocodone pills while he was waiting to be seen in the emergency room because of pain. Her examination demonstrated that appellant had slightly slurred speech and was obviously somewhat sleepy. Appellant's neck was supple with normal range of motion. There was no edema or tenderness on musculoskeletal examination with normal range of motion. Judgment and thought content were normal. Dr. Grisham diagnosed lightheadedness and acute narcotic intoxication. Electrocardiogram was abnormal and a prior

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[3] In a request for accommodation dated October 24, 2015, appellant noted that his medical care was located in Texas, and that, if his pain shots wore off, he would then have to take medication while at work, making it unsafe for himself and others. He also requested that transportation be provided to and from work.

anterior infarct could not be ruled out. Discharge instructions included that appellant need not work while taking narcotics and should have his orthopedic surgeon recheck his shoulder. Appellant was advised to establish treatment with a doctor in Arkansas where he worked.

Appellant also submitted a health information document that listed his medication history from August 2, 2015 to February 14, 2016. This included a notation that a right shoulder x-ray on August 2, 2015 showed degenerative changes of the AC joint. An August 28, 2015 left shoulder magnetic resonance imaging (MRI) scan demonstrated a partial thickness supraspinatus tear, mild osteoarthritis of the AC joint, bursitis, and post-traumatic scarring.

On April 15, 2015 Dr. Yickui Li, Board-certified in family medicine, noted a history of chronic lower back, left shoulder, knee, and foot pain that limited appellant's ability to sit, stand, or walk. Dr. Li advised that, if appellant could work from home, he could be productive in an environment that was more comfortable and would provide less stress on his joints.

In a January 20, 2016 form report, Ms. Fraser noted a history of left shoulder surgery and January 6, 2016 fall. She listed his restrictions, including no use of left arm, walking upstairs, or driving while taking narcotics. Ms. Fraser advised that he could work from home.

On a form report dated February 13, 2016, Dr. Hoyumpa indicated that appellant was prevented from returning to work through February 22, 2016 because he could not drive due to drowsiness from medication and must work from home. He diagnosed low back, neck, and left shoulder pain.

Appellant began seeing Dr. Daniel Beltran, a chiropractor, on February 18, 2016. He noted that on January 6, 2016 appellant slipped on a loose stair and fell back, landing on his spine. Current complaints were neck, left arm, lower back, and bilateral leg pain. Dr. Beltran described findings and diagnosed cervical sprain/strain, lumbar sprain/strain, possible herniated nucleus pulposus (HNP), left shoulder sprain/strain with internal derangement, and myofascial pain. On March 3, 2016 he noted that appellant could not work.

Email correspondence dated December 17, 2015 to January 11, 2016 between appellant and the employing establishment, documents that appellant was on approved annual and sick leave through January 15, 2016 and was told not to perform any work function. He requested reasonable accommodation to telework from his Texas home or administrative leave for his absence. The employing establishment denied his request. Appellant arrived for work at 4:46 a.m. on January 4, 2016. He advised that "liberal leave is useless" and noted that no accommodations were made to his office. Appellant requested transportation for four to six months and accommodation of his San Antonio medical appointments. At 6:47 a.m. that day the employing establishment advised that it was working with management to address his office concerns and requested additional medical documentation. The employing establishment denied his request for reimbursement of transportation expenses.

On January 5, 2016 the employing establishment noted that appellant's restrictions of no lifting, reaching, walking up the stairs, and no driving for six weeks limited his ability to perform the functions of his position and noted that he had been provided liberal leave to accommodate his condition. Appellant noted that he was not feeling well that day as he had no one to prepare

his meal and had to take his medication on an empty stomach, which caused nausea and dizziness. He advised that he lost his balance going up stairs. The employing establishment responded that appellant get help navigating the stairs and again recommended that he take the approved leave.

At 7:15 a.m. on January 6, 2015 he again reported difficulty with the stairs and reported that his office heating was not working. At 7:53 a.m. appellant requested help with the stairs. At 3:24 p.m. on January 7, 2016 the employing establishment noted his fall the previous day. It instructed appellant that, based on medical documentation received, he should get help going down stairs and when going home. The employing establishment indicated that appellant could not return to work until medically cleared. Appellant requested telework or administrative leave, which was denied.

On February 22, 2016 the employing establishment notified OWCP that there was no elevator or escalator available to appellant, that he was offered assistance in navigating the stairs, and that there were no witnesses to the January 6, 2016 fall, other than the driver who was there to pick up appellant.

By decision dated March 9, 2016, OWCP denied appellant's claim, finding that he had not submitted sufficient medical evidence to establish causal relationship between his claimed condition and the January 6, 2016 fall, and that his intoxication was the proximate cause of the injury.

Counsel timely requested a hearing with a representative of OWCP's Branch of Hearings and Review. Additional evidence submitted included correspondence regarding a 2015 alternative accommodation request, a grievance appellant filed in August 2015, medical evidence that predated the January 6, 2016 injury, a January 30, 2016 letter from appellant to his Congressman, a January 30, 2016 letter in which appellant rejected the employing establishment's offer of alternative accommodation and his March 1, 2016 appeal, and e-mail communications between appellant and the employing establishment dated January 14 to March 21, 2016 which mainly dealt with his request to work from home in Texas. The e-mails included a list of his medications and schedule of his weekly medical appointments.

A July 13, 2015 computerized tomography (CT) scan of appellant's head was normal. A July 13, 2015 lumbar spine MRI scan revealed disc bulges at L4-5 and L5-S1 with mild neural foraminal narrowing and facet degenerative changes. A July 23, 2015 x-ray of the cervical spine demonstrated minimal degenerative spurring and no other significant abnormalities.[4] A December 19, 2015 discharge note indicated that appellant had left shoulder surgery. It noted that he should not bear weight with his left arm and should wear a sling at all times. One to two tablets of Norco, every four to six hours, was prescribed for pain.[5]

[4] The record also contains March 15, 2016 cervical and spine MRI reports showing a protrusion-subligamentous disc herniation at C3-4 and a protrusion-subligamentous disc herniations at L3-4, L4-5, L5-S1. A May 8, 2016 cervical spine x-ray showed minimal degenerative spurring.

[5] The medical provider signature is illegible.

Dr. Hoyumpa provided a treatment note dated February 13, 2016. He noted that appellant was originally seen on January 22, 2016 for a January 6, 2016 employment injury when he fell down stairs while carrying a back pack, injuring his left shoulder, neck, and lower back. Dr. Hoyumpa noted appellant's complaint of continued sharp pain for which he was taking Hydrocodone. He diagnosed strains of the left upper extremity and neck and low back pain, all improved. Dr. Hoyumpa advised that appellant should remain off work, noting that his medication caused drowsiness.

In a March 19, 2016 report, Jeff Dickerson, a nurse practitioner, noted a history that appellant fell down a flight of stairs on January 6, 2016, and listed appellant's complaints of continued cervical and lumbar spine pain. He reviewed results of diagnostic testing, described findings, and offered diagnoses for the cervical and lumbar spine. Mr. Dickerson advised that appellant's subjective complaints, combined with his physical examination and imaging studies, were consistent with the reported mechanism of injury. Dr. Beltran continued to submit duty status reports (CA-17 forms) advising that appellant could not work.

In a treatment note dated March 30, 2016, Dr. Johnny White, Board-certified in anesthesiology and pain medicine, listed January 6, 2016 as the date of injury and slip and fall under a heading "causation." He described appellant's complaints of radiating back pain and left shoulder pain with difficulty standing erect, fatigue in legs with walking, sleep dysfunction, right leg tingling, and bilateral leg swelling and heaviness with ambulation. Low back examination demonstrated positive straight leg raising bilaterally and tenderness over the paravertebral muscles. Dr. White reviewed the March 23, 2016 lumbar spine MRI scan and diagnosed sprain of ligaments of lumbar spine, intervertebral disc disorders with radiculopathy, lumbosacral region. He recommended epidural injections.

In correspondence dated March 31, 2016, appellant requested that Baptist Health amend its medical record regarding inaccuracies in its medical report.

On May 5, 2016 Dr. Beltran advised that appellant must work from home due to medication. In an amended May 5, 2016 duty status report (Form CA-17), the chiropractor also indicated that appellant needed physical therapy three times per week. He continued to submit reports indicating that appellant must work from home due to medication. On May 16, 2016 Dr. Simon advised that appellant could perform light duty, but must work from home and would have physical therapy appointments.

Appellant filed an additional grievance in May 2016. He returned to duty on May 13, 2016.

During the hearing, held on November 8, 2016, appellant testified that he did not work from January to July 2016 and had been instructed to return to work. He indicated that on January 6, 2016 he could not drive because he had undergone nonemployment-related rotator cuff surgery and was taking Hydrocodone and Naprosyn for pain and additional medication for hypertension and gout, and had restrictions provided by Dr. Simon on December 31, 2015 of no stair-climbing and no driving. Appellant stated that he felt lightheaded and sick to his stomach at work on January 6, 2016, and that his driver E.K., a friend, came his office and walked in front of him as he went down the stairs. He stated that he took Hydrocodone just as he left, picked up

his backpack, took a few steps and slid almost to the landing. Appellant noted that the building had no elevator and the employing establishment would not give him a first floor office. He related that coworkers helped him sit up until he was taken to an emergency room. Appellant maintained that the Hydrocodone had kicked in and made him groggy and sleepy, and that the emergency room report was incorrect. He indicated that he also had a history of bilateral total knee replacements and needed a hip replacement. Appellant stated that he returned to work the next day, but was sent home. He claimed that he injured his back, left shoulder, and neck. The hearing representative advised him to get a statement from his driver and provide supportive medical evidence. The record was left open for 30 days.

The only evidence received by OWCP after the hearing were duplicates of the March 15, 2016 MRI scans, and an October 5, 2016 report in which Dr. Beltran described examination findings. Dr. Beltran reviewed the March 15, 2016 MRI scans and diagnosed cervical and lumbar herniated discs, left shoulder sprain/strain with internal derangement, and myofascial pain. He noted that appellant had left shoulder surgery on December 9, 2015 and returned to work on January 4, 2016. Dr. Beltran indicated that the January 6, 2016 fall caused a worsening of left shoulder symptoms, and neck and lower back pain. He opined that, within reasonable medical probability, appellant's history, mechanism of injury, and physical examination findings were consistent with injuries to his cervical spine, lumbar spine, and left shoulder.

By decision dated January 9, 2017, OWCP's hearing representative found that appellant's fall on January 6, 2016 was caused by medication intoxication and, assuming arguendo that it was not caused by narcotic intoxication, it was an idiopathic fall related to appellant's left shoulder injury. The hearing representative affirmed the March 9, 2016 decision.

LEGAL PRECEDENT

An employee seeking compensation under FECA[6] has the burden of proof to establish the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,[7] including that he or she is an employee within the meaning of FECA, that the claim was filed within the applicable time limitation,[8] and that he or she sustained an injury in the performance of duty as alleged. The employee must also prove that any disability from work was causally related to the employment injury.[9]

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.

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[6] *Supra* note 2.

[7] *J.P.*, 59 ECAB 178 (2007).

[8] *R.C.*, 59 ECAB 427 (2008).

[9] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989). OWCP regulations define 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. 20 C.F.R. § 10.5(ee). OWCP regulations define the term "occupational disease or illness" as a condition produced by the work environment over a period longer than a single workday or shift." 20 C.F.R. § 10.5(q).

There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[10]

Under FECA, OWCP shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty, unless the injury or death is proximately caused by the intoxication of the injured employee.[11] Intoxication is an affirmative defense and, if invoked, OWCP must do so during the initial adjudication of the claim.[12] In order to correctly invoke section 8102(a)(3), OWCP must establish by reliable, probative, and substantial evidence that intoxication was the proximate cause of injury or death.[13]

OWCP procedures provide that where intoxication may be the proximate cause of the injury, the record must contain all available evidence showing: (a) the extent to which the employee was intoxicated at the time of injury; and (b) the particular manner in which the intoxication caused the injury. It is not enough merely to show that the employee was intoxicated. It is also OWCP's burden to show that the intoxication caused the injury. An intoxicant may be alcohol or any other drug.[14]

In addition to obtaining statements from the supervisor/official superior, the employee and any coworkers or other witnesses, the procedures also indicate that a statement should be obtained from the physician and the hospital where the employee was examined following the injury which describes as fully as possible the extent to which the employee was intoxicated and the manner in which the intoxicant was affecting the employee's activities.[15] Moreover, the results of any tests made by the physician or hospital to determine the extent of intoxication should be obtained.[16]

ANALYSIS

The Board finds that OWCP did not meet its burden of proof to deny this claim by raising the affirmative defense of intoxication.

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[10] *T.H.*, 59 ECAB 388 (2008).

[11] 5 U.S.C. § 8102(a)(3).

[12] *T.F.*, Docket No. 08-1256 (issued November 12, 2008).

[13] *Id.*

[14] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 1.804.14.c(1) (September 1995).

[15] *Id.* at Chapter 1.804.14.c(2)(3).

[16] *Id.*

As noted, OWCP's use of an affirmative defense must be invoked in the original adjudication of the claim, and OWCP has the burden to prove such a defense.[17] The evidence to establish this defense must be reliable, probative, and substantial.[18] When intoxication is invoked as an affirmative defense, the Board has explained that the statutory test under FECA is "proximate cause." Therefore, OWCP must show that the employee was in fact intoxicated when the injury occurred and that such intoxication was the proximate cause of such injury. A mere showing that intoxication existed concurrently with the injury is insufficient.[19] FECA does not intend that compensation shall be denied where intoxication is one cause of injury or death, on the theory that if an employee is intoxicated he or she is not in the performance of duty. Intoxication as a cause does not, *ipso facto,* take the case out of the performance of duty.[20] In defining what is meant by proximate cause, the Board has stated that intoxication as one cause of an injury does not destroy the possibility of an injury arising out of and in the course of employment, and that intoxication does not bring the case within the statutory language under which benefits may be denied, unless the injury was occasioned solely by or was proximately caused by intoxication.[21] Something more is necessary than a mere showing that intoxication existed concurrently with injury. If the injury was solely caused by intoxication, then the statute requires denial of benefits, but this test can only be applied where the injury is one arising out of and in the course of employment from other aspects, as this fundamental prerequisite must be satisfied first before applying the secondary "cause" test. If the first test is not met, then there is no need to apply the second test.[22]

In the case at hand, at the time of appellant's injury at 3:30 p.m. on January 6, 2016, he was just ending his day as a contract specialist. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in his master's business, at a place when he or she may reasonably be expected to be in connection with his employment, and while he or she was reasonably fulfilling the duties of the employment or engaged in doing something incidental thereto.[23] The Board has accepted the general rule of workers' compensation law that, as to employees having fixed hours and places of work, injuries occurring on the premises of the employing establishment, while the employee is going to or

[17] *Supra* note 12.

[18] *Supra* note 13.

[19] *N.P.*, Docket No. 10-0952 (issued July 26, 2011).

[20] In *Ruth Bubier (Sylvester C. Bubier)*, the Board considered whether intoxication was the proximate cause of the employee's injury and death. It noted that, under FECA, intoxication comes into picture as destroying the right to compensation in situations, otherwise within the performance of duty, only if intoxication is the proximate cause of the injury. *Ruth Bubier (Sylvester Bubier),* 2 ECAB 60 (1948).

[21] *Id*.

[22] *Id.; see N.P.*, *supra* note 19.

[23] *P.S.*, Docket No. 08-2216 (issued September 25, 2009).

from work, before or after working hours, or at lunch time, are compensable.[24] Thus, appellant was in the course of employment when the January 6, 2016 incident occurred.

Appellant arrived at the emergency department at 4:32 p.m. in January 6, 2016 and was discharged home at 7:43 p.m. Dr. Grisham noted his complaint of dizziness and fall at work. She related a history that he slid down approximately 15 stairs, and that he recently had left shoulder rotator cuff surgery and was wearing a left shoulder immobilizer. Dr. Grisham reported that appellant told her he took 20 mg of Hydrocodone when he got to work, took 20 mg more four hours later, took one more dose after that, and then fell at work because he felt lightheaded. She indicated that appellant reported he had no injury from his fall, but took two more 10 mg Hydrocodone pills while he was waiting to be seen in the emergency room because of shoulder pain. On examination appellant had slightly slurred speech and was somewhat sleepy. Judgment and thought content were normal. Dr. Grisham diagnosed lightheadedness and acute narcotic intoxication. The record, however, does not include a toxicology report that could provide evidence of intoxication. As noted, it is not enough to show that an employee was intoxicated. Therefore, even if the record in this case contained positive toxicology reports in the record, these would not necessarily establish that appellant was intoxicated at the time of the fall such that intoxication was the proximate cause of the fall.

The Board finds that the evidence of record establishes only the possibility that appellant was intoxicated by ingestion of medication at the time of injury.[25] The record is insufficient to establish that intoxication was the proximate cause of his fall. The Board, therefore, finds that OWCP has not met its burden of proof to establish the affirmative defense of intoxication. Therefore, the claim is not precluded under 5 U.S.C. § 8102(a)(3).

The record indicates that no coworkers witnessed the fall. Appellant testified at the hearing that he was accompanied on the stairs by coworker, E.K. The hearing representative asked that he obtain a statement from her, but appellant did not do so. As the incident was witnessed, it is incumbent on appellant to furnish this statement to OWCP so that a proper description of his fall can be determined for assessing whether the fall was idiopathic in nature and, if not, the nature and degree of any injuries sustained.[26]

The case will be remanded to OWCP to first obtain a witness statement from E.K. to determine an exact description of the incident, to be followed by evaluation of the medical evidence and a determination of the extent of any injury and periods of disability. Following this and any other development deemed necessary, OWCP shall issue a *de novo* decision.

[24] *R.M.*, Docket No. 07-1066 (issued February 6, 2009).

[25] *N.P., supra* note 19.

[26] As to the hearing representative's reliance on the idiopathic fall doctrine, to properly apply the idiopathic exception to the premises rule, there must be two elements present: a fall resulting from a personal, nonoccupational pathology, and no contribution from the employment. *N.P.*, Docket No. 08-1201 (issued May 8, 2009). As the exact circumstances of the fall have yet to be determined, the Board is unable to properly adjudicate this issue.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2017 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: March 12, 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