United States Department of Labor
Employees' Compensation Appeals Board

J.W., Appellant	)	
and	)	**Docket No. 19-0335**
	)	**Issued: July 2, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Cleveland Heights, OH, Employer	)	

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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 30, 2018 appellant filed a timely appeal from an October 29, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish an injury in the performance of duty on September 5, 2018, as alleged.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the October 29, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On September 17, 2018 appellant, then a 49-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 5, 2018 she sustained a bruised right arm and shoulder, bruised right eye, and swollen left knee when she fainted due to heat. On the reverse side of the claim form, the employing establishment indicated that she stopped work on September 5, 2018 and returned to work on September 13, 2018. It contended that appellant was not injured in the performance of duty and noted that she fainted while "delivering to her businesses" and "[appellant] was kept in the hospital for heart-related issues."

In a work excuse note dated September 7, 2018, Dr. Scott L. Massien, Board-certified in internal medicine, indicated that he treated appellant on September 7, 2018 and that she was to return to work on September 11, 2018.

In an x-ray scan report dated September 9, 2018, Dr. Jawad Nesheiwat, a Board-certified diagnostic radiologist, noted impressions of no acute osseous abnormality and mild progression of mild-to-moderate degenerative changes of the left knee.

In a duty status report (Form CA-17) dated September 11, 2018, Dr. Scott L. Massien, Board-certified in internal medicine, diagnosed syncope. He noted that appellant fainted due to heat outside, and indicated that she could return to work with restrictions.

In a letter dated September 14, 2018, the employing establishment controverted appellant's claim noting that she was taken to the hospital after fainting on her route. However, it alleged that the physician admitted her into the hospital after finding an air pocket on her heart. The employing establishment indicated that the hospital discharged appellant with a heart monitor and treated her for an upper respiratory infection and other illnesses. It alleged that the paramedics on the scene of the incident stated that they thought she passed out from the heat, however, her medical documentation did not indicate that heat was the cause.

In a development letter dated September 26, 2018, OWCP advised appellant that the evidence of record was insufficient to establish that she actually experienced the incident alleged to have caused the injury as a result of her work duties, and that she had not submitted a physician's opinion as to how her injury resulted in a diagnosed medical condition. It requested that she submit additional factual and medical evidence and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence. No response was received.

By decision dated October 29, 2018, OWCP denied appellant's claim, finding that she was not in the performance of duty at the time of the alleged September 5, 2018 employment incident. It noted that the evidence she submitted for review did not support that her diagnosed condition of syncope was caused or contributed to by her federal employment. OWCP specifically related that it could not determine if appellant's reported fall was idiopathic or unexplained because she had not responded to the requested questionnaire.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 within the applicable time limitation period of FECA,[4] 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.[5] 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.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.[7] 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.[8] Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[9]

FECA provides for the payment of compensation for "the disability or death of an employee resulting from personal injury sustained while in the performance of duty."[10] "The phrase" sustained while in the performance of duty" has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers' compensation law of "arising out of and in the course of employment."[11] The phrase "in the course of employment" is recognized as relating to the work situation, and more particularly, relating to elements of time, place, and circumstance. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be stated to be engaged in the master's business, at a place where he or she may reasonably be expected to be in connection with the employment, and while the employee was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto."[12]

---

[3] *Supra* note 1.

[4] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153(1989).

[5] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *C.B.*, Docket No. 18-0071 (issued May 13, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *D.B.*, Docket o. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[8] *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

[10] 5 U.S.C. § 8102(a).

[11] *G.R.*, Docket No. 18-1490 (issued April 4, 2019); *Charles Crawford*, 40 ECAB 474, 476-77 (1989).

[12] *G.R.*, *id.*; *Mary Keszler*, 38 ECAB 735, 739 (1987).

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.[13] 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.[14] 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.[15]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an injury in the performance of duty on September 5, 2018, as alleged.

Appellant has not provided sufficient detail to establish that a traumatic incident occurred in the performance of duty as alleged.[16] On her Form CA-1 she explained that she sustained a bruised right arm and shoulder, bruised right eye, and swollen left knee when she fainted due to heat while delivering mail in the performance of duty. On the reverse side of the Form CA-1, and in a separate letter, the employing establishment controverted the claim indicating that "[appellant] was kept in the hospital for heart-related issues," and not as a result of the alleged fall. Therefore, OWCP could not determine, based upon evidence of record, whether appellant's fall was idiopathic or otherwise remained unexplained.[17]

Appellant was provided an opportunity to submit evidence to establish how her alleged injury occurred on September 5, 2018. By development letter dated September 26, 2018, OWCP requested that she describe the factual circumstances of her injury and provided her with a factual development questionnaire for completion. Appellant did not respond to the questionnaire and failed to provide a narrative statement detailing the traumatic incident prior to the issuance of OWCP's denial of her claim on October 29, 2018. The only explanation she provided pertaining to the alleged September 5, 2018 employment incident is a general and vague statement noted on

[13] *H.B.*, Docket No. 18-0278 (issued June 20, 2018); *see Carol A. Lyles*, 57 ECAB 265 (2005).

[14] *H.B.*, *id.*; *Dora J. Ward,* 43 ECAB 767, 769 (1992); *Fay Leiter,* 35 ECAB 176, 182 (1983).

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

[16] *Dennis M. Mascarenas,* 49 ECAB 215, 218 (1997).

[17] *Supra* note 15.

her Form CA-1. While appellant indicated that she fainted due to heat, she did not provide details such as the alleged circumstances surrounding her alleged injury *e.g.*, outdoor temperature on September 5, 2018 and how long she had been exposed to this or any other factors as a result of delivering mail in the alleged "heat." By failing to describe the employment incident and circumstances surrounding her alleged injury, she has not established that the traumatic injury occurred in the performance of duty, as alleged.[18] Thus, the Board finds that appellant has not met her burden of proof.[19]

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 met her burden of proof to establish an injury in the performance of duty on September 5, 2018, as alleged.

[18] *Id.*

[19] The Board notes that appellant was transported to the hospital. OWCP, however, did not adjudicate the issue of her incurred medical expenses or whether emergency or unusual circumstances were present. Ordinarily, the employing establishment will authorize treatment of a job-related injury by providing the employee a properly executed authorization for examination and/or treatment (Form CA-16) within four hours. In this case, the record does not contain a Form CA-16 or any other authorization from OWCP for medical treatment. However, under section 8103 of FECA, OWCP has broad discretionary authority to approve unauthorized medical care which it finds necessary and reasonable in cases of emergency or other unusual circumstances. 5 U.S.C. § 8103; 20 C.F.R. § 10.304. *See L.B.*, Docket No. 10-0469 (issued June 2, 2010); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3a.(3) (February 2012)

ORDER

IT IS HEREBY ORDERED THAT the October 29, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 2, 2019
Washington, DC

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

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

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