United States Department of Labor
Employees' Compensation Appeals Board

M.A., Appellant	)	
and	)	**Docket No. 19-0341**
	)	**Issued: July 10, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Dacula, GA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 3, 2018 appellant, through counsel, filed a timely appeal from an October 5, 2018 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.[3]

[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.

[3] The Board notes that, following the October 5, 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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish an injury in the performance of duty on December 12, 2017, as alleged.

FACTUAL HISTORY

On December 13, 2017 appellant, then a 53-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 12, 2017 he injured his right knee when he tripped and fell as he walked to the "flat/mark-up case" while in the performance of duty. On the reverse side of the claim form the employing establishment indicated that appellant did not stop work.

In a report dated December 13, 2017, Dr. William Huey, an occupational medicine specialist, diagnosed right knee contusion and nondisplaced fracture of the right tibia. He noted that appellant's injury was a result of a "foot drop" due to his diagnosed Charcot-Marie-Tooth (CMT) disease. Dr. Huey related that appellant was walking in his usual toe-to-heel manner, tripped on his toes and fell straight forward landing on his anterior right knee. He related that appellant had been able to work with CMT disease, but had noticed increasing symptoms with his advancing age. In an accompanying duty status report (Form CA-17) of the same date, Dr. Huey noted that appellant could return to restricted duty.

In a letter dated December 14, 2017, the employing establishment controverted appellant's claim, arguing that it was unclear how work factors contributed to his fall. It indicated that appellant did not trip on anything, and that its records showed that he had a preexisting condition that caused him to fall.

In a development letter dated December 19, 2017, OWCP advised appellant that additional factual and medical evidence was necessary to establish his claim. It requested that he complete a questionnaire regarding the factual circumstances of his injury and provide additional medical evidence. OWCP afforded appellant 30 days to submit the requested evidence.

In a development letter of even date, OWCP requested that the employing establishment submit comments from any individuals who witnessed or had direct knowledge of the circumstances surrounding the alleged incident so it could determine whether appellant was in the performance of duty when injured. It also afforded the employing establishment 30 days to submit the requested evidence.

On December 21, 2017 OWCP issued an authorization for examination and/or treatment (Form CA-16) authorizing medical treatment for appellant's alleged December 12, 2017 injury.

In a supplemental statement dated December 26, 2017, appellant indicated that, while walking to the "throw-back case" at his duty station, he "stumped" his toe on the floor and fell forward onto his right knee. He noted that a coworker witnessed the event, attempted to help him return to his feet, and summoned his supervisor. Appellant related that he continued his duties that day even though he was in pain. He noted that he had been previously diagnosed with CMT disease, and that his supervisors had been aware of his condition.

In reports dated December 18 and 27, 2017, received by OWCP on July 3, 2018, Dr. Huey diagnosed right knee contusion and nondisplaced fracture of the right tibia based on x-ray and

magnetic resonance imaging (MRI) scan reports of appellant's right knee. He opined that appellant was to remain on restricted duty.

In a December 27, 2017 attending physician's report contained in Part B of the Form CA-16 report, Dr. Huey diagnosed right tibial fracture and marked the box "yes" to the question whether appellant's condition was caused or aggravated by his employment activities. He indicated that appellant was to remain on light duty with restrictions.

In a report dated January 4, 2018, Dr. Neil J. Negrin, a Board-certified orthopedic surgeon, examined appellant and noted the CMT disease diagnosis in the "past medical history" section. Upon physical examination and review of diagnostic tests, he diagnosed mildly displaced fracture tibial plateau posterior. Dr. Negrin noted that appellant was to remain off work.

By decision dated January 24, 2018, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the alleged injury arose during the course of employment and within the scope of compensable work factors. Specifically, it found that the evidence revealed that appellant's injury was caused by an idiopathic disease and not from factors of his federal employment.

In a report dated February 5, 2018, Dr. Negrin indicated that appellant was improving from his employment-related injury. He noted that appellant could return to limited work with restrictions. Dr. Negrin related that appellant's preexisting disease should not preclude him from being covered for his accidental work-related fall.

On February 20, 2018 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative. He submitted additional evidence along with his request.

Appellant submitted physical therapy reports dated February 20, 22, and 26, March 1 and 6, 2018 from Patti Willis, a physical therapist.

In a report dated March 19, 2018, Dr. Negrin indicated that appellant had continued pain in the posterior aspect of his right knee. He related that appellant was unable to climb in and out of a vehicle, except on rare occasions. Dr. Negrin noted that appellant was to remain on limited work status.

In a supplemental statement dated April 27, 2018, appellant indicated that he walked in a toe-to-heel manner, and wore a brace to help prevent tripping, due to his CMT disease. He related that the band on his brace had snapped so the brace lost the ability to keep his toe upright and he tripped.

On July 13, 2018 a telephonic hearing was held before an OWCP hearing representative.

In a letter dated August 8, 2018, Dr. Negrin indicated that, while in the course of his employment duties, appellant stubbed his toe on the floor and fell forward onto his right knee. He noted that appellant received an MRI scan, which indicated that he suffered a fracture fragment from the posterior tibial plateau. Dr. Negrin opined that the blunt impact to appellant's knee in the fall caused his bone to fracture, and that the impact of his knee hitting the floor was the direct and proximate cause of the tibial fracture.

By decision dated October 5, 2018, an OWCP hearing representative affirmed the January 24, 2018 decision, finding that the evidence of record supported that the fall was due to an idiopathic preexisting medical condition and that there was no contribution from employment factors.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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.[5] These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[6]

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.[7] 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.[8]

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.[9] 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.[10] 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.[11]

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[4] *Supra* note 2.

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

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

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

[8] *H.B.*, *id.*; *M.M.*, Docket No. 08-1510 (issued November 25, 2008).

[9] *P.N.*, Docket No. 17-1283 (issued April 5, 2018); *Dora Ward*, 43 ECAB 767 (1992).

[10] *A.B.*, Docket No. 17-1689 (issued December 4, 2018); *P.P.*, Docket No. 15-0522 (issued June 1, 2016); *see also Jennifer Atkerson*, 55 ECAB 317 (2004).

[11] *P.N.*, *supra* note 9; *John R. Black*, 49 ECAB 624 (1998); *Judy Bryant*, 40 ECAB 207 (1988).

ANALYSIS

The Board finds that appellant has failed to meet his burden of proof to establish an injury in the performance of duty on December 12, 2017, as alleged.

Appellant alleged that he sustained a right knee injury in the performance of duty when he fell at work on December 12, 2017. OWCP does not contest that appellant fell while performing his job duties as a rural carrier. The evidence indicated that he was walking to the "throw-back case" at the employing establishment's facility when he tripped and fell forward onto his right knee. OWCP denied the claim finding that appellant's fall was a result of an idiopathic condition.

As noted, an injury resulting from an idiopathic fall is not compensable.[12] 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 to establish that a given fall is idiopathic in nature.[13]

Appellant explained in his April 27, 2018 statement that he tripped because a band on his brace snapped, and he was unable to keep his toe upright. The Board finds that appellant's statement, along with the medical evidence of record, establishes that appellant's fall on December 12, 2017 was due to a personal, nonoccupational pathology without employment contribution. In his December 13 and 26, 2017 reports, Dr. Huey indicated that appellant has a "foot drop" due to his previously diagnosed CMT disease, which required him to walk in a toe-to-heel manner. While walking in this manner, appellant tripped on his toes and fell. Following an MRI scan, Dr. Huey diagnosed nondisplaced fracture of the right tibia.

In his January 4, February 5 and 26, and March 19, 2018 reports, Dr. Negrin noted the CMT disease diagnosis in the "past medical history" section. Upon physical examination and review of diagnostic tests, he diagnosed mildly displaced fracture tibial plateau posterior. While Dr. Negrin, in his February 5, 2018 report, noted that appellant's CMT disease did not preclude him from accidentally falling, there is no indication that any employment-related factor caused appellant to trip. The Board thus finds that appellant tripped due to his preexisting CMT condition.

In his August 8, 2018 letter, Dr. Negrin argued that appellant's tibia fracture was a direct result of the employment fall. However, the fracture occurred when appellant struck the floor and, as previously noted, in the case of an idiopathic fall, striking an immediate supporting surface, with no intervention or contribution by any hazard or special condition of employment -- is not within coverage of FECA.[14]

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

[13] *Supra* note 8; *H.B.*, Docket No. 12-0840 (issued November 20, 2012)

[14] *Supra* note 7.

Accordingly, appellant has not established that he sustained an injury in the performance of duty on December 12, 2017, as alleged.[15]

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 December 12, 2017, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the October 5, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 10, 2019
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

[15] A properly completed CA-16 form authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. See 20 C.F.R. § 10.300(c); P.R., Docket No. 18-0737 (issued November 2, 2018); *N.M.*, Docket No. 17-1655 (issued January 24, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).