United States Department of Labor
Employees' Compensation Appeals Board

D.M., Appellant	)	
	)	
and	)	**Docket No. 18-1552**
	)	**Issued: June 2, 2020**
SOCIAL SECURITY ADMINISTRATION, Richmond, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 6, 2018 appellant filed a timely appeal from a February 5, 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish that he sustained an injury in the performance of duty on August 1, 2016, as alleged.

FACTUAL HISTORY

On August 10, 2016 appellant, then a 32-year-old claims representative, filed a traumatic injury claim (Form CA-1) alleging that, on August 1, 2016, he lost consciousness and fell while in the performance of duty. He explained that, while accepting an application for a replacement

[1] 5 U.S.C. § 8101 *et seq.*

Social Security card, he felt weak. Appellant attempted to go to the restroom to gain his composure, but before he could make it there, he leaned on a cubicle and then lost consciousness and fell. The fall caused him to hit his face on the cubicle, resulting in a black eye, and then hit his head on the floor. Appellant stopped work on August 1, 2016.

In a development letter dated September 30, 2016, OWCP advised appellant that additional evidence was needed to establish his claim for FECA benefits. It informed appellant of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded him 30 days to submit the necessary evidence.

On October 29, 2016 appellant responded explaining that, at the time of the August 1, 2016 incident he was taking an application from a customer and began to feel faint. He attempted to make it to the restroom, but fainted before he got there. Appellant indicated that as he fell, his head struck the side of a cubicle causing a black eye and he woke up on the floor. Immediately after the incident, he informed his supervisor that he had lost consciousness and immediately sought treatment at a hospital. Appellant further indicated that he did not have a preexisting medical condition that would have contributed to his fall.

By decision dated November 18, 2016, OWCP denied appellant's claim finding that, although appellant had established that the August 1, 2016 incident occurred in the performance of duty as alleged, he had not established a medical diagnosis in connection with the accepted August 1, 2016 employment incident. Consequently, it found that the requirements had not been met to establish an injury as defined by FECA.

On July 3, 2017 appellant requested reconsideration. In an undated statement, he indicated that after losing consciousness on August 1, 2016, he was placed in continuation of pay status for 45 days and underwent multiple medical tests. The employing establishment informed appellant that he needed a work release from his physician to return to work. Appellant noted that his physician would not release him back to work due to his medical condition, continuing symptoms, and the possibility that he would lose consciousness again. On October 12, 2016 he was released to work by his physician, but he continued to experience the medical episodes. Appellant reported losses of consciousness at work on January 3 and May 26, 2017 and that he intermittently missed work approximately two days per pay period due to this condition. He was unable to drive and was hospitalized from June 19 to 23, 2017. Appellant reported no prior medical history of losing consciousness.

By decision dated July 7, 2017, OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant a merit review.

On November 20, 2017 appellant again requested reconsideration and submitted additional medical evidence. In a narrative statement dated November 12, 2017, he indicated that, while finishing up with a customer at work on August 1, 2016, he "suffered a loss of consciousness resulting in hitting his face on a cubicle" as he fell to the ground. Appellant noted that upon regaining consciousness, he went to his supervisor to explain what happened and his supervisor noted that he had a lump near his left eye that was swollen. He indicated that he drove home and his wife took him to the emergency room. On September 12, 2016 his physician informed him that he could not return to work until they determined a cause for the fall. Appellant reported that

all of his tests came back normal and he had not lost consciousness while off work. His physician released him to work on October 12, 2016.

An August 1, 2016 hospital report noted that appellant was treated in the emergency room by a registered nurse after losing consciousness at work that day. Appellant reported waking up on the floor with facial pain, a bump on the upper eyelid area, and a headache. In an addendum report dated August 2, 2016, it was noted that the nurse treated appellant after a syncope episode at work in which he hit the left corner of his eye. Appellant reported that the last few months he felt like he had "déjà vu" and almost passed out.

In an August 2, 2016 report, Dr. George M. Isaac, a Board-certified internist, noted that appellant was last treated on February 11, 2011. Appellant reported an "epiphany kind of issue" and that he got "deep thoughts, like they are shutting down a movie, described as an anxiety attack, skin gets flushed." He indicated that this occurred once or twice per month. Appellant reported that he passed out the prior day at work while serving a customer, he felt as though something was not right, he went into the bathroom and woke up on the floor. Dr. Isaac noted findings on examination of a bruise mark on left lateral eye area and no focal deficits in motor or sensory testing. He diagnosed syncopal episode evaluated for cardiac etiology (symptoms after working out) and seizures ("epiphany").

In an addendum note dated August 8, 2016, acknowledged by Dr. Isaac, appellant indicated that his employing establishment would not permit him to return to work unless he provided a letter from his primary care physician detailing work restrictions. On August 9, 2016 he noted that appellant could return to work as long as he was not driving. In an addendum note dated August 10, 2016, prepared by a nurse and acknowledged by Dr. Isaac, appellant noted that his employing establishment would not permit him to return to work without written statement that he was released to work and was examined by a physician. In a September 12, 2016 note, Dr. Isaac noted that appellant was currently under his care. Appellant reported passing out while at work. Dr. Isaac indicated that appellant would be evaluated by the cardiology service. Appellant reported two episodes of lightheadedness since that time. Dr. Isaac anticipated the testing would be complete by late October and recommended that appellant be off work through October 2016.

By decision dated February 5, 2018, OWCP modified the November 18, 2016 decision, finding that the claim should be denied based on performance of duty, rather than the medical component of fact of injury. It found that the evidence of record established a diagnosis of syncopal episode. However, the case remained denied because appellant had not met his burden of proof to establish that the condition occurred in the performance of duty as the fall was caused by a nonoccupational preexisting condition, anxiety, and was idiopathic and therefore not compensable.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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

[2] *Id.*

time limitation of FECA,[3] 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] 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.[5]

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.[6] Fact of injury consists of two components that must be considered in conjunction with one another. 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.[7] Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[8]

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.[9] 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.[10]

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.[11] 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

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

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

[5] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

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

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

[9] *A.B.*, Docket No. 17-1689 (issued December 4, 2018); *L.G.*, Docket No. 13-0927 (issued August 27, 2013); *Carol A. Lyles*, 57 ECAB 265 (2005).

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

[11] *Dora J. Ward*, 43 ECAB 767 (1992); *Fay Leiter*, 35 ECAB 176 (1983).

idiopathic in nature.[12] 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 proven that a physical condition preexisted and caused the fall.[13]

ANALYSIS

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

As previously noted, OWCP bears the burden of proof to establish an idiopathic fall.[14] In *L.J.*,[15] the Board found that OWCP failed to prove that a fall was idiopathic in nature because the medical evidence of record failed to establish that the employee's fall was solely the result of a nonoccupational orthostatic hypotension condition. The Board determined that the medical evidence of record demonstrated that the claimant's employment activities of bending over and stooping down, at least partially, contributed to her falling at work.

Similarly, herein, the Board finds that the medical evidence of record fails to establish that appellant's fall was solely the result of a personal, nonoccupational pathology. The emergency room physician who treated appellant immediately after the August 1, 2016 incident attributed his fall to a syncopal episode precipitated by preexisting anxiety. Dr. Isaac opined that appellant experienced a syncopal episode and evaluated him for cardiac etiology (symptoms after working out) and seizure (epiphany). He described a history of a preexisting condition beginning February 11, 2011 where appellant experienced an "epiphany kind of issue" with deep thoughts "like they are shutting down a movie" where his skin became flushed. Dr. Isaac described this condition as an anxiety attack. The condition occurred once or twice a month and occurred at work on August 1, 2016 while appellant was serving a customer.

The mere fact that an employee has a preexisting medical condition, without supporting medical rationale to establish that it was the cause of the employment incident, is insufficient to establish that a fall is idiopathic.[16] The medical evidence of record demonstrates that appellant was standing at work and sat down after he got tunnel vision when the fall occurred, striking his head on a cubicle. Dr. Isaac observed a bruise mark on the left lateral eye area on August 2, 2016 examination. Therefore, these reports raise an uncontroverted inference that employment factors contributed to the work incident on August 16, 2016.

[12] *A.B., supra* note 9; *P.P.*, Docket No. 15-0522 (issued June 1, 2016).

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

[14] *A.B., supra* note 9.

[15] Docket No. 08-1415 (issued December 22, 2008).

[16] *A.B., supra* note 9.

Moreover, the Board notes that the factual evidence of record also supported that employment conditions contributed to appellant's fall at work. In an August 10, 2017 Form CA-1, appellant described the nature of his injury as "Loss of consciousness, hit face which caused black eye, and hit head on floor." Similarly, in a statement dated November 12, 2017, he indicated that, while at work on August 1, 2016, he "suffered a loss of consciousness resulting in hitting his face on a cubicle" as he fell to the ground. Accordingly, the record does support that conditions of employment did contribute, at least partially, to appellant's fall on August 16, 2016.

The Board thus finds that the evidence of record is sufficient to establish that he struck a supporting surface as he fell, such that his injury would be covered under FECA. As appellant's fall resulted in a visible injury above his eye, the case should be further developed consistent with OWCP procedures and Board precedent relating to visible injuries.[17] Accordingly, the case will be remanded for OWCP to determine whether appellant sustained an injury causally related to the August 1, 2016 employment incident, and if so, to also determine the nature and extent of disability, if any.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the February 5, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 2, 2020
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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

[17] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6(a) (June 2011); *see also M.A.*, Docket No. 13-1630 (issued June 18, 2014).