

On the reverse side of the claim form the employing establishment indicated that appellant stopped work on July 20, 2018 and received medical treatment that same day.

In an August 5, 2018 note, Dr. Marianna Vinokur, a neurology resident, indicated that appellant could return to work as of August 7, 2018.

In an August 10, 2018 statement, appellant recounted that on July 20, 2018 he fell and hit his head and face on the work floor. He stated that he came out of the bathroom that morning and did not remember how, but fell and injured his head and face. The impact damaged appellant's tooth and caused an avulsion. Appellant further stated that the only thing he recalled was waking up in the ambulance on the way to the hospital.

In an August 22, 2018 statement, C.S., a customer service manager, indicated that on July 20, 2018 appellant was involved in an incident at the employing establishment. He stated that according to appellant and witnesses, appellant was walking on the workroom floor when he went into a seizure and fell to the floor. C.S. further stated that upon falling, appellant sustained injuries to his face and mouth when he struck the concrete floor. Paramedics were immediately summoned and he was taken to the hospital.

In an August 22, 2018 letter, the employing establishment challenged appellant's claim. It noted that he failed to produce medical documentation stating how the injury was causally related to his employment. The employing establishment further noted that appellant exited the bathroom and fell to the floor on his face, and did not strike anything on the way to hitting the floor. Additionally, it noted that he had a medical seizure causing him to fall to the floor.

In an August 23, 2018 development letter, OWCP explained that the evidence received to date was insufficient to establish entitlement to FECA benefits. It noted there was no diagnosis of any condition resulting from appellant's injury. OWCP advised him of the type of medical evidence necessary to support a claim for benefits. It also requested that appellant complete a factual questionnaire regarding his alleged injury, and provide a detailed description as to how the injury occurred. OWCP also requested that he provide statements from any persons who witnessed the injury or had immediate knowledge of it. It afforded appellant 30 days to submit the requested factual and medical evidence.

In a September 12, 2018 response, appellant stated that the last thing he remembered was leaving the bathroom and waking up in an ambulance outside the employing establishment. He further stated that lifting was not the cause of his injury, and all he remembered was falling on his face and the impact causing him to lose a tooth and break a bone in his face (upper lip). As to statements from individuals who witnessed the injury or had immediate knowledge of it, appellant responded "Not applicable." He also described the treatment he received on July 20, 2018 and follow up with his primary care physician and dentist. Lastly, appellant stated that he had no similar disabilities or symptoms before the injury.

By decision dated October 3, 2018, OWCP denied appellant's claim, finding that he failed to submit any medical evidence containing a diagnosis in connection with the accepted July 20, 2018 employment incident. It concluded, therefore, that the requirements had not been met to establish the medical component of fact of injury.

On November 1, 2018 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. In an attached letter, he indicated that he was submitting evidence from a treating neurologist. Appellant also stated that he had fallen to the floor at work and hit his face, head, and body. He further indicated that he was unsure "if the ground caused his seizure" when he fell, but was sure that the impact with the workroom cement floor was responsible for his broken jaw and tooth extraction.

At the February 26, 2019 hearing, appellant testified that when he exited the restroom at work, he hit a crack in the cement floor and tripped and fell, and subsequently hit his face on the floor. He further testified that he was diagnosed with a seizure, which he believed was a result of the fall and hitting his face on the floor. Appellant did not believe he had a seizure before he fell, and the seizure did not cause him to fall. He also testified that he had never had a seizure before July 20, 2018, had not previously been diagnosed with any conditions that would cause a seizure, and had no prior history of fainting. Appellant further testified that he did not believe he hit anything as he fell down to the cement floor.

OWCP also received medical evidence, which included a July 20, 2018 emergency department discharge summary, which noted that appellant was seen by Dr. Brent T. Rau, Board-certified in emergency medicine, for possible seizure. Dr. Rau's diagnoses included tooth avulsion and seizure. Appellant was referred to the dental clinic for his tooth avulsion and fracture. He was also advised to follow up with his primary care physician and a neurologist for continued evaluation of the seizure(s).

A July 20, 2018 computerized tomography (CT) scan of appellant's facial bones revealed a fracture at the maxilla on the right with loosening of the right maxillary canine tooth.

Dr. Troy Desai, a Board-certified neurologist, interpreted appellant's August 8, 2018 electroencephalogram (EEG) as normal in the awake and drowsy state.

An August 13, 2018 after visit summary noted that Dr. James Jones, Board-certified in family medicine, saw appellant that day for "new onset seizure and dental trauma."

In a September 26, 2018 attending physician's report (Form CA-20), Dr. Jones noted a July 20, 2018 date of injury with no specific history of injury, noting instead "N/A." He diagnosed new onset seizure and a tooth avulsion. Dr. Jones' physical findings included dental trauma, and he noted that appellant would need surgery in the future. He similarly noted "N/A" with respect to the cause of appellant's diagnoses. In the remarks section of the form report, Dr. Jones commented "seizure D/O -- resolved." He advised that appellant was released to resume his full duties effective August 14, 2018.

OWCP also received an article regarding whether hitting one's head can cause seizures or other problems.

By decision dated April 8, 2019, OWCP's hearing representative affirmed the October 3, 2018 decision as modified. She found that Dr. Jones' diagnoses of seizure and tooth avulsion were sufficient to establish the medical component of fact of injury. However, the hearing representative denied appellant's claim, finding that he failed to establish that the injury occurred in the performance of duty. She found that appellant collapsed during a seizure and did not strike

any furniture or items on the floor. Therefore, the hearing representative determined that appellant was injured due to an idiopathic fall, which was not compensable under FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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 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

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.”⁶ 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.⁷ To arise in the course of employment, an injury must occur: (1) at a time when the employee may reasonably be stated to be engaged in the master’s business; (2) at a place where he or she may reasonably be expected to be in connection with his or her employment; and (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.⁸ This alone is insufficient to establish entitlement to benefits for compensability. The concomitant requirement of an injury “arising out of the employment” must be shown, and this encompasses not only the work setting, but also a causal concept, the requirement being that the employment caused the injury.⁹

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

² *Id.*

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 *See M.T.*, Docket No. 17-1695 (issued May 15, 2018); *S.F.*, Docket No. 09-2172 (issued August 23, 2010); *Valerie C. Boward*, 50 ECAB 126 (1998).

⁷ *L.B.*, Docket No. 19-0765 (issued August 20, 2019); *G.R.*, Docket No. 16-0544 (issued June 15, 2017); *Cheryl Bowman*, 51 ECAB 519 (2000).

⁸ *A.S.*, Docket No. 18-1381 (issued April 8, 2019); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Mary Keszler*, 38 ECAB 735, 739 (1987).

⁹ *D.C.*, Docket No. 18-1216 (issued February 8, 2019); *R.B.*, Docket No. 16-1071 (issued December 14, 2016); *Eugene G. Chin*, 39 ECAB 598 (1988).

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.¹⁰ 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.¹¹

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.¹² 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.¹³ 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.¹⁴

An injury resulting from an idiopathic fall may still be compensable if some job circumstance or working condition intervenes in contributing to the incident or injury, such as, if an employee, instead of falling directly to the floor, strikes a part of his body against a wall, a piece of equipment, furniture, machinery, or some similar object. Appellant has the burden of establishing that he or she struck an object connected with their employment during the course of the idiopathic fall.¹⁵

ANALYSIS

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

In determining whether appellant's injury occurred in the performance of duty, the Board must first consider factors to determine whether the July 20, 2018 incident was caused by an idiopathic fall. Factors to be considered include whether there is evidence of a predisposed condition that caused appellant to collapse, whether there were any intervening circumstances or conditions that contributed to his fall, and whether appellant struck any part of his body against a wall, piece of equipment, furniture, or similar object as he fell.¹⁶

¹⁰ *H.B.*, Docket No. 18-0278 (issued June 20, 2018); *Carol A. Lyles*, 57 ECAB (2005).

¹¹ *H.B.*, *id.*; *M.M.*, Docket No. 08-1510 (issued November 25, 2008).

¹² *P.N.*, Docket No. 17-1283 (issued April 5, 2018); *Dora Ward*, 43 ECAB 767 (1992).

¹³ *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).

¹⁴ *P.N.*, *supra* note 12; *John R. Black*, 49 ECAB 624 (1998); *Judy Bryant*, 40 ECAB 207 (1988).

¹⁵ *Robert J. Choate*, 39 ECAB 103 (1987); *Sharon I. Erdmann*, 38 ECAB 589 (1987).

¹⁶ *Supra* note 13.

OWCP received an August 22, 2018 statement from C.S. providing that, according to appellant and witnesses, appellant went into a seizure and fell to the ground. It also received a letter of even date from the employing establishment controverting the claim, providing that a medical seizure was the cause of appellant's injuries. OWCP, in an August 23, 2018 development letter, requested additional factual information with regard the July 20, 2018 incident. However, the development letter made no mention of appellant's seizure and did not seek any additional evidence concerning the circumstances surrounding it. In its October 3, 2018 decision, OWCP accepted that appellant's injury occurred as described, but initially denied his claim because he did not submit medical evidence containing a diagnosis in connection with his injury. It subsequently determined in its April 8, 2019 merit decision that appellant's seizure was caused by a personal, nonoccupational pathology.

OWCP's procedures provide that it should obtain evidence from the injured employee, supervisors, witnesses, and the attending physician showing that a fall was due to an idiopathic condition or an unknown cause.¹⁷ Here, despite it receiving evidence suggesting that appellant's fall may have been idiopathic in nature, OWCP's August 23, 2018 development letter did not seek any additional factual or medical evidence from appellant demonstrating that his seizure was caused by a personal, nonoccupational pathology. Moreover, Dr. James' August 13, 2018 medical note and September 26, 2018 Form CA-20 diagnosing a new onset of seizure supports appellant's contention that he had no history of seizures or fainting prior to the July 20, 2018 incident.

Although appellant surmised that the seizure occurred as a result of striking his head/face on the workroom floor, the hearing representative relied on the August 22, 2018 statement from C.S. in finding that appellant had a seizure, which precipitated his fall. The Board finds that OWCP did not sufficiently develop the evidence regarding whether appellant suffered an idiopathic or unexplained fall.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While appellant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.¹⁸ Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹⁹

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 deficiencies in the evidence of record, as noted herein, should be addressed so that an informed determination can be made regarding whether appellant was in the performance of duty at the time of his injury and, if so, whether there was any resulting disability. Following this and other such development as deemed necessary, OWCP shall issue a *de novo* decision.

¹⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.9(b) (August 1992);

¹⁸ *S.S.*, Docket No. 18-0397 (issued January 15, 2019); *D.G.*, Docket No. 15-0702 (issued August 27, 2015); *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹⁹ *S.S., id.*; *Richard F. Williams*, 55 ECAB 343, 346 (2004).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the April 8, 2019 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this decision.

Issued: January 17, 2020
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