United States Department of Labor
Employees' Compensation Appeals Board

C.S., Appellant	)	
and	)	**Docket No. 19-0769**
	)	**Issued: March 15, 2022**
DEPARTMENT OF VETERANS AFFAIRS, EDITH NORSE ROGERS MEMORIAL VETERANS HOSPITAL, Bedford, MA, Employer	)	

Appearances:
Daniel B. 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
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 22, 2019 appellant, through counsel, filed a timely appeal from an August 28, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP).[2] Pursuant to the

[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] Appellant timely requested oral argument before the Board. By order dated July 20, 2020, the Board exercised its discretion and denied the request as the matter could be adequately addressed based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 19-0769 (issued July 20, 2020).

Federal Employees' Compensation Act[3] (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 her burden of proof to establish an injury in the performance of duty on October 1, 2015, as alleged.

FACTUAL HISTORY

On October 8, 2015 appellant, then a 61-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging on October 1, 2015 that she fell to her knee and twisted her ankle while in the performance of duty. On the reverse side of the claim form, the employing establishment acknowledged that she was injured in the performance of duty. Appellant stopped work on the date of injury.

In support of her claim, appellant provided an October 1, 2015 note from Dr. Ryan A. Secan, a Board-certified internist, noting that she fell after her legs gave way for an unknown reason. Dr. Secan recounted that she did not walk well due to back issues and used a scooter to cover long distances. He reviewed x-rays and diagnosed a spiral fracture through the distal left fibula.

A note of even date from Linda Gaudet, a registered nurse, indicated that appellant was walking out of her office using her cane when her knees collapsed and she fell, landing on her right knee.

In an October 2, 2015 report, Dr. Brock Drapkin, a Board-certified internist, noted that appellant fell forward when walking home from work and was unable to get up due to severe left leg pain. He relayed that, over the past several months, she had experienced frequent falls for uncertain reasons. Dr. Drapkin related that appellant experienced a feeling of generalized weakness when she fell, but no loss of consciousness, and was generally unable to get up by herself. He diagnosed preexisting morbid obesity, gout, hyperlipidemia, depression, neuropathy, and found that she had sustained a nondisplaced oblique distal fibular fracture on the left. Dr. Drapkin found that appellant had experienced an unexplained fall without loss of consciousness which resulted in a distal left fibular fracture. He reported, "The mechanism of this and other recent recurrent falls is not clear."

On October 2, 2015 Dr. Eric Holstein, a Board-certified orthopedic surgeon, examined appellant and noted her history of morbid obesity and severe knee degenerative joint disease. He reported that she ambulated with a cane and that she sustained a syncopal episode at work. Dr. Holstein found that appellant did not slip, but fell after passing out. He noted that she was unclear as to why this occurred, and that she awoke with pain in her left leg. Dr. Holstein diagnosed nondisplaced distal fibula fracture.

[3] 5 U.S.C. § 8101 *et seq*.

On October 2, 2015 the employing establishment provided appellant with an authorization for examination and/or treatment (Form CA-16).

Dr. Jasper Ngomba, a Board-certified internist, examined appellant on October 3, 2015 and noted that she had fallen 20 times in the past six months. He found that she had been diagnosed with optic neuritis.

In an October 4, 2015 report, Dr. Stacie Perlman, a Board-certified surgeon, noted that, on October 2, 2015, appellant fell on the sidewalk while walking home from work and sustained a nondisplaced left fibular fracture.

On October 4, 2015 Dr. Jonathan Moray, a Board-certified neurologist, examined appellant due to her frequent falls. He noted that she reported falls beginning 23 years earlier. Dr. Moray noted that appellant had fallen recently and was experiencing increasing pain in her low back as well as weakness and numbness in the right leg. He indicated that she had chronic neck and back pain. Dr. Moray noted that appellant experienced frequent falling with an unknown etiology. He reported that she had a history of a possible central nervous system disease, that her examination was consistent with peripheral neuropathy or spinal stenosis, and questionable regarding lumbar radiculopathy with myelopathy.

On October 5, 2015 appellant underwent a brain magnetic resonance imaging (MRI) scan which demonstrated minimal scattering of white matter signal abnormalities with bilateral frontal predominance differential including microangiopathic change, Lyme disease, the effects of hypertension or migraine, demyelinating disease, and other entities.

In a December 10, 2015 development letter, OWCP advised appellant of the deficiencies of her claim. It requested additional factual and medical evidence and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In an October 1, 2015 note, Jessica G. Sprangers, a physician assistant, reported that appellant described appellant's fall as resulting from a slip, and that she had no preceding symptoms. She recounted that appellant used a cane due to chronic back pain. Appellant denied feeling dizzy or weak just prior to falling. Ms. Sprangers noted that appellant was unsure of exactly what made her fall, but that appellant had asserted that her legs did not "give out." She noted that appellant had experienced frequent falls in the past due to balance problems.

In a December 16, 2015 letter, appellant denied syncopal episodes. She asserted that on October 1, 2015 she was feeling well, did not have dizziness, and that her gait was steady. Appellant alleged that she informed her physicians that she did not know why she fell. She described the events surrounding her fall as walking toward the restroom at the employing establishment at approximately 3:55 p.m. and as she was walking in the corridor she suddenly had fallen onto the hard surface of the corridor. Appellant noted pain in her left foot and indicated that she sought medical treatment. She asserted that she did not strike any objects on the way down to the immediate supporting surface. Appellant denied any history of fainting. She noted that her back was arthritic. Appellant reported that she had experienced more falls as she had aged, but that the falls were not serious and usually caused by an uneven surface or due to objects, ice, or

fluids on the floor. She did not notice any substance on the floor on October 1, 2015 and did not know what caused her fall.

In a December 24, 2015 note, Dr. Mythily Meda, an internist, reported that appellant had a history of dizziness, but no syncope. She recounted that appellant reported no syncopal episode at the time of her fall on October 1, 2015.

By decision dated January 14, 2016, OWCP denied appellant's claim, finding that the factual evidence was insufficient to support that she actually experienced the alleged employment incident as a result of her work duties, as well as that the medical evidence did not substantiate that the diagnosis provided was caused or aggravated by a work injury. It noted that she reported that she did not know what caused her fall and did not strike any object as she was falling. OWCP also noted that Dr. Holstein reported that appellant had sustained a syncopal episode at work.

On February 5, 2016 appellant requested reconsideration of the January 14, 2016 decision. She provided a February 5, 2016 note from Dr. Holstein in which he reported that she used a cane or walker due to severe knee degenerative joint disease. Dr. Holstein reported that there had been a discrepancy between appellant's history of injury, experiencing an mechanical fall, and his reports suggesting a syncopal episode. He noted that she reported no loss of consciousness and that medically there were no abnormalities. Dr. Holstein also reported that physicians had found no diagnosis of syncope in appellant's medical history, and that therefore her history was "consistent with a mechanical fall at work." He diagnosed closed fracture of the lateral malleolus.

In a March 10, 2016 narrative statement, appellant again asserted that she had not ever experienced syncope including immediately prior to her fall on October 1, 2015. She noted that she did have a history of dizziness due to medications prior to October 1, 2015 and that this was addressed through dosage adjustment before her fall on October 1, 2015. Appellant surmised that she likely slipped on liquid left on the floor by a patient. She submitted nurses' notes, as well as physical and occupational therapy notes.

By decision dated April 11, 2016, OWCP denied modification.

On February 8, 2017 appellant, through counsel, requested reconsideration of the April 11, 2016 decision. She submitted additional medical and factual evidence and asserted that OWCP had not established that her fall on October 1, 2015 was idiopathic, rather than an unexplained fall which would be considered to have occurred in the performance of duty.

In a February 7, 2017 affidavit, appellant asserted that the corridor where she fell on October 1, 2015 was busy and traveled by hundreds of people on a daily basis. She noted that there had been numerous floods and water leaks on the floor as well as water drips from people using the restrooms, spills of liquids including coffee and other beverages, and water tracks from inclement weather. Appellant alleged that there were cracks, grooves, depressions, and pits in the floor surface in which water or other liquids often collected. She repeated her statement that, on October 1, 2015, as she walked to the restroom, she was feeling well, her gait was steady and that she was not weak or dizzy in any way. Appellant suddenly slipped and fell on the floor. She did not know the cause of her slip, but asserted that it felt like she slipped due to water on the floor. In a January 16, 2017 report, Matthias J. Mulvey, a professional building safety and code

consultant, noted that on November 4, 2016 he inspected the corridor where appellant fell on October 1, 2015. He found deep erosion marks, pitting, and water stains from heavy pedestrian traffic and water damage. Mr. Mulvey reported 20 feet of erosion marks and water staining running in a line from the bathroom exit toward appellant's office door. He noted that the depth of the erosion and pitting was sufficient to allow for the pooling of liquid and that the existing surface marks were consistent with liquid historically collecting and pooling in the pits and depressions of the floor's surface.

Appellant also resubmitted Ms. Sprangers' October 1, 2015 note in which appellant described a fall at work which resulted from a slip. She also provided discharge notes in which Dr. Meda diagnosed a fracture of the distal fibular shaft and noted that she had a fall at work. Appellant submitted Dr. Drapkin's October 2, 2015 note describing her frequent falls for uncertain reasons.

In a January 17, 2017 report, Dr. George P. Whitelaw, a Board-certified orthopedic surgeon, reviewed appellant's medical records and affidavit. He noted that syncope was a temporary loss of consciousness or fainting due to other medical conditions. Dr. Whitelaw found that there was no medical evidence that appellant had a diagnosis of a syncopal event and that Dr. Meda explicitly denied that appellant had a history of syncope. He opined that appellant had experienced a mechanical fall as her incident was consistent with slipping.

By decision dated July 7, 2017, OWCP denied modification of its prior decisions.

On July 5, 2018 appellant, through counsel, requested reconsideration and submitted additional factual evidence.

In an October 1, 2015 incident report, the employing establishment described appellant's fall as losing her balance while trying to exit the building, striking both knees on the floor, and complaining of left ankle pain.

Appellant's husband completed a narrative statement on November 8, 2017 explaining that appellant fell on October 1, 2015 in the basement of a building on the employing establishment's premises, approximately 25 feet from her office

K.H., the acting director of performance management at the employing establishment, completed a statement on November 14, 2017 and reported that on October 1, 2015 he was informed that appellant had fallen in a tunnel.

On November 24, 2017 K.S., patient safety officer at the employing establishment, reported on October 1, 2015 appellant informed her that she had fallen and did not know how or why. Appellant denied hitting her head or losing consciousness at any time. K.S. and K.H. helped appellant onto her scooter and directed her to urgent care.

In a November 30, 2017 statement, J.W., an employing establishment nurse, reported that she found appellant on her knees on October 1, 2015 outside her office and next to the exit door. Appellant indicated that she had injured her left leg and discussed seeking treatment at urgent care. J.W. noted that appellant did not fall on her face, but was on her knees in a sitting position holding on to a railing.

On June 15, 2018 Dr. Whitelaw provided a correction to his January 17, 2017 report and again opined that appellant's incident was consistent with slipping and suffering a mechanical fall. He noted that a review of the medical records established that she denied dizziness or weakness prior to the fall. Dr. Whitelaw concluded that there was no syncopal event involved in the October 1, 2015 fall.

By decision dated August 28, 2018, OWCP denied appellant's claim, finding that the evidence of record established that she sustained an idiopathic fall outside of the performance of duty. It found that the medical record was consistent in reporting that she had a long history of falling with a recent increase in frequency of falls, difficulty ambulating, and balance problems. OWCP concluded that the mere fact that the etiology of appellant's falls both past and present remained undiagnosed does not make the fall sustained at work on October 1, 2015 unexplained. It determined that both the medical and factual evidence clearly established that a physical condition preexisted and resulted in the fall on October 1, 2015. OWCP concluded that appellant's fall on October 1, 2015 was explained as it was one of a series of 20 falls sustained over the preceding 6-month period resulting from preexisting pathology and must therefore be considered as idiopathic.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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]

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. The Board has made equally clear, the fact that

[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] *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).

[7] *M.R.*, Docket No. 19-0341 (issued July 10, 2019); *H.B.*, Docket No. 18-0278 (issued June 20, 2018); *see Carol A. Lyles*, 57 ECAB 265 (2005).

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 on the industrial premises during working hours 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]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an injury in the performance of duty on October 1, 2015, as alleged.

In determining whether appellant's injury occurred in the performance of duty, the Board must first consider factors to determine whether the October 1, 2015 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 her fall, and whether appellant struck any part of her body against a wall, piece of equipment, furniture, or similar object as she fell.[12]

The Board finds that the medical evidence establishes that appellant's fall on October 1, 2015 was due to a personal, nonoccupational pathology without employment contribution. On October 1, 2015 Dr. Secan reported that appellant did not walk well due to back issues. Dr. Ngomba examined appellant on October 3, 2015 noting that she had fallen 20 times in the past six months, and she had been diagnosed with optic neuritis. On October 2, 2015 Dr. Holstein reported that appellant used a cane or walker due to severe knee degenerative joint disease. Dr. Moray found on October 4, 2015 that her examination was consistent with peripheral neuropathy or spinal stenosis. The Board, therefore, finds that the evidence of record is sufficient to establish that appellant's fall was caused by appellant's preexisting conditions and thus, was idiopathic.

[8] *M.R. and H.B., id.*

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

[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] *M.R., supra* note 7; *P.N.*, Docket No. 17-1283 (issued April 5, 2018); *John R. Black*, 49 ECAB 624 (1998); *Judy Bryant*, 40 ECAB 207 (1988); *Martha G. List*, 26 ECAB 200 (1974).

[12] *D.T.*, Docket No. 19-1486 (issued January 17, 2020); *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).

Further, the Board finds that the evidence of record is insufficient to show that appellant experienced an intervention or contribution by any hazard or special condition of employment. Appellant did not allege that she struck any object related to her employment when she fell to the ground.[13] The Board, therefore, finds that appellant's fall on October 1, 2015, without any further intervention or contribution by the employing establishment, is considered idiopathic and is therefore noncompensable.[14]

Accordingly, appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty on October 1, 2015, as alleged.

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 October 1, 2015, as alleged.[15]

[13] *P.N., supra* note 11.

[14] *Id*.

[15] The Board notes that where an employing establishment properly executes a Form CA-16 authorizing medical treatment related to a claim for a work injury, the form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination/treatment regardless of the action taken on the claim. *Tracy P. Spillane*, 54 ECAB 608 (2003). 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).

ORDER

IT IS HEREBY ORDERED THAT the August 28, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 15, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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