United States Department of Labor
Employees' Compensation Appeals Board

L.H., Appellant	)	
and	)	**Docket No. 22-0449**
	)	**Issued: November 8, 2022**
FEDERAL DEPOSIT INSURANCE CORPORATION, Arlington, VA, 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:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On February 1, 2022 appellant, through counsel, filed a timely appeal from a November 29, 2021 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 November 29, 2021 decision, appellant submitted additional evidence to OWCP. 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 her burden of proof to establish an injury in the performance of duty on May 29, 2019, as alleged.

FACTUAL HISTORY

On July 8, 2019 appellant, then a 67-year-old supervisory program specialist, filed a traumatic injury claim (Form CA-1) alleging that on May 29, 2019 she sustained an injury to her right foot while in the performance of duty. She indicated that she was entering invoices on her computer when she reached for the trash can. Appellant then opened her eyes and saw that she was lying on the floor with her head against a metal cabinet. She tried to get up, but fell back down to the floor. Appellant then looked at her and her right foot was twisted. On the reverse side of the claim form, the employing establishment contended that she was not injured in the performance of duty; rather, she likely fainted when she got up from her chair and fell. Appellant stopped work on the date of injury.

In an occupational health incident report dated May 29, 2019, appellant indicated that she felt nauseated and then bent over to throw-up when she lost consciousness and fell on her right side and twisted her right ankle. The nurse, who was not identified, noted that appellant's right ankle was visibly swollen and painful, she was alert and oriented, and there were no neurological deficits observed. Appellant was transported by ambulance to the hospital.

In support of her claim, appellant provided a June 14, 2019 note from Dr. C. Clay Wellborn, a Board-certified orthopedic surgeon, noting that she was treated for a fractured ankle and underwent surgery on June 7, 2019. Dr. Clay recommended telework from May 29 through July 15, 2019.

OWCP received a position description for a supervisory program specialist.

On July 19, 2019 the employing establishment controverted appellant's claim, indicating that it was untimely filed and not work related the claimed injury constituted an idiopathic fall.

In a July 22, 2019 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. The questionnaire noted that the cause of appellant's fall was unclear; therefore, she was asked specifically to address the circumstances that caused her to fall, whether she had a history of fainting spells, a heart condition, or epileptic seizures, whether there was a special hazard or condition, *i.e.*, slippery floor, which contributed to her fall, and whether she struck anything on the way down. OWCP afforded her 30 days to submit the necessary evidence. No response was received.

By decision dated August 22, 2019, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the injury occurred as alleged. It noted that she had not responded to the development questionnaire. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP subsequently received a May 31, 2019 report, wherein Dr. Wellborn noted treating appellant for right ankle pain following a workplace injury. Dr. Wellborn noted symptoms of

blurred vision, blacking out or fainting, and swelling including ankles or legs. Physical examination of the head and face revealed normal contour and symmetry, no masses, lesions, or significant scars, and tenderness and swelling of the right ankle. Dr. Wellborn diagnosed displaced bimalleolar fracture of the right lower leg, closed fracture, initial encounter, and recommended surgical treatment. On June 7, 2019 he performed an open reduction internal fixation (ORIF) of lateral malleolus for bimalleolar ankle fracture and diagnosed displaced lateral malleolus fracture with interposed medial malleolar chip. Dr. Wellborn treated appellant on June 14, 2019 for postoperative ORIF of right lateral malleolar ankle fracture. He noted that the surgical incision was healing normally, there was tenderness of the lateral malleolus, swelling, and effusion of the anterior ankle. Dr. Wellborn provided an ankle brace and short walking boot and noted that appellant was nonweight bearing. In a duty status report (Form CA-17) dated July 9, 2019, he diagnosed fracture of bimalleolar and advised that she could not work. Dr. Wellborn had postoperative follow-up appointments on July 17, 24, and August 7, 2019 and noted that appellant developed an ulcer over the lateral aspect of the ankle with skin breakdown. He noted an x-ray of the right ankle revealed a healing fracture, no loss of fixation, and good mortise alignment.

On July 18, 2019 Janice Zima, a nurse practitioner, performed a wound culture for an open wound on the right ankle with complications.

OWCP received a witness statement from S.C. dated August 5, 2019, who arrived after the fall on May 29, 2019 and noticed appellant was on the floor behind her desk grimacing. S.C. noticed her office was unusually hot with little air circulation. A witness statement from an individual who was not identified, noted arriving at appellant's office after her fall and that she appeared alert and she was responding to questions. Appellant explained that she began to feel unwell and reached for the trash can when she passed out and injured her foot.

On August 28, 2019 appellant responded to the development letter and indicated that, on May 29, 2019, while performing computer work, she rolled her chair over to use the trash can and the next thing she remembered she was lying on the floor. She opened her eyes and her head was resting against the file cabinet on the floor. Appellant reported hitting her head on the bottom drawer of the file cabinet stating, "I don't know what really happened." She indicated that her office was "extremely over heated" and that she had never before fainted. Appellant tried to lift herself off the floor, but fell back down and noticed her right foot was twisted. She indicated that her ankle was severely injured and she also hit her head on the file cabinet, but she was more concerned about her foot which was very painful. Appellant noted that the emergency room physician asked about her head and she told her that she did not notice any memory loss. She could not explain how she was injured and only remembered reaching for the trash can while sitting in her office chair at her computer.

On March 30, 2020 appellant, through counsel, requested reconsideration.

By decision dated June 17, 2020, OWCP denied appellant's claim, as modified. It accepted that the May 29, 2019 incident occurred as alleged and that there was a diagnosed closed right ankle fracture. However, OWCP found that appellant failed to establish that the alleged injury occurred while in the performance of duty. It found that her collapse and fall were due to an idiopathic incident, which was considered to be a personal nonoccupational pathology without intervention or contribution by a factor of employment and, therefore, the injury was not considered compensable.

OWCP received additional evidence. On May 29, 2019 appellant was treated in the emergency room by Dr. Teresa M. Ross, a Board-certified emergency medicine physician. In a history and physical examination, appellant reported a prior medical history of myocardial infarction in 2013, diabetes mellitus, one episode of acute syncope with associated nausea prior to syncope, and right ankle pain. She related that, while speaking to her sister on the telephone, she felt intensely nauseated and reached for the trash can and woke up on the floor. Appellant reported that her office was hot and she felt nauseated after eating "bad eggs and sausage." She reported a recent six-day steroid course regimen that ended three days prior. Appellant also stated that her physician increased her blood pressure medicine two weeks prior. Findings on examination revealed tender bilateral joint effusion on bilateral malleoli of right ankle and limited range of motion secondary to pain. Dr. Ross noted that appellant had a history of hypertension and past myocardial infarction and presented after an episode of syncope from her chair at work and right ankle pain. She opined that workup suggested multifactorial syncope, including vasovagal from heat and nausea in the context of low baseline blood pressure with increased medication two weeks prior due to transient hypertension. Dr. Ross diagnosed syncope and collapse, nausea induced, likely due to overmedication of hypertension medication, with a betablocker recently prescribed due to high blood pressure. She suspected that appellant was overmedicated, which likely exacerbated her syncope in the context of nausea, heat, and dehydration. Dr. Ross also diagnosed subacute hypokalemia.

A May 29, 2019 x-ray of the right ankle revealed acute fracture and dislocation. A subsequent x-ray after the right ankle reduction revealed improved alignment.

On July 6, 2020 Dr. Farzad Saleh, a podiatrist, treated appellant for right ankle pain. Appellant's history was significant for a right ankle fracture one year ago when she underwent ORIF surgery and developed an infection at the wound site. She reported being a diabetic with a heart problem. An x-ray of the right ankle revealed intact hardware on the right fibula, trabeculation on the right distal fibula, and decreased bone density. Dr. Saleh diagnosed ORIF of the right ankle fracture, diabetes mellitus with neuropathy, and xerosis. In a prescription note of even date, he diagnosed fracture of the right ankle and referred appellant for physical therapy.

By decision dated November 29, 2021, OWCP denied modification of the June 17, 2020 decision.

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

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

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 if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee experienced the employment incident at the time and place, and in the manner alleged.[7] The second component is whether the employment incident caused a personal injury.[8]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[9] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[10] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).[11]

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.[12] 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.[13] 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

[5] *L.S.*, Docket No. 19-1769 (issued July 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[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] *B.P.*, Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[9] *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

[10] *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

[11] *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

[12] *D.R.*, Docket No. 19-0954 (issued October 25, 2019); *H.B.*, Docket No. 18-0278 (issued June 20, 2018); *see Carol A. Lyles*, 57 ECAB 265 (2005).

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

idiopathic in nature.[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 May 29, 2019, as alleged.

In determining whether appellant's injury occurred in the performance of duty, the Board must first consider factors to determine whether the May 29, 2019 incident was caused by an idiopathic fall. Factors to be considered include whether there is evidence of a predisposed condition that caused her to collapse, whether there were any intervening circumstances or conditions that contributed to her fall, and whether she struck any part of her body against a wall, piece of equipment, furniture, or similar object as she fell.[16]

The Board finds that the medical evidence of record is sufficient to establish that appellant's fall on May 29, 2019 was due to a personal, nonoccupational pathology without employment contribution.

On May 29, 2019 Dr. Ross noted that appellant's history was significant for myocardial infarction in 2013, diabetes mellitus, hypertension, and an episode of acute syncope with associated nausea. She opined that the May 29, 2019 workup suggested multifactorial syncope, including vasovagal from heat and nausea, low baseline blood pressure, and increased medication two weeks prior due to transient hypertension after the death of a family member. Dr. Ross diagnosed syncope and collapse, nausea induced, over medication of hypertension medication with a betablocker recently prescribed due to high blood pressure, and subacute hypokalemia. The Board, therefore, finds that the evidence of record is sufficient to establish that appellant's fall was caused by her preexisting conditions and thus, was idiopathic.

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 initially did not allege that she struck any object related to her employment when she fell to the ground. In the July 8, 2019 Form CA-1, she reported that on May 29, 2019 that she was sitting at her desk typing on her computer when she reached for the trash can and opened her eyes and saw that she was lying on the floor with her head against a metal cabinet. Similarly, in an occupational health incident report dated May 29, 2019, appellant stated that she lost consciousness and fell on her right side and twisted her right ankle. In an August 28, 2019 statement, appellant alleged that she hit her head on the bottom drawer of the file cabinet.

[14] *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).

[15] *H.B.*, *supra* note 12; *John R. Black*, 49 ECAB 624 (1998); *Judy Bryant*, 40 ECAB 207 (1988); *Martha G. List*, 26 ECAB 200 (1974).

[16] *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).

However, appellant could not explain how she was injured and only remembered reaching for the trash can while sitting in her office chair at her computer.

Additionally, the medical reports contemporaneous with the employment incident do not support treatment for a head injury. In an occupational health incident report dated May 29, 2019, she stated that she lost consciousness and fell on her right side and twisted her right ankle. The nurse noted that appellant's right ankle was visibly swollen and painful, she was alert and oriented, and there were no neurological deficits observed. On May 29, 2019 Dr. Ross treated appellant immediately after the injury and diagnosed closed right fibular ankle fracture, ankle dislocation, syncope and collapse, nausea induced, and likely due to overmedication of hypertension medication. Similarly, on May 31, 2019 Dr. Wellborn noted that physical examination of the head and face revealed normal contour and symmetry, no masses, lesions, or significant scars. He indicated that examination of the head and face were normal.

The Board, therefore, finds that appellant's fall on May 29, 2019 without any further intervention or contribution by the employing establishment, is considered idiopathic and is, therefore, noncompensable.[17] Accordingly, appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty on May 29, 2019 as alleged.[18]

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 May 29, 2019, as alleged.

[17] *P.N.*, Docket No. 17-1283 (issued April 5, 2018).

[18] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the November 29, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 8, 2022
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board