

**United States Department of Labor  
Employees' Compensation Appeals Board**

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<b>J.M., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 22-0623</b>
	)	<b>Issued: December 12, 2023</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Kansas City, MO, Employer</b>	)	
_____	)	

*Appearances:*  
*Jack Jordan, Esq., for the appellant*<sup>1</sup>  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On March 23, 2022 appellant filed a timely appeal from a September 24, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish an injury in the performance of duty on April 29, 2016, as alleged.

## FACTUAL HISTORY

This case has previously been before the Board.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On May 16, 2016 appellant, then a 52-year-old letter carrier, filed a notice of recurrence (Form CA-2a) under OWCP File No. xxxxxx643<sup>4</sup> alleging that lifting heavy parcels at work on April 29, 2016 caused neck/shoulder pain so severe that she collapsed. She stopped work on April 29, 2016.<sup>5</sup>

In an April 29, 2016 emergency room report, Dr. Clifford Weith, a Board-certified emergency medicine specialist, noted that on that date appellant reported headaches to her supervisor, but she continued to work. Appellant related that she was walking back to her vehicle after delivering a package when she collapsed in the street. Dr. Weith noted that emergency medical services (EMS) found appellant lying face down in the middle of the street. Appellant reported complaints of chronic neck pain and pulled muscle in her left thigh. She had multiple facial contusions/abrasions and a lip laceration. Dr. Weith noted that she had a history of a prior cervical spine fusion at C6-7 and recent radioablation. He diagnosed syncope/near syncope, acute nondisplaced fracture ring C1, facial abrasions, and lower lip laceration not repaired.

In an April 30, 2016 report, Dr. Stephen L. Reintjes, a Board-certified neurosurgeon, related that appellant had awakened the day prior with a headache and dizziness. He noted that she was going to call her supervisor because of her dizziness. Appellant "got out of her vehicle and passed out falling forward." Dr. Reintjes discussed appellant's prior history of C6-7 anterior cervical discectomy and fusion and her complaints of frontal headache, neck pain, and pulled hamstring behind her left leg. He reported examination findings and provided an impression of syncope with anterior C1 ring fracture.

Emergency room computerized tomography (CT) scans of the maxillofacial bones, head, and cervical spine; a magnetic resonance imaging (MRI) scan of the brain; and x-ray reports of the left knee dated April 29 and 30, 2016 were also of record. A brain MRI scan reported white hyperintensities within the bilateral frontal lobes likely chronic microangiopathy or migraine vasculopathy. The CT scan of the cervical spine reported nondisplaced nonangulated fracture

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<sup>3</sup> Docket No. 18-0541 (issued October 11, 2018).

<sup>4</sup> Under OWCP File No. xxxxxx864, OWCP accepted that on October 25, 2012 appellant sustained displacement of cervical intervertebral disc without myelopathy.

<sup>5</sup> In a June 8, 2016 statement, appellant requested that OWCP convert her claim to a traumatic injury claim (Form CA-1), as her medical conditions occurred after she fell on her route on April 29, 2016. OWCP thereafter developed the claim as a traumatic injury claim.

through the ring of C1 and degenerative changes of the cervical spine at C5-6 and C6-7 with postoperative changes at C6-7. The x-rays of her left knee reported mild degenerative changes. No significant findings were otherwise reported.

The employing establishment controverted the claim on May 26, 2016.

In a development letter dated June 24, 2016, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a July 8, 2016 attending physician's report (Form CA-20), Dr. Reintjes reported that on April 29, 2016 appellant awoke with a headache and dizziness, but proceeded with her work delivery route. Because of dizziness she was going to call her supervisor to cancel her route. Appellant got out of the vehicle and passed out, falling forward. Dr. Reintjes checked a box marked "Yes" indicating that the diagnosed C1 fracture was caused or aggravated by appellant's employment activity as she "fell at work and suffered a fracture."

In a July 12, 2016 statement, appellant indicated that she was delivering a parcel at approximately 12:45 p.m. on Friday, April 29, 2016. She was unsure whether she "stepped in a hole next to the curb, or tripped on the curb." Appellant related, "I felt a sharp pain in my left thigh and fell to the street, hitting my forehead on the street, blacking out momentarily." She did not hit any objects falling to the street. Appellant indicated that her back, shoulder, and neck had been bothering her for a few days as the amount and weight of parcels had increased on her route. She also indicated that, on the morning of April 29, 2016, she awoke with a headache. Appellant denied any history of fainting, epilepsy, diabetes, or cardiac conditions. She also noted that she had not seen an orthopedic doctor for her leg or a dentist for her chipped teeth.

By decision dated July 28, 2016, OWCP denied appellant's traumatic injury claim. It found that she had established that the April 29, 2016 employment incident occurred as alleged and that a medical condition had been diagnosed in connection with the accepted incident. OWCP determined, however, that appellant's fall on April 29, 2016 was an idiopathic fall from a nonoccupational pathology without any intervention or contribution by her employment. It thus found that she had not sustained an injury in the performance of duty.

OWCP subsequently received a copy of an April 29, 2016 EMS report, which noted that appellant was found lying face down on the street. Appellant related that she had gotten out of her truck to deliver a package and did not remember much thereafter. She advised that she had severe leg cramps. Appellant also indicated that she had awakened with a headache and had taken medication. She complained of neck and head pain, as well as left leg cramps.

In a May 16, 2016 report, Dr. Christina L. Eliason, a Board-certified family practitioner, noted the history of the claimed April 29, 2016 injury. Appellant reported going to work that day with marked left shoulder pain. She informed her supervisor that her arm hurt. While on her route, appellant noted increased pain in her left shoulder while moving packages. She remembered setting a package on the porch and walking to the street. Appellant subsequently collapsed

forward, striking her head on the street and tearing her left hamstring. She did not remember the fall. Dr. Eliason diagnosed a closed fracture of the cervical spine and hamstring tear.

On July 26, 2017 appellant, through counsel, requested reconsideration.

In a declaration dated July 26, 2017, appellant related that on April 29, 2016 after delivering a package to a customer she walked down a grassy slope to the curb, stepped forward, and felt severe left hamstring pain. She related that she could not remember the exact cause of her fall or hamstring injury. Appellant related that she lost at least partial consciousness and was unable to think clearly. She advised that before the fall, her neck and shoulders hurt because of lifting she had done at work for several days before. Appellant attributed her fall to sudden pain in her left hamstring. She advised that she bent forward and grabbed her hamstring with both hands due to the pain and landed on her head by her mail truck.

Thereafter, OWCP received an August 19, 2016 report, Dr. Brian C. Kindred, a Board-certified orthopedic surgeon, who obtained a history of appellant tripping and falling on a steep driveway after delivering a package. He diagnosed a left hamstring muscle strain and cervical spine fracture. In an August 22, 2016 attending physician's report (Form CA-20), Dr. Kindred reported that appellant was seen on August 19, 2016 and diagnosed with left hamstring muscle strain and cervical spine fracture, for which he checked the box marked "Yes" indicating that the conditions were caused or aggravated by the employment injury. For the history of injury, he stated "see notes."

In a September 19, 2016 report, Dr. Kindred assessed status post left hamstring injury and released appellant to work. He opined that her hamstring injury was a direct result of her work-related fall on the steep driveway.

By decision dated July 28, 2017, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

On January 21, 2018 appellant appealed to the Board. By decision dated October 11, 2018, the Board set aside the July 28, 2017 OWCP decision, finding that it improperly denied merit review as appellant had raised a new legal argument. The Board thus remanded the case for a merit review.<sup>6</sup>

On February 14, 2019 OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that an injury occurred in the performance of duty. It determined that her fall was idiopathic in nature and resulted from an underlying condition unrelated to employment.

On February 14, 2020 appellant, through counsel, requested reconsideration of OWCP's February 14, 2019 decision. Counsel noted that appellant complained of severe leg cramps to the paramedics, who found her face-down on the ground. He indicated that contemporaneous medical

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<sup>6</sup> *Supra* note 3.

evidence discussed her hamstring pain. Counsel asserted that OWCP had the burden of proof to establish that appellant's fall was idiopathic in nature.

By decision dated July 1, 2020, OWCP denied modification of its February 14, 2019 decision.

On June 30, 2021 appellant, through counsel, requested reconsideration. In an attached statement, counsel contended that OWCP failed to weigh all reliable, probative, and substantial evidence in the record and further reiterated that appellant established an injury in the performance of duty. He again asserted that OWCP had the burden of proof to establish that a fall was idiopathic in nature. Counsel indicated that OWCP had not submitted any medical evidence demonstrating that appellant's fall resulted from a personal, nonoccupational pathology. No additional evidence was received.

By decision dated September 24, 2021, OWCP denied modification of its July 1, 2020 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>7</sup> 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,<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup> The second component is whether the employment incident caused an injury.<sup>12</sup>

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<sup>7</sup> *Supra* note 2.

<sup>8</sup> *M.C.*, Docket No. 21-1122 (issued March 23, 2022); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>9</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>10</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>11</sup> *B.P.*, Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>12</sup> *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

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.<sup>13</sup> 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.<sup>14</sup>

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.<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup>

### ANALYSIS

The Board finds that appellant has met her burden of proof to establish that the accepted traumatic incident occurred in the performance of duty on April 29, 2016, as alleged.

In determining whether appellant's injury occurred in the performance of duty, the Board must first consider factors to determine whether the accepted April 29, 2016 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.<sup>18</sup>

The record contains medical evidence from appellant's treating physicians. On April 29, 2016 Dr. Weith noted that appellant had experienced headaches that day but continued to work. She delivered a package and walked back to her vehicle and the next thing she knew she was on the street. Dr. Weith discussed appellant's history of a prior fusion at C6-7 and recent radioablation. He diagnosed syncope/near syncope, acute nondisplaced fracture ring C1, facial

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<sup>13</sup> *L.H.*, Docket No. 22-0449 (issued November 8, 2022); *H.B.*, Docket No. 18-0278 (issued June 20, 2018); *Carol A. Lyles*, 57 ECAB (2005).

<sup>14</sup> *H.B.*, *id.*; *M.M.*, Docket No. 08-1510 (issued November 25, 2008).

<sup>15</sup> *P.N.*, Docket No. 17-1283 (issued April 5, 2018); *Dora Ward*, 43 ECAB 767 (1992).

<sup>16</sup> *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).

<sup>17</sup> *P.N.*, *supra* note 15; *John R. Black*, 49 ECAB 624 (1998); *Judy Bryant*, 40 ECAB 207 (1988).

<sup>18</sup> *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).

abrasions, and a laceration of the lower lip. On April 30, 2016 Dr. Reintjes advised that appellant had awakened with a headache and dizziness on April 29, 2016. Appellant passed out and fell forward after getting out of her vehicle. Dr. Reintjes diagnosed a syncope with anterior C1 ring fracture. In a report dated May 16, 2016, Dr. Eliason related that appellant experienced increased left shoulder pain delivering packages. Appellant set a package on a porch and walked to the street and collapsed forward. Dr. Eliason diagnosed a closed fracture of the cervical spine and hamstring tear. On August 19, 2016 Dr. Kindred advised that appellant had tripped and fallen on a steep driveway after delivering a package and diagnosed a left hamstring muscle strain and cervical spine fracture. However, none of these physicians specifically opined that appellant had a preexisting condition that caused the April 29, 2016 fall. The Board finds, therefore, that OWCP has not established that the April 29, 2016 fall was due to an idiopathic condition.<sup>19</sup>

The Board has held that a fall is compensable if it remains an unexplained fall which occurred while the claimant was engaged in activities incidental to his or her employment.<sup>20</sup> As the record does not establish that the particular fall was due to an idiopathic condition, it must be considered as merely an unexplained fall.<sup>21</sup>

As appellant has established that the accepted traumatic incident occurred in the performance of duty on April 29, 2016, as alleged, the question becomes whether that incident caused an injury. On remand, OWCP shall evaluate the medical evidence to determine whether appellant sustained an injury causally related to the accepted April 29, 2016 employment incident and, if so, to determine the nature and extent of any disability and attendant medical expenses.

### **CONCLUSION**

The Board finds that appellant has met her burden of proof to establish that the accepted traumatic incident occurred in the performance of duty on April 29, 2016, as alleged.

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<sup>19</sup> *A.B.*, *supra* note 16; *see Robert A. Redmond*, 40 ECAB 796 (1989).

<sup>20</sup> *S.Y.*, Docket No. 23-0641 (issued September 27, 2023); *Dora J. Ward*, 43 ECAB 767, 769-70 (1992).

<sup>21</sup> *Supra* note 16.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 24, 2021 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 12, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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