

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

_____)	
Y.K., Appellant)	
)	
and)	Docket No. 22-0659
)	Issued: July 3, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
City of Industry, CA, Employer)	
_____)	

Appearances: *Case Submitted on the Record*
*William H. Brawner, Esq., for the appellant*¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 20, 2022 appellant, through counsel, filed a timely appeal from an October 4, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 an 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 October 4, 2021 decision, OWCP received additional evidence. 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 his burden of proof to establish an injury in the performance of duty on August 4, 2021, as alleged.

FACTUAL HISTORY

On August 26, 2021 appellant, then a 37-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on August 4, 2021 he sustained a left skull fracture and brain bleed when he developed a headache, became dizzy and nauseous, fell down, and passed out while in the performance of duty. On the reverse side of the claim form, appellant's supervisor checked a box marked "No" in response to whether she agreed with appellant's statements. She indicated that a challenge letter would follow.

In support of his claim, appellant submitted an August 6, 2021 letter from Dr. Alexander Lopez. Dr. Lopez indicated that appellant had been hospitalized for medical treatment/surgery since August 4, 2021.

Appellant also submitted an August 24, 2021 letter from Dr. Yeh Yi-Bing, a Board-certified physiatrist. Dr. Yi-Bing indicated that appellant was admitted to the hospital on August 4, 2021 with a left skull fracture and brain bleed. She noted that he would likely be discharged from the hospital on August 25, 2021. Dr. Yi-Bing advised that appellant would be off work until November 4, 2021.

OWCP, by development letter dated August 31, 2021, informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire regarding the factual circumstances of his injury for his completion. OWCP afforded appellant 30 days to submit the requested evidence.

In an August 31, 2021 response to OWCP's development questionnaire, appellant related that at the time of injury he "was working on APPS, side 1." He had a headache and became dizzy and nauseous. Appellant did not remember what happened after he passed out until the second day when he opened his eyes and a physician was talking to him. He related that immediately prior to his fall he was behind a computer. Appellant noted that, following his injury, he was transported to the hospital by ambulance. He attributed his fall to work-related stress and anxiety, and noted that he feared retaliation by two supervisors for filing two Equal Employment Opportunity (EEO) complaints against them. Appellant provided the names of two witnesses regarding his fall and injury. He related that he did not strike any object when he fell down to the immediate supporting surface. Appellant further related that he did not sustain any other injury, either on or off duty. He indicated that he did not have a history of fainting or any other medical condition that would have contributed to his claimed injury.

OWCP, in a subsequent development letter dated September 1, 2021, again requested that appellant submit additional medical and factual evidence and provided a questionnaire for his completion. The questionnaire requested that he provide whether he was claiming that work stress caused his fall and a detailed explanation of his reasons. OWCP afforded appellant 30 days to submit the requested evidence.

On September 1, 2021 appellant responded to OWCP's development questionnaire. He claimed that work stress caused his fall. Appellant related that he had no prior emotional condition, treatment from a psychiatrist/psychologist, or counseling. He also had not taken medication for an emotional condition. Appellant continued to attribute his headache, dizziness, and fainting to stress and anxiety at work and to worry about the supervisors' actions. In an undated letter, appellant specifically described work incidents alleged to have caused his emotional condition.⁴

In an August 30, 2021 letter, the employing establishment controverted appellant's claim, contending that he had failed to establish fact of injury, causal relationship, and that he was in the performance of duty at the time of injury. It noted that on August 4, 2021 appellant worked for approximately three hours and was standing at a printer when he became dizzy and collapsed. The employing establishment contended that he related that he did not trip and fall. Rather, he claimed that he was on a computer when he developed a headache, became dizzy, and collapsed. The employing establishment noted that several witnesses related that appellant was standing and collapsed. It maintained that there were no tripping hazards or unsafe conditions leading to the incident. The employing establishment believed that appellant's unfortunate incident would have occurred whether he was at work or home.

By decision dated October 4, 2021, OWCP denied appellant's traumatic injury claim, finding that the factual component of fact of injury had not been established. It explained that he did not submit evidence to establish that work-related stress caused his fall. OWCP also found that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the claimed injury or event(s). It, therefore, concluded that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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, 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.⁶ These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁷

It is a well-settled principle of workers' compensation law that an injury resulting from an idiopathic fall where a personal, nonoccupational pathology causes an employee to collapse and to

⁴ An EEO Settlement Agreement Pre-Complaint form signed by management on April 11, 2021 and by appellant on April 21, 2021 indicated that W.Y., a supervisor, agreed to take a communication training course within three weeks of the date of the agreement, which represented full and final settlement of appellant's EEO case assigned 1F-927-0046-21.

⁵ *Supra* note 2.

⁶ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

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.⁸ Such an injury does not arise out of a risk connected with the employment and is, therefore, not compensable.⁹ However, 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 while in the performance of duty 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 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 appellant has established that the August 4, 2021 incident occurred in the performance of duty, as alleged.

In determining whether appellant's injury occurred in the performance of duty, the Board must first consider factors to determine whether the August 4, 2021 incident was caused by an idiopathic fall. Factors to be considered include whether there is evidence of a preexisting condition that caused him to fall, whether there were any intervening circumstances or conditions that contributed to his fall, and whether he struck any part of his body against a wall, piece of equipment, furniture, or similar object as he fell.¹⁴ As previously noted, OWCP bears the burden of proof to establish an idiopathic fall.¹⁵

On his claim form, appellant alleged that he was injured as a result of passing out and falling on August 4, 2021 after he developed a headache and became dizzy and nauseous while in the performance of duty. In his subsequent responses to OWCP's development letters and undated letter, he explained that his fall was caused by work-related stress and anxiety. Appellant also maintained that he did not strike any object when he fell down to the supporting surface.

⁸ *M.A.*, Docket No. 19-0341 (issued July 10, 2019); *H.B.*, Docket No. 18-0278 (issued June 20, 2018); *Carol A. Lyles*, 57 ECAB 265 (2005).

⁹ *Id.*; see also *D.T.*, Docket No. 19-1486 (issued January 17, 2020).

¹⁰ *H.B.*, *supra* note 8; *M.M.*, Docket No. 08-1510 (issued November 25, 2008).

¹¹ *P.N.*, Docket No. 17-1283 (issued April 5, 2018); *Dora Ward*, 43 ECAB 767 (1992).

¹² *J.W.*, Docket No. 20-0598 (issued December 2, 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).

¹³ *P.N.*, *supra* note 11; *John R. Black*, 49 ECAB 624 (1998); *Judy Bryant*, 40 ECAB 207 (1988).

¹⁴ *D.T.*, Docket No. 19-1486 (issued January 17, 2020); *P.P.*, *supra* note 12; *Jennifer Atkerson*, *supra* note 12.

¹⁵ *Supra* note 12.

In an August 30, 2021 letter controverting appellant's claim, the employing establishment noted that, according to him and witnesses, he was standing at a printer when he became dizzy and collapsed on August 4, 2021. It also noted his contention that he did not trip and fall, but rather, he developed a headache while on a computer and became dizzy and collapsed.

The Board has held that an injury resulting from an idiopathic condition is not compensable. The fact that the cause of a particular fall cannot be ascertained, or that the reason it occurred cannot be explained, does not however establish that it was due to an idiopathic condition. 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 the fall and caused the fall.¹⁶

The medical evidence of record consists of letters from Dr. Lopez and Dr. Yi-Bing who indicated that appellant was hospitalized for left skull fracture and brain bleed following his fall on August 4, 2021. The record establishes that appellant was standing at work and became dizzy and nauseous when the fall occurred. While he has alleged that he sustained stress at work, the medical evidence of record does not establish that he fell due to a medically diagnosed idiopathic condition. The Board finds that there is no medical evidence of a nonoccupational pathology which caused the employee to fall. Accordingly, the Board finds that OWCP has failed to meet its burden to establish that appellant's fall at work was of an idiopathic nature with no contribution or intervention from employment factors; therefore, it is unexplained.¹⁷ The evidence of record is sufficient to require OWCP to further develop the medical evidence and the case record.¹⁸

Accordingly, the case will be remanded for OWCP to determine whether appellant sustained an injury causally related to the August 4, 2021 unexplained fall, and if so, to also determine the nature and extent of disability, if any. Following any further development deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has established that the August 4, 2021 incident occurred in the performance of duty, as alleged. The Board further finds that the case is not in posture for decision regarding whether he has established an injury causally related to the August 4, 2021 unexplained fall.

¹⁶ *J.L.*, Docket No. 17-1712 (issued February 12, 2018); *P.W.*, Docket No. 13-0170 (issued March 15, 2013).

¹⁷ *J.F.*, Docket No. 20-1604 (issued July 8, 2021); *D.M.*, Docket No. 18-1552 (issued June 2, 2020); *A.B.*, *supra* note 11; *M.O.*, Docket No. 16-0822 (issued August 29, 2016); *H.B.*, Docket No. 12-840 (issued November 20, 2012).

¹⁸ *J.F.*, *id.*; *A.B. id.*; *Robert A. Redmond*, 40 ECAB 796, 801 (1989).

ORDER

IT IS HEREBY ORDERED THAT the October 4, 2021 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: July 3, 2023
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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