

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

_____)
D.H., Appellant)

and)

U.S. POSTAL SERVICE, JOHNS ISLAND POST)
OFFICE, Johns Island, SC, Employer)
_____)

Docket No. 23-0640
Issued: November 21, 2023

Appearances:

Alan J. Shapiro, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On March 30, 2023 appellant, through counsel, filed a timely appeal from a March 17, 2023 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.

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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish an injury in the performance of duty on November 12, 2021, as alleged.

FACTUAL HISTORY

On November 18, 2021 appellant, then a 64-year-old rural delivery specialist, filed a traumatic injury claim (Form CA-1) alleging that on November 12, 2021 she fractured her left elbow when she tripped on a rubber mat and fell down face first while in the performance of duty. She stopped work on November 12, 2021. On the reverse side of the claim form, appellant's supervisor indicated that appellant did not have postal-regulated shoes, did not watch where she was going, and had asked employees to pick her up instead of waiting for the ambulance.

In a November 22, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for completion. OWCP afforded appellant 30 days to respond.

In a progress note dated December 17, 2021, Dr. Josef K. Eichinger, a Board-certified orthopedic surgeon, indicated that appellant had a history of a "fall while working on the job as a mail carrier" over a month ago. He reported that she was seen in the emergency department for left elbow pain and was referred for surgical intervention, but was unable to find surgeons that were willing to take federal workers' compensation claims. On physical examination of appellant's left elbow, Dr. Eichinger observed restricted range of motion on flexion and extension, and tenderness over the olecranon. He diagnosed right and left elbow pain and closed displaced fracture of the left olecranon.

A December 17, 2021 left elbow x-ray scan showed a displaced olecranon fracture with fragment posterior to distal humerus.

Appellant submitted a statement from F.L., a coworker. F.L. indicated that on November 12, 2021 she noticed appellant holding her back and asked appellant if she was okay. Appellant replied, "not really" and explained that she had taken medication and should feel better soon. F.L. indicated that about 5 to 10 minutes later she observed appellant walking towards the scanner cradles, and then heard that appellant was on the floor. She noted that she rushed over and found appellant lying on the ground. F.L. reported that she asked appellant what happened, and appellant explained that she had tripped on a "route 16" rug. She noted that she asked appellant if she was sure, because the rug was not near the location of the fall. F.L. explained that she did not observe any straps or items on the floor that could have caused appellant's fall. She further reported that appellant was not wearing postal-regulated shoes, and had previously informed management of several conditions, including back issues, diabetes, and psoriasis of the liver.

In a December 14, 2021 work status note, Dr. Charles L. Smith, Jr., a Board-certified internist, recommended that appellant be excused from work until December 20, 2021.

By decision dated January 3, 2022, 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.

Appellant subsequently submitted a November 12, 2021 emergency room report from Kristen Stanley, a physician assistant, who noted appellant's complaints of left elbow pain after a fall at work. Ms. Stanley indicated that appellant lost her footing and tripped, bracing her fall with her arms. She provided examination findings and diagnosed olecranon fracture and fall.

A November 12, 2021 left elbow x-ray scan showed comminuted and displaced right olecranon fracture, elbow joint effusion, and probable small avulsion fracture of the coronoid process.

OWCP also received operative reports dated January 4 and February 3, 2022 from Dr. Eichinger.

In a January 18, 2022 work capacity evaluation (Form OWCP-5c), Dr. Eichinger noted a diagnosis of left displaced olecranon fracture and indicated that appellant could work sedentary duty with restrictions.

In an after-visit summary report and work status note dated March 21, 2022, Josh Whibley, a physician assistant, indicated that appellant was evaluated for continued postop left elbow pain following a left olecranon surgery. He noted a medical history of diabetes, gastroesophageal reflux disease, stomach ulcer, and hypertension. Mr. Whibley reported that appellant should continue with her postoperative plan and authorized her to return to work with restrictions.

On August 2, 2022 appellant, through counsel, requested reconsideration.

Appellant submitted visit summary reports dated December 17, 2021 through November 14, 2022, which indicated that she was evaluated for follow-up of left elbow pain.

In a narrative report dated May 13, 2022, Dr. Eichinger recounted that appellant was working as a mail carrier when she fell and landed directly on the tip of her elbow. He reported that this type of injury was the typical mechanism of injury to sustain olecranon fracture. Dr. Eichinger opined that, all the treatment that appellant received, including surgical care, was related to the work-related accident.

In a June 13, 2022 note, Mr. Whibley authorized appellant to work light duty.

OWCP received a completed questionnaire dated July 14, 2002 from appellant. Appellant responded "No" indicating that she did not strike any object on the way down when she fell at work. She also responded "No" indicating that there were no individuals who witnessed or had direct knowledge of the circumstances surrounding the fall. Appellant reported that she was in the walkway and tripped and fell.

In a July 28, 2022 note, Mr. Whibley indicated that appellant could work with restrictions of lifting up to five pounds.

By decision dated March 17, 2023, OWCP denied appellant's claim, as modified. It accepted that the November 12, 2021 incident occurred as alleged, and that there was a diagnosed condition. However, OWCP found that appellant failed to establish that the alleged injury occurred while in the performance of duty. It found that her fall was idiopathic in nature, 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.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including 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,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

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, OWCP must first determine whether fact of injury has been established.⁷ There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit evidence, in the form of probative medical evidence, to establish that the employment incident caused an injury.⁸

To establish causal relationship between the condition and the employment event or incident, the employee must submit rationalized medical opinion evidence.⁹ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the

³ *Id.*

⁴ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *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 *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *S.P.*, 59 ECAB 184 (2007).

⁸ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *see also Robert G. Morris*, 48 ECAB 238 (1996).

nature of the relationship between the diagnosed condition and the specific employment factor(s) identified by the employee.¹⁰

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.¹¹ 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.¹²

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 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 definitively proved that a physical condition preexisted and caused the fall.¹⁵

ANALYSIS

The Board finds that appellant has established that the November 12, 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 November 12, 2021 incident was caused by an idiopathic fall. Factors to be considered include whether there is evidence of a predisposed condition that caused her to fall down, whether there were any intervening circumstances or

¹⁰ *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹¹ *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).

¹² *M.R.*, Docket No. 19-0341 (issued July 10, 2019); *H.B.*, *id.*

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

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 11; *John R. Black*, 49 ECAB 624 (1998); *Judy Bryant*, 40 ECAB 207 (1988); *Martha G. List*, 26 ECAB 200 (1974).

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

In this case, the Board finds that the evidence of record fails to establish that appellant's fall was solely the result of a personal, nonoccupational pathology.¹⁷ Appellant alleged in the Form CA-1 that on November 12, 2021 she tripped on a rubber mat and fell down. She denied striking any object on her way down to the floor. In a November 12, 2021 emergency room report, Ms. Stanley, a physician assistant, noted appellant's complaints of left elbow pain after a fall at work. She indicated that appellant lost her footing and tripped. In a narrative report dated May 13, 2022, Dr. Eichinger recounted that appellant was working as a mail carrier when she fell and landed directly on the tip of her elbow. He reported that this type of injury was the typical mechanism of injury to sustain olecranon fracture. Dr. Eichinger opined that all the treatment that appellant received, including surgical care, was related to the work-related accident. Although appellant's diabetes and hypertension are briefly mentioned in the evidence of record, there is no clear evidence that these or any other nonwork-related conditions caused her November 12, 2021 fall at work. Accordingly, the Board finds that the evidence related to the November 12, 2021 employment incident did not establish any idiopathic cause for her fall.

As previously noted, 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 definitively proved that a physical condition preexisted and caused the fall.¹⁸ The Board finds that OWCP has failed to meet its burden of proof 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.¹⁹ The Board also finds that the evidence of record is sufficient to require OWCP to further develop the medical evidence and the case record.²⁰

Accordingly, the case will be remanded for OWCP to determine whether appellant sustained an injury causally related to the November 12, 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 November 12, 2021 incident occurred in the performance of duty, as alleged. The Board further finds that the case is not in

¹⁶ *D.T.*, Docket No. 19-1486 (issued January 17, 2020); *supra* note 14.

¹⁷ *See J.F.*, Docket No. 20-1604 (issued July 8, 2021) (the Board found that OWCP had failed to meet its burden of proof to establish that a claimant's fall at work was of an idiopathic nature when the medical evidence of record showed that appellant's preexisting ankle condition had resolved); *see also D.M.*, Docket No. 18-1552 (issued June 2, 2020).

¹⁸ *Supra* note 15.

¹⁹ *See J.W.*, Docket No. 20-0598 (issued December 2, 2020); *R.D.*, Docket No. 13-1854 (issued December 23, 2014).

²⁰ *Id.*

posture for decision regarding whether she has established an injury causally related to the November 12, 2021 unexplained fall.

ORDER

IT IS HEREBY ORDERED THAT the March 17, 2023 decision of the Office of Workers' Compensation Programs is reversed. The case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: November 21, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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