United States Department of Labor
Employees' Compensation Appeals Board

L.H., Appellant	)	
and	)	**Docket No. 23-0481**
	)	**Issued: October 11, 2023**
FEDERAL DEPOSIT INSURANCE COMPANY, 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:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On February 22, 2023 appellant, through counsel, filed a timely appeal from a February 1, 2023 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.

[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 May 29, 2019, as alleged.

FACTUAL HISTORY

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

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 next remembered that when she opened her eyes, she was lying on the floor with her head against a metal cabinet. She advised that she tried to get up, but fell back down to the floor. Appellant then noticed that her right foot was twisted. On the reverse side of the claim form, the employing establishment contended that appellant 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 the claimed injury.

An occupational health incident report dated May 29, 2019 indicated that appellant 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 treated on June 14, 2019 by Dr. C. Clay Wellborn, a Board-certified orthopedic surgeon, for a fractured right ankle and underwent surgery on June 7, 2019.

In a July 22, 2019 development letter, OWCP notified 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. OWCP afforded appellant 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 his treatment of 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. He diagnosed displaced bimalleolar fracture of the right lower leg, closed fracture, initial encounter,

[3] Docket No. 22-0449 (issued November 8, 2022); *Order Dismissing Appeal*, Docket No. 20-1454 (issued August 26, 2020).

and recommended surgical treatment. On June 7, 2019 Dr. Wellborn performed an open reduction internal fixation (ORIF) of right lateral malleolus for bimalleolar ankle fracture and diagnosed displaced right lateral malleolus fracture with interposed medial malleolar chip. He treated appellant on June 14, 2019 for postoperative ORIF of right lateral malleolar ankle fracture. In a duty status report (Form CA-17) dated July 9, 2019, Dr. Wellborn diagnosed fracture of right bimalleolar and advised that she could not work.

OWCP received an August 5, 2019 witness statement from S.C., who arrived after the fall on May 29, 2019 and observed that appellant was on the floor behind her desk grimacing. S.C. noticed that appellant's 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 observing that she appeared alert and 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 advised 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. She 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 employment 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. Dr. Ross opined that the work-up 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. She diagnosed syncope and collapse, nausea induced, likely due to overmedication of hypertension medication, with a betablocker recently prescribed due to high blood pressure.

Dr. Ross suspected that appellant was overmedicated, which likely exacerbated her syncope in the context of nausea, heat, and dehydration.

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

On February 1, 2022 appellant appealed to the Board. By decision dated November 8, 2022, the Board affirmed the November 29, 2021 decision finding that she did not meet her burden of proof to establish an injury in the performance of duty on May 29, 2019, as alleged.[4]

On November 11, 2022 appellant requested reconsideration.

A January 27, 2022 report from Dr. Ghazala S. Shah, an internist and general surgeon, noted that appellant had an injury at work on May 29, 2019. She indicated that appellant had been on blood pressure medication, cholesterol, and diabetes medicine for years and there was no problem with her medicines that would cause dizziness or cause her to pass out.

By decision dated February 1, 2023, OWCP denied modification of the November 29, 2021 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,[5] 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 each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[7]

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,

[4] Docket No. 22-0449 (issued November 8, 2022).

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

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

[7] *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).

and in the manner alleged.[8] The second component is whether the employment incident caused a personal injury.[9]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[10] 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.[11] 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).[12]

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.[13] 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.[14]

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.[15] 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.[16] 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

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

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

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

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

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

[13] *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).

[14] *Id.*

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

[16] *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).

distinguishable from a fall in which it is definitely proved that a physical condition preexisted and caused the fall.[17]

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.

Initially, the Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of OWCP's November 29, 2021 decision, which was considered by the Board in its November 8, 2022 decision. Findings made in prior Board decisions are *res judicata* absent further merit review by OWCP under section 8128 of FECA.[18]

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 employment 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.[19]

In its prior decision dated November 8, 2022, the Board found that a May 29, 2019 report of Dr. Ross demonstrated that appellant's May 29, 2019 fall was caused by a personal, nonoccupational pathology, including hypertension, without employment contribution.[20] After the issuance of the November 29, 2021 OWCP decision affirmed by the Board, appellant submitted a January 27, 2022 report from Dr. Shah who noted that she had been on blood pressure medication, cholesterol, and diabetes medicine for years and there was no problem with her medicines that would cause dizziness or cause her to pass out on May 29, 2019. While Dr. Shah generally indicated that appellant had no problem with her blood pressure, cholesterol, and diabetes medicine that would cause dizziness, she did not specifically address whether appellant's fall was unexplained, thereby rendering it compensable.[21]

The Board, therefore, finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty on November 8, 2022, as alleged.[22]

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[17] *H.B., supra* note 13; *John R. Black*, 49 ECAB 624 (1998); *Judy Bryant*, 40 ECAB 207 (1988); *Martha G. List*, 26 ECAB 200 (1974).

[18] *C.M.*, Docket No. 19-1211 (issued August 5, 2020); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

[19] *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).

[20] In its November 8, 2022 decision, the Board found that appellant had not established that intervening circumstances or conditions contributed to her fall, or that she struck any part of her body against a wall, piece of equipment, furniture, or similar object as she fell.

[21] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

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

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.

ORDER

IT IS HEREBY ORDERED THAT the February 1, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 11, 2023
Washington, DC

Alec J. Koromilas, 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