United States Department of Labor
Employees' Compensation Appeals Board

CLARICE J. SANCHEZ, Appellant	)	
and	)	**Docket No. 05-379**
	)	**Issued: September 13, 2005**
DEPARTMENT OF AGRICULTURE, FOREST SERVICE, Lufkin, TX, Employer	)	

Appearances:
Pete V. Domenici, Jr., Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 29, 2004 appellant filed an appeal of a decision of the Office of Workers' Compensation Programs dated May 3, 2004, affirming a March 12, 2003 decision, finding that she did not establish that she sustained a head injury while in the performance of duty on January 14, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d) the Board has jurisdiction over the merits of her claim.

ISSUE

The issue is whether appellant has met her burden of proof in establishing that she sustained a head injury or intracranial cerebral hemorrhage in the performance of duty on January 14, 2003.

FACTUAL HISTORY

On January 17, 2003 appellant, then a 53-year-old secretary, filed a traumatic injury claim (Form CA-1), asserting that on January 14, 2003 during an authorized errand to her office between two sessions of a required off site meeting, she "missed a step" while descending a

flight of stairs, causing her to fall and strike her head. She stopped work that day and was hospitalized.

Appellant submitted the statements of several coworkers, dated January 14 to February 10, 2003. Willie Tutt, a security officer, stated that on the afternoon of January 14, 2003 while speaking with Rodney Peters, he heard a "noise in the stairs leading to the second floor." He and Mr. Peters opened the door and saw appellant "lying on the floor at the bottom of the stair." Mr. Peters noted that she remarked that she was "dizzy but also stated that this condition had been occurring at least two week[s] prior to the incident." Betty Jordan and another employee whose signature is illegible stated that on January 14, 2003 they saw appellant sitting with her legs folded beneath her at the bottom of the stairs, holding her head, speaking to Mr. Peters. Ms. Jordan noted that appellant complained of feeling dizzy and that she had been experiencing dizziness for several weeks. Appellant then went to her car and drove back to the meeting. Stephen R. Rickerson, a supervisor, stated that during the lunch break of the January 14, 2003 meeting, he received a pager message from Sheila Sprague that appellant had "fallen down the staircase" at the office and that he should "'keep an eye'" on her as she might be injured. Appellant then returned to the meeting and began taking notes, commenting that she had a headache. She went to get some aspirin, returned to her seat then went outside to sit in her car. Gay Ippolito recalled that as appellant sat in her car, she stated that she hurt her head at the main office when she "walked down two or three steps, then 'bumped' down the rest of them." Appellant asserted that she had a "bump" on the left side of her head. Her headache intensified at approximately 1:45 p.m., while taking notes during the meeting.

In a January 14, 2003 report, Dr. Stig Peitersen, an attending Board-certified neurosurgeon, related appellant's account that she fell down steps at work but did not lose consciousness. She was unsure why she fell, although she believed that she probably missed a step. Appellant noted that she had experienced a "spinning type" of dizziness throughout the day for the prior two weeks. On examination Dr. Peitersen observed no external cranial trauma, no scalp lacerations, abrasions or hemorrhages and no trauma of the extremities. He diagnosed status post fall and an intracranial hemorrhage of uncertain etiology. Dr. Peitersen explained that it was not clear whether the intracranial hemorrhage was post-traumatic or whether appellant sustained the hemorrhage and then fell as a result.

In a January 30, 2003 letter, the Office advised appellant of the additional evidence needed to establish her claim regarding both fact of injury and causal relationship. She responded that she had no injuries or medical conditions before the January 14, 2003 incident.

In a February 6, 2003 form report, Dr. Peitersen diagnosed a right temporal parenchymal hematoma and checked a box "yes" indicating his support for a causal relationship between the hemorrhage and the January 14, 2003 fall.

In a March 3, 2003 report, Dr. Cherry Mathew, an attending Board-certified neurologist, noted that appellant experienced headaches after falling down several stairs at work on January 14, 2003. Dr. Mathew diagnosed "[s]tatus post intracerebral hemorrhage secondary to fall."

In a March 5, 2003 report, Dr. Thomas Duncan, an attending Board-certified ophthalmologist, related appellant's account of falling down stairs on January 14, 2003. He obtained visual field test results and diagnosed "head trauma" and a complete left hemianopsia in the right eye, caused by damage to the visual pathway.

By decision dated March 12, 2003, the Office denied the claim on the grounds that fact of injury was not established. The Office found that appellant submitted insufficient evidence to establish that the January 14, 2003 event occurred at the time, place and in the manner alleged. The Office further found that she submitted insufficient rationalized medical evidence to establish that the alleged incident caused any injury or condition.

Appellant requested an oral hearing before a representative of the Office's Branch of Hearings and Review, held February 6, 2004. She asserted that on January 14, 2003 her foot slipped on one of the top steps as she descended the staircase, causing her to fall down all 19 concrete steps and injure her head.

At the hearing, appellant asserted that she was not dizzy the morning of January 14, 2003. She alleged that the stairwell in which she allegedly fell was in violation of Occupational Safety and Health Administration (OSHA) regulations. Appellant also asserted that the exit door was extremely close to the top step and that she missed, overstepped or fell on the top step while descending the stairs. Her memory of the incident, the afternoon meeting session and events in the emergency room was absent or incomplete. Appellant returned to work on April 21, 2003 but had a persistent left peripheral visual field defect and severe headaches.[1]

In a May 28, 2003 letter, appellant asserted that the exit stairway was steep, poorly lit and had a "short landing," causing her either to overstep the top step or slip. In a December 22, 2003 letter, she asserted that, on entering the stairwell on January 14, 2003 she "turned to close the door and fell backwards down the" stairs. Appellant submitted photographs of the stairway. She emphasized in February 4 and 11, 2004 letters, that she had no preexisting condition that would have caused her to fall.

To support her allegation that the stairway was unsafe, appellant submitted an August 1, 2003 OSHA notice of unsafe or unhealthful working condition, finding that the "stairs by elevator" had uneven tread widths and riser heights as they varied more than 3/8 inches and that there was no emergency lighting. The employing establishment installed lighting as of August 6, 2003.

In an April 3 and 21, 2003 letters, Ms. Ippolito and Ernest S. Murray stated that appellant did not appear ill at the morning session of the January 14, 2003 meeting. In a

[1] Appellant submitted medical records regarding her general health before January 14, 2003. She was treated for fatigue on April 13, 1999 and August 14, 2002 by Dr. Marie T. Pimentel, an attending internist. In a June 11, 1999 report, Dr. Debra Michel, an attending Board-certified rheumatologist, related appellant's complaints of dizziness, fatigue, body aches and tinnitus. She diagnosed fibromyalgia and possible age-related degeneration of the cervical spine. Appellant also submitted several reports dated September 23, 1997 to November 13, 2002 containing illegible signatures as well as laboratory test results which do not appear to have been signed or reviewed by an identifiable physician. As these forms cannot be properly identified, they cannot constitute probative medical evidence in this case. *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

January 17, 2003 statement, Larry H. Bonner asserted that during the afternoon session of the January 14, 2003 meeting, appellant stated that "she had slipped and fallen at the office" and "had a tremendous headache." She then left the room to get an aspirin, returned to her seat then left the room to get "some air." Mr. Bonner followed her to her car, where she sat in the driver's seat slumped over the dashboard. An ambulance was called to take appellant to the hospital.

A January 14, 2003 computerized tomography (CT) scan showed an acute right temporoparietal hematoma with an adjacent subarachnoid hemorrhage and a history of trauma. Dr. Troy Coleman, a radiologist, opined that the hemorrhage could be either post-traumatic or due to an underlying vascular lesion.[2]

In January 27 and 28, 2003 reports, Dr. Robert Lindsey, an attending Board-certified physiatrist, noted appellant's account of falling down stairs then driving to a meeting on January 14, 2003. He diagnosed a right temporoparietal hematoma and subarachnoid hemorrhage, producing a left visual field defect and impaired coordination. In a February 4, 2003 examination, Dr. Lindsey noted that appellant's extremities showed "no evidence of ecchymosis or edema or cyanosis."

In a February 4, 2003 report, Dr. Mathew noted appellant's visual field defect and diagnosed "[s]tatus post fall with intracerebral hematoma involving the right temporal lobe and small subarachnoid hemorrhage."

In a February 11, 2003 report, Dr. Peitersen stated that appellant had a "traumatic fall down the stairs at work" and was diagnosed with an intracerebral hemorrhage.

Appellant participated in visual and physical therapies from February to April 2003. In a March 2, 2003 CT scan report, Dr. Darwin K. Clark, a Board-certified diagnostic radiologist, opined that the temporoparietal lesion "could be the result of old infarction." Dr. Sean E. Mullen, an osteopathic physician specializing in radiology, opined that a March 25, 2003 CT scan showed an area of "low-density involving the right temporal and parietal lobe represent[ing] either post-traumatic or post infarct change."

In March and April 2003, appellant was treated by Dr. Richard J. Ruckman, a Board-certified ophthalmologist, who diagnosed a permanent "left hemianopic field defect consistent with previous history of head trauma." He noted in a September 2003 report, that she had no preexisting history of illness or disease.

In an April 9, 2003 report, Dr. Peitersen noted appellant's assertion that her condition was caused by falling on the stairs whereas the Office found that it was a preexisting condition. He stated that he could "certainly not settle this argument, but that either [was] possible." Dr. Peitersen released appellant to regular clerical duties.

[2] January 15 and February 2, 2003 cerebral and carotid arteriograms were negative. The hematoma and hemorrhage were unchanged on January 20 and February 2, 2003 scans.

In an April 16, 2003 report, Dr. Lindsey noted that he would defer "entirely" to Dr. Peitersen's opinion as to whether appellant's "intracerebral hemorrhage was work related or whether it occurred spontaneously and led to her fall at work."

In an October 10, 2003 report, Dr. Thomas Carlow, an attending Board-certified neurologist, related appellant's account that on January 14, 2003 she "turned, missed the top of a step and fell 19 steps on concrete. She did not have any fractures or bruises, but did suffer a right intraparenchymal hematoma with a subarachnoid bleed." Appellant then drove to a meeting and was taken to the hospital two to three hours later. Dr. Carlow noted that she had no history of vertigo. He diagnosed a "dense left homonymous hemianopsia secondary to a traumatic intraparenchymal hemorrhage that appellant suffered from a fall on January 14, 2003."

In a February 3, 2004 letter, Dr. Tricia Kamerer, a chiropractor, opined that appellant's symptoms "were a result of her injury. There [was] no evidence in the history, examination or radiographs to suggest a preexisting condition."

By decision dated and finalized May 3, 2004, an Office hearing representative affirmed the March 12, 2003 decision, finding that appellant had not established the alleged January 14, 2003 fall as factual as her statements regarding the incident were inconsistent with witness statements and the medical record. The hearing representative further found that the medical evidence was equivocal and insufficiently rationalized regarding whether appellant sustained a work-related injury.[3]

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[4] has the burden of establishing 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 the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are 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 on a traumatic injury or an occupational disease.[6]

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been

[3] Following issuance of the Office's May 3, 2004 decision, appellant submitted additional evidence. The Board may not consider evidence for the first time on appeal that was not before the Office at the time it issued the final decision in the case. Thus, the additional evidence appellant submitted after issuance of the Office's May 3, 2004 decision is not before the Board on the present appeal. 20 C.F.R. § 501.2(c). Such evidence may be submitted to the Office pursuant to a request for reconsideration.

[4] 5 U.S.C. §§ 8101-8193.

[5] *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.[7] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[8]

It is a general rule of workers' compensation law 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 the employment -- the injury is not a personal injury while in the performance of duty as it does not arise out of a risk connected with the employment.[9] On the other hand if the cause of the fall cannot be determined or the reason it occurred cannot be explained, then it is an unexplained fall that comes within the general rule that an injury occurring on the industrial premises during working hours is compensable.[10]

ANALYSIS

Appellant asserted that she sustained an intracranial hemorrhage, right intraparenchymal hematoma and visual field loss related to a January 14, 2003 fall down a flight of stairs at work. The Office found that she had not established that the January 14, 2003 fall occurred at the time, place and in the manner alleged, as her statements regarding the incident were inconsistent with witness statements and the medical record.

The details of exactly how or why appellant fell are unclear. She asserted that she slipped and fell due to the configuration of the stairs or that they were poorly lit. Appellant noted that she did not have a complete recollection of the fall. There is also some indication that she may have had a preexisting condition causing dizziness on the day of the fall, although there were no contemporaneous medical diagnoses of dizziness or vertigo. The record is clear, however, that appellant fell down stairs while at work on January 14, 2003. Ms. Jordan, Mr. Peters and Mr. Tutt, her coworkers, stated that they saw appellant lying or sitting in a folded posture at the bottom of the stairwell on that date. She stated at that time that she had fallen down the stairs and shortly afterward complained of a severe headache. The Board finds that under the circumstances of this case, appellant has submitted sufficient evidence to establish that she fell on January 14, 2003 but that the cause of the fall is unexplained. The Board further finds that the unexplained fall constitutes a compensable injury as it occurred on the employing establishment's premises during working hours.[11]

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[7] *Gary J. Watling*, 52 ECAB 278 (2001).

[8] *Deborah L. Beatty*, 54 ECAB ___ (Docket No. 02-2294, issued January 15, 2003).

[9] *Steven S. Saleh*, 55 ECAB ___ (Docket No. 03-2232, issued December 12, 2003); *Karen K. Levene*, 54 ECAB ___ (Docket No. 02-25, issued July 2, 2003).

[10] *Id*.

[11] *Id*.

As appellant has established the January 14, 2003 fall as factual, it must now be determined whether she submitted sufficient medical evidence to establish that this incident caused an injury. Dr. Peitersen, an attending Board-certified neurosurgeon, submitted reports opining that it was not clear whether the intracranial hemorrhage was post-traumatic or whether appellant sustained the hemorrhage due to a preexisting condition and then fell as a result.[12] Dr. Coleman and Dr. Clark, both Board-certified radiologists, as well as Dr. Mullen, an osteopathic physician specializing in radiology, opined that the diagnosed right temporoparietal hematoma and adjacent subarachnoid hemorrhage could be due to either trauma or an underlying vascular lesion. The medical records reflect that the treating physicians were unsure as to whether the January 14, 2003 fall caused the diagnosed intracerebral hemorrhage and right intraparenchymal hematoma with visual field defect. Therefore, their reports are insufficient to establish that the accepted fall caused the diagnosed conditions.[13]

Several of appellant's physicians supported a causal relationship between the intracerebral hemorrhage and a January 14, 2003 fall. Dr. Mathew, a Board-certified neurologist and Dr. Duncan and Dr. Ruckman, Board-certified ophthalmologists, submitted reports opining that appellant's intracerebral hemorrhage and left hemianopsia were caused by head trauma sustained in the January 14, 2003 fall. Dr. Carlow, an attending Board-certified neurologist, concurred with this opinion. However, none of these physicians provided medical rationale explaining how or why the alleged January 14, 2003 incident caused or contributed to the diagnosed conditions. Without such rationale, their opinions are of diminished probative value.[14]

Appellant also submitted a February 3, 2004 letter from Dr. Kamerer, a chiropractor, opining that her symptoms resulted from the January 14, 2003 injury. As her opinion does not relate to the diagnosis of a spinal subluxation by x-ray or its treatment by chiropractic manual manipulation, she does not qualify as a physician for the purposes of this case and her opinion carries no probative medical value.[15] Thus, appellant has submitted insufficient medical evidence to meet her burden of proof.

The Board finds that appellant did not submit sufficient medical evidence to establish that the accepted January 14, 2003 fall caused the diagnosed intracranial hemorrhage, right

[12] Dr. Peitersen checked a box "yes" in a February 6, 2003 form report, indicating his support for a causal relationship between the diagnosed intracerebral hemorrhage and the January 14, 2003 fall. However, the Board has held that in the absence of supporting medical rationale, checking a box "yes" on a form report is insufficient to establish causal relationship. *Lillian M. Jones*, 34 ECAB 379 (1982).

[13] *Deborah L. Beatty*, *supra* note 8.

[14] *Id*.

[15] Section 8101(2) of the Act provides that medical opinion, in general, can only be given by a qualified physician. 5 U.S.C. § 8101(2). This section defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by stated law. Section 8101(3) of the Act, which defines services and supplies, limits reimbursable chiropractic services to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary. 5 U.S.C. § 8101(3). *See Thomas W. Stevens*, 50 ECAB 288 (1999); *George E. Williams*, 44 ECAB 530 (1993).

intraparenchymal hematoma, visual field loss or other injury. She has failed to meet her burden of proof.

CONCLUSION

The Board finds that appellant has established that she sustained a fall on January 14, 2003 arising in the performance of duty. However, she failed to meet her burden of proof to establishing that she sustained a head injury, intracranial hemorrhage, right intraparenchymal hematoma, visual field loss or other injury causally related to this fall.

ORDER

IT IS HEREBY ORDERED THAT the May 3, 2004 decision of the Office of Workers' Compensation Programs is affirmed as modified to reflect that appellant has established that she sustained a fall in the performance of duty on January 14, 2003 but that she has not established that she sustained an injury resulting from the January 14, 2003 fall.

Issued: September 13, 2005
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board