

In the Matter of the Compensation of  
**JEFFREY E. MILLER, Claimant**

WCB Case No. 13-03049

ORDER ON REVIEW

Hooton Wold & Okrent LLP, Claimant Attorneys  
John E Snarskis & Assocs, Defense Attorneys

Reviewing Panel: Members Curey and Weddell.

Claimant requests review of Administrative Law Judge (ALJ) Otto's order that upheld the insurer's denial of claimant's injury claim. On review, the issue is course and scope of employment.

We adopt and affirm the ALJ's order with the following supplementation.

On March 4, 2013, while in his work area, claimant fell. Claimant was uncertain why he fell, but there were no obstacles, cabinets or floor anomalies in the area. (Ex. 15-2). The record does not indicate that claimant tripped, slipped or otherwise lost his balance. Claimant testified that he had not previously experienced episodes of seizures or fainting spells.

A coworker found claimant and shook him awake. Claimant had a laceration on his chin, he misidentified the current President of the United States, and his words were not clear or well pronounced. (Ex. 15-2). Claimant did not remember how he fell at work, where he was going at the time of his fall, or anything else, until he was receiving stitches in his chin at the hospital.

On May 9, 2013, the insurer denied compensability of claimant's injury claim. (Ex. 14). Claimant requested a hearing.

In upholding the insurer's denial, the ALJ found that claimant's fall was caused by fainting or a seizure, rather than by a truly unexplained fall, and that the medical evidence did not establish a causal connection between claimant's employment and his injury. Thus, the ALJ determined that claimant's injury was not compensable.

On review, claimant contends that his compensable injury resulted from a truly unexplained fall and, thus, is compensable. Alternatively, he maintains that Dr. Ash's opinion is sufficient to establish that work factors, including fatigue from his work schedule, high temperatures, and possible dehydration, were material causes of his loss of consciousness. For the following reasons, we disagree with claimant's contentions.

A compensable injury is “an accidental injury \* \* \* arising out of and in the course of employment.” ORS 656.005(7)(a). An unexplained fall that occurs on the employer’s premises, during work hours, while the employee is performing required duties is compensable if the employee eliminates idiopathic causes. “Idiopathic” means the cause is personal to claimant rather than work-related. If a fall is due to idiopathic causes, it is not compensable. Neither is a fall compensable where it is equally possible that its cause was idiopathic as it was work-related. See *Phil A. Livesley Co. v. Russ*, 296 Or 25, 30 (1983) (unexplained fall that occurs on employer’s premises during working hours while the claimant is performing required duties is compensable if the claimant can eliminate idiopathic causes); *McAdams v. SAIF*, 66 Or App 415 (1984) (where it was equally possible that the claimant’s fainting spell was idiopathic as that it was work-related, claimant’s burden of proof not satisfied); *Billie J. Owens*, 58 Van Natta 392 (2006), *aff’d without opinion*, 213 Or App 587 (2007) (a fall caused by fainting is not a truly unexplained fall, even if the cause of the fainting is unknown); *Magaly V. Villiers*, 56 Van Natta 510, 513 (2004)(fall was explained where the record established that the claimant lost consciousness).

Here, the medical evidence establishes that claimant lost consciousness, which caused his fall. (Exs. 3, 9-3, 10-1, 11-2, 12-1, 15-9). Thus, claimant’s fall was not unexplained. See *Owens*, 58 Van Natta at 393; *Villiers*, 56 Van Natta at 511. The medical evidence also indicates that claimant likely lost consciousness due to a syncopal episode or a partial complex seizure. (Exs. 3, 9-3, 11-2, 12-1, 15-9). Claimant acknowledged that he had fainted at work. (Ex. 8). Because claimant’s fall is not truly unexplained, it is not compensable unless the cause of his fall—loss of consciousness due to syncope or a seizure—was sufficiently work-connected to satisfy the burden of proof delineated above. We find that it was not.

Claimant had no fainting or seizure episodes before the incident in question. The emergency room physician, Dr. Mitchell, made a primary diagnosis of syncope (a fainting episode), but acknowledged the possibility of a seizure. (Ex. 3-1). The record does not contain persuasive evidence that the cause of claimant’s loss of consciousness was related to his employment. At most, it establishes that it is equally possible that the cause of claimant’s syncopal episode or seizure was idiopathic as it was work-related. That is not enough to satisfy claimant’s burden of proof under *McAdams*.

In *McAdams*, the evidence established that the cause of the claimant’s fall was fainting from an unknown cause. 66 Or App at 417. There was no medical evidence that the claimant fainted as a result of a risk of employment. *Id.* at 418.

Applying *Livesley*, the *McAdams* court found that it was as equally possible that the cause of the claimant's fainting was idiopathic as it was work-related and held that, unlike in *Livesley*, the claimant had not met his burden of eliminating all idiopathic factors of causation. *Id.* at 418-19.

This case is similar to *McAdams* in that the medical evidence does not establish that claimant's syncopal episode or seizure was related to an employment risk. Dr. Ash opined that claimant's work environment "in some way was, more probably than not a material factor in the 'occurrences[.]'" (Ex. 20-3). However, he did not explain his opinion. See *Moe v. Ceiling Sys., Inc.*, 44 Or App 429, 433 (1980) (rejecting unexplained or conclusory opinions). Moreover, although Dr. Dickerman acknowledged that he would have ordered a "sleep deprived EEG with nasopharyngeal leads that picks up a significant greater number of abnormalities in the brain" to rule out a seizure disorder, he ultimately opined that "[o]n a more probable than not basis, [claimant] fell for reasons personal to the patient, yet to be defined, which include a possible seizure disorder or syncopal episode." (Exs. 15-11, 16-5). Dr. Dickerman identified the following potential idiopathic factors: "bradycardia, episodic pauses in his rhythm, hypercholesterolemia, [and] borderline hypertension for which he is not in treatment." (Ex. 15-11).

Citing Dr. Dickerman's opinion, claimant contends that fatigue related to his employment schedule may have been a causal factor in his fall. On this record, we disagree with that contention. Although Dr. Dickerman explained that a "sleep deprived" EEG is useful in ruling out a seizure disorder, he did not suggest that fatigue was a likely cause of a loss of consciousness. (Ex. 15-12). Dr. Dickerman also noted that, because claimant had been performing alternating 12 hour shifts for several months before his fall, his body would have been fairly accustomed to his work schedule. (Ex. 16-4). Moreover, in this case, the medical evidence does not support a finding that fatigue and sleep deprivation are the same thing.

In summary, because it is equally possible that claimant's loss of consciousness resulted from personal, idiopathic factors as from work-related factors, we conclude that claimant has not met his burden of proving a compensable claim. Accordingly, we affirm.

#### ORDER

The ALJ's order dated April 29, 2014 is affirmed.

Entered at Salem, Oregon on November 7, 2014