

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CONSTANCE L. ASHER and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, Washington, DC

*Docket No. 98-2193; Submitted on the Record;
Issued September 18, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained a stroke on February 24, 1994 as a result of emotional stress in the performance of duty, causally related to compensable factors of her federal employment.

On March 15, 1994 appellant, then a 45-year-old staff secretary, filed a claim alleging that on February 24, 1994 she sustained a stroke as a result of high blood pressure which she alleged was caused by severe stress in her working environment.¹ Appellant alleged that she was continually subjected to supervisory and coworker harassment and abuse. She alleged that her supervisor, William T. Dixon, denied requested training, denied her lunch on February 24, 1994, and that they had a stressful discussion on February 24, 1994. She alleged that her hypertension was caused by two years of abusive management and severe stress by Mr. Dixon and his staff.² Appellant alleged that she was not permitted to implement new office procedures, was forced to learn the office system through trial and error without guidance or cooperation, that she was a secretary for 8 or 10 people,³ that she had to complete filing and to move files, and that she got the lowest evaluation rating she had in 23 years.

¹ Appellant was not diagnosed as having had a stroke until March 7, 1994. At that time magnetic resonance imaging (MRI) revealed "multiple areas of ischemic disease, most significantly old ischemic disease in the right parietal area and the left occipital area, the right side being considerably older than the left-sided lesion." The admitting physician attributed her left occipital ischemic stroke, with multiple areas of ischemia, to the effects of long-standing hypertension, but could not rule out auto-immune type vasculitis. Causation with factors of appellant's employment was not discussed. Appellant was noted to have a history of a preexisting seizure disorder, for which she took medication, and had experienced her last seizure in February 1994 when she missed her medication. Appellant countered that the "old ischemic disease" was due to physical trauma in 1979.

² The record reflects that appellant began work at the employing establishment in question on October 21, 1991. She had relocated from Alaska and was remarried in September 1989.

³ The number of people appellant served apparently varied over time.

In a response dated March 31, 1994, Mr. Dixon controverted the claim, noting that on February 24, 1994 appellant was already upset with someone or something regarding a telephone call before he spoke with her. Mr. Dixon noted that he spoke with appellant at 9:50 a.m., that she was upset and stated that she was leaving for training and that she did not care whether the telephones got answered. Appellant left her work station abruptly without concern for telephone coverage. Mr. Dixon asked to speak with appellant when she returned from training, and that he told appellant of the necessity of having the telephones covered. He told appellant how he felt about her behavior, reemphasized his expectations for work, and advised that, if people on staff were refusing to answer her telephone, she should let him know and he would intervene. Mr. Dixon noted that appellant had told him about her passing out while driving an automobile in Alaska, and about her having high blood pressure. He also commented that emotional outbursts were not unusual for appellant.

Thereafter appellant claimed that the incident regarding training occurred on February 17, 1994.

A March 25, 1994 report from Dr. Ronald J. Garson, a Board-certified psychiatrist, noted that he had been treating appellant for depression since January 5, 1993. Causation was not discussed.

By decision dated September 19, 1994, the Office of Workers' Compensation Programs rejected appellant's claim finding that she failed to establish fact of injury. The Office further found that appellant had not established any compensable factors of employment.

By letter dated October 1, 1994, appellant requested an oral hearing. In support she submitted copies of her performance appraisals, her job description and her personnel papers dating from 1987. A March 31, 1992 performance appraisal noted that appellant needed to improve her interpersonal relations with staff as her behavior had not been supportive of working as an effective team. Appellant claimed that, before she started work at the employing establishment, she functioned well, had no pressures in her personal life, that her seizures were under control, her blood pressure was normal, she did not smoke, and that she previously received exceptional performance evaluations.

Mr. Dixon denied that he refused to allow appellant to go to lunch on February 24, 1994 and reiterated that she became angry with someone on the telephone. He noted that appellant took medication for seizures and was a smoker. He noted that she had unusual interpersonal interactions, such as sudden emotional outbursts (anger, tears and laughter), mood swings, overreactions to criticism, and that she blamed others for her poor performance. Mr. Dixon alleged that she made inappropriate statements and had become isolated from workers. Mr. Dixon noted that appellant had been previously referred to an Employee Assistance Program counselor by her former manager, and that he had also referred her for assistance. He noted that, during the 40 months prior to appellant's illness, there had been three different managers acting on his behalf and that, based on feedback from the other managers and employees on staff, appellant's behavior and performance did not change from manger to manager and became worse.

Other coworker statements were also submitted which noted that on February 24, 1994 Mr. Dixon was seen as being calm and appellant was visibly upset. Hank Skalski noted that when appellant hung up the telephone on February 24, 1994 she was angry and began talking to herself. He noted that this situation “was identical in nature to other emotional outbreaks that [appellant] has repeatedly demonstrated since her assignment as secretary.”

A January 7, 1993 grievance against appellant was submitted wherein Ann Bowman, a program analyst, detailed multiple incidents of unpredictable, unprofessional and discourteous behavior towards her, such as outbursts in angry tones, insubordination and shouting rudely at coworkers. She noted instances of appellant grabbing and shoving folders, ignoring questions and requests, and failing to modify her behavior after counseling and mediation. Appellant responded that Ms. Bowman had invaded her work space and was unprofessional.

A hearing was held on July 6, 1995 at which appellant testified. She submitted copies of letters and medical reports which had been previously submitted.

In a July 11, 1994 report, Dr. James P. Simsarian, a Board-certified neurologist, noted that appellant suffered an acute stroke which she dated to a February 24, 1994 “argument with her boss.” Dr. Simsarian stated:

“[Appellant] relates a stressful work environment including difficulties with her boss and other employees. She developed hypertension for which she is being treated. The hypertension played a role in the causation of her acute stroke. Stress may produce an increase in blood pressure and stress may play a role in the occurrence of acute cerebral infarction. No other causes for her acute stroke were demonstrated. Accordingly, the work reported stresses and the resultant hypertension contributed to or precipitated her acute stroke....”

In an amended July 14, 1994 report Dr. Simsarian noted that a computerized tomography (CT) scan showed a left occipital subacute infarct and some old right encephalomalacia and atrophy. He further noted that an MRI scan showed multiple areas of ischemic disease with old ischemic disease in the right parietal area and left occipital area.

By decision dated September 21, 1995, the hearing representative found that appellant had established two compensable factors of employment: an offsite group meeting in May 1992 and the office telephone policy. The hearing representative found that, at the May 1992 offsite group meeting, which appellant was required to attend, employees went around the room and told appellant what they thought she was doing wrong and what they did not like about her, which caused her to leave the room crying. The hearing representative also found that the telephone coverage policy was compensable as it arose out of and in the course of appellant’s required duties.⁴ The hearing representative found, however, that the medical evidence of record

⁴ The hearing representative found that Mr. Dixon did not harass appellant, deny lunch breaks, or fail to come to her aid, and that no evidence was submitted to support appellant’s allegations that other acts of harassment occurred as alleged.

did not relate the development of appellant's stress condition or hypertension and subsequent stroke, to either of these two compensable factors.

By letters dated March 30 and April 24, 1996, appellant requested reconsideration of the September 21, 1995 decision.

In a December 30, 1994 report, Dr. Simsarian noted that appellant gave him "multiple examples of work environment-induced stresses including difficulties with managing conflicting instructions and problems with coworkers." He opined: "Stress such as [appellant] experienced in her work environment may be a causative factor in the production of hypertension. Hypertension is a known risk factor in the causation of stroke. These same stresses may be a causation factor in the occurrence of a stroke." In a March 21, 1996 report, Dr. Simsarian noted that appellant "was subject to work stress which resulted in hypertension. The hypertension was a causative factor in her stroke." He further stated: "The acute stroke suffered by [appellant] on February 24, 1994 was caused by the stress to which she was subjected in her work environment and the confrontation which occurred on February 24, 1994 with her supervisor. [Appellant's] diagnosed stroke was causally related to her indicated employment stresses."

By decision dated April 25, 1996, the Office denied modification of the September 21, 1995 decision.

By letter dated May 8, 1996, appellant expressed her intention to submit additional information.

By decision dated May 28, 1996, the Office denied reconsideration finding that appellant's letter neither raised a substantive legal question nor included new and relevant evidence.

By letter dated November 26, 1996, appellant, through her representative, requested reconsideration. Appellant submitted a statement by Sidney M. Keller, a coworker, who stated: "I ... was very much aware of the adverse conditions that [appellant] had to endure. Some of her male counterparts were not very nice in regards to calling her a 'stupid broad' and having items in their cubicles that were derogatory towards women." Mr. Keller stated that Romey Vile had a picture of a woman's buttocks covered only with a "G-string" on his wall, and that he had stated in conversation with Mr. Keller, regarding appellant, "Oh that stupid broad, she [i]s not able to handle her own job and is looking for something to bitch about today."

Also submitted was an August 30, 1996 report from Dr. Leo Goldhammer, a Board-certified neurologist, who noted that appellant asked him to submit medical evidence as to the part of her working environment which might have caused the February 24, 1994 stroke. Dr. Goldhammer began his factual and medical recitation and analysis with the February 24, 1994 stroke, noting that in the early afternoon appellant's supervisor's abusive treatment caused her to miss lunch, and indicated that during this confrontation she developed initial symptoms of the impending stroke. Dr. Goldhammer opined that Dr. Simsarian's reference to appellant's general employment "stresses" as causing her hypertension and stroke, included, as stresses, the specific factors determined to be compensable, that "the stresses reportedly experienced by [appellant] contributed to and very probably caused the occurrence of her acute cerebral

infarction,” that “the total absence of possible causes other than hypertension for [appellant’s] acute stroke and the documentation presented by her strongly support the conclusion that her work-related stresses led to her documented increase in blood pressure during 1992 and 1993 and the development of hypertension,” that appellant “suffered an acute stroke on February 24, 1994 during the reported confrontation with her supervisor,” and that “with reasonable medical certainty ... her stroke was causally related to the employment stresses found to be compensable” by the [Office]” Dr. Goldhammer noted that appellant was subjected to abusive treatment, that she was regularly required to accept loud and abusive language, and that she was often required to do without breaks, and to miss lunch as a result of an inflexible office telephone policy.

By decision dated April 6, 1998, the Office denied modification of the April 25, 1996 decision finding.

The Board finds that appellant has failed to establish her stroke on February 24, 1994 was sustained as a result of emotional stress causally related to factors of her federal employment.

To establish appellant’s occupational disease claim that she has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.⁵ Rationalized medical opinion evidence is medical evidence that includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. Such an opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.⁶

Workers’ compensation law does not apply to each and every injury or illness that is somehow related to an employee’s employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept of workers’ compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Federal Employees’ Compensation Act. Generally speaking, when an employee experiences an emotional reaction to his or her regular or special assigned employment duties or to a requirement imposed by his or her employment or has fear or anxiety regarding his or her ability to carry out assigned duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the

⁵ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁶ *Id.*

coverage of the Act.⁷ Conversely, if the employee's emotional reaction stems from employment matters which are not related to his or her regular or assigned work duties, the disability is not regarded as having arisen out of and in the course of employment, and does not come within the coverage of the Act.⁸ Noncompensable factors of employment include administrative and personnel actions, which are matters not considered to be "in the performance of duty."⁹

In *Thomas D. McEuen*,¹⁰ the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant.¹¹ Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. The incidents and allegations made by appellant which fall into this category of administrative or personnel actions include: office policy and procedure changes, including the office's failure to implement procedures appellant desired,¹² receipt of a poor performance evaluation,¹³ work, training and break schedules,¹⁴ and being referred to Employee Assistance Program for counseling regarding her interpersonal relations.¹⁵ Appellant has presented no evidence of administrative supervisory error or abuse in the performance of these actions, and therefore they are not compensable under the Act.

Appellant alleged that her condition was caused by multiple incidents of supervisory and coworker harassment. The Board has held that actions of an employee's supervisor or coworkers which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.¹⁶ However, in order for harassment to give rise to a compensable disability under the Act, there must be some evidence that such harassment did in fact occur. Mere perceptions of harassment alone are not compensable under the Act.¹⁷ The Board finds

⁷ *Donna Faye Cardwell*, *supra* note 5, *see also Lillian Cutler*, 28 ECAB 125 (1976).

⁸ *Id.*

⁹ *See Joseph Dedenato*, 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987).

¹⁰ 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹¹ *See Richard J. Dube*, 42 ECAB 916 (1991).

¹² *See David W. Shirey*, 42 ECAB 783 (1991).

¹³ *See Thomas D. McEuen*, *supra* note 10.

¹⁴ *See Helen P. Allen*, 47 ECAB 141 (1995).

¹⁵ *See i.e., Donald E. Ewals*, 45 ECAB 111 (1993) (regarding counseling).

¹⁶ *Sylvester Blaze*, 42 ECAB 654 (1991).

¹⁷ *Ruthie M. Evans*, 41 ECAB 416 (1990).

that in this case appellant has failed to submit sufficient, specific, reliable, probative and substantial corroborative evidence in support of her multiple allegations, to establish that they occurred as alleged. Appellant has the burden of establishing a factual basis for her allegations, however, the allegations in question are not supported by specific, reliable, probative and substantial corroborating evidence and have been refuted by statements from appellant's employer and coworkers. Accordingly, the Board finds that these allegations cannot be considered to be compensable factors of employment since appellant has not established a factual basis for them.

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship, and which working conditions are not deemed factors of employment and may not be considered.¹⁸ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.¹⁹ When the matter asserted is a compensable factor of employment, and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.²⁰ If the evidence fails to establish that any compensable factor of employment is implicated in the development of the claimant's emotional condition, then the medical evidence of record need not be considered.

In the instant case, the Office determined that appellant established that two compensable factors of employment: the May 1992 off-site group meeting during which appellant's coworkers criticized appellant's performance and shortcomings to the point that appellant had to leave because she was upset; and the telephone coverage policy.

Appellant's burden of proof, however, is not discharged by the fact that she has established employment factors which may give rise to a compensable disability under the Act. Appellant must submit also rationalized medical evidence including a physician's rationalized opinion explaining the causal relationship between the appellant's diagnosed condition and the implicated employment factors, based on a complete factual and medical background, of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific compensable employment factors.²¹

¹⁸ See *Barbara Bush*, 38 ECAB 710 (1987).

¹⁹ *Ruthie M. Evans*, *supra* note 17.

²⁰ See *Gregory J. Meisenberg*, 44 ECAB 527 (1993).

²¹ See *Arnold A. Alley*, 44 ECAB 912 (1993); *Brian E. Flescher*, 40 ECAB 532 (1989); *Ronald K. White*, 37 ECAB 176 (1983).

The medical evidence submitted is insufficient to establish causal relation. The medical evidence addressing appellant's March 7, 1994 stroke does not discuss causation of her stroke, except to attribute it to the effects of long-standing hypertension. Therefore, the medical evidence does not support that the February 24, 1994 seizure was causally related to either the May 1992 group meeting or to office telephone coverage policy.

The March 25, 1994 report from Dr. Garson diagnosed depression and noted that appellant had been under his treatment since January 5, 1993. He did not, however, discuss causation of this condition; he did not discuss appellant's hypertension or her stroke, or mention causation. Consequently, his report does not support appellant's claim.

Dr. Simsarian's July 11, 1994 report related appellant's February 24, 1994 seizure to an argument with her boss, the occurrence of which has not been accepted as occurring as alleged. As this argument has not been accepted as factual, this part of the report is not probative with regard to causation. Dr. Simsarian thereafter noted that appellant had a stressful work environment and difficult relations with her boss and other employees. However, the factors of employment determined to be compensable were not addressed. He noted that she developed hypertension, but he did not discuss the causation of appellant's hypertension. Dr. Simsarian opined that appellant's hypertension, the causation of which had not been established, "played a role in the causation of her acute stroke." That role, however, was not explained. Dr. Simsarian stated only that stress may produce an increase in blood pressure and stress may play a role in the occurrence of acute cerebral infarction. Specific stressors were not identified, and no pathophysiologic explanation was provided linking appellant's reaction to the May 1992 group meeting or the office telephone coverage policy to the development of hypertension or the February 24, 1994 cerebrovascular accident. Dr. Simsarian merely opined that "the work stresses reported and the resultant hypertension contributed to or precipitated her acute stroke." The Board has held that, without sufficient explanation or rationale for the conclusion reached, a medical opinion is of diminished probative value.²² Therefore, Dr. Simsarian's July 11, 1994 report is insufficient to establish appellant's claim.

In his December 30, 1994 report, Dr. Simsarian did not address the specific work stresses implicated in causing appellant's condition, noting only two types of stressors, "conflicting instructions" and "problems with coworkers," neither of which have been accepted as compensable factors of employment. Dr. Simsarian further couched his opinion in speculative terms of what "may be a causative factor" of hypertension and of appellant's stroke. The Board has held that medical opinions which are speculative are of reduced probative value, and are, therefore, insufficient to establish causal relation.²³

In his March 21, 1996 report, Dr. Simsarian stated that appellant's work stress caused her hypertension which caused her stroke, without providing sufficient supporting medical rationale. Dr. Simsarian attributed appellant's stroke to the alleged February 24, 1994 confrontation, which

²² See *Vicky L. Hannis*, 48 ECAB 538 (1997); *Jacquelyn L. Oliver*, 48 ECAB 232 (1996); *Lucrecia M. Nielsen*, 42 ECAB 583 (1991); *Donald W. Long*, 41 ECAB 142 (1989).

²³ See *Linda I. Sprague*, 48 ECAB 386 (1997); *Jennifer L. Sharp*, 48 ECAB 209 (1996).

had not been accepted. This report is also conclusory, a nonaccepted factor, and is of reduced probative value to establish appellant's claim.

The August 30, 1996 report from Dr. Goldhammer is not based on a complete and accurate factual and medical history,²⁴ as evidenced by his lack of mention of and explanation as to why appellant's preexisting cerebral condition and its sequelae, her contemporaneous medications, and her personal smoking history were noncontributory in the development of her hypertension and her cerebral infarction. This is particularly significant, in light of the areas of old encephalomalacia, and old ischemic disease and atrophy demonstrated by MRI and CT scans. As the Board has explained, medical opinions based upon an incomplete factual and medical history are of diminished probative value.²⁵ Dr. Goldhammer opined, without explanation, that the stresses "reportedly experienced by appellant ... very probably caused the occurrence of her acute cerebral infarction." This statement is speculative and vague. Dr. Goldhammer indicated that appellant had a "total absence of possible causes other than hypertension for her stroke, failing to acknowledge that her history indicates other causative factors. He failed to adequately explain why her preexisting cerebral condition, including passing out while driving in Alaska prior to 1989, her medications, and her smoking habit were not contributory. Dr. Goldhammer concluded that "with reasonable medical certainty" the stroke was causally related to the factors accepted by the Office, without specifically identifying the accepted factors and without adequately explaining the pathophysiological process.²⁶ Dr. Goldhammer's report is therefore of diminished probative value and insufficient to establish appellant's claim.²⁷

²⁴ Dr. Goldhammer also implicated appellant's supervisor's abusive treatment in the onset of cerebral infarction symptomatology, but this was not accepted as having occurred as alleged.

²⁵ See *i.e.*, *Joseph M. Popp*, 48 ECAB 624 (1997); *Patricia M. Mitchell*, 48 ECAB 371 (1997); *Kimper Lee*, 45 ECAB 565 (1994).

²⁶ See *O. Paul Gregg*, 46 ECAB 624 (1995).

²⁷ See *James W. Griffin*, 45 ECAB 774 (1994); *Arnold A. Alley*, *supra* note 21.

Accordingly, the decision of the Office of Workers' Compensation Programs dated April 6, 1998 is hereby affirmed.

Dated, Washington, DC
September 18, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member