

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

J.K., Appellant

and

**U.S. POSTAL SERVICE, ATLANTIC BEACH
STATION, Atlantic Beach, FL, Employer**

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**Docket No. 06-2049
Issued: February 26, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 5, 2006 appellant filed a timely appeal of an August 9, 2006 merit decision of the Office of Workers' Compensation Programs which rescinded its acceptance that he sustained a stroke while in the performance of duty on June 15, 2000. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether the Office met its burden of proof to rescind its acceptance that appellant sustained a stroke in the performance of duty on June 15, 2000.

FACTUAL HISTORY

This is appellant's second appeal before the Board. On January 19, 2006 the Board reversed the Office's March 8, 2005 decision rescinding acceptance of his claim.¹ The Board

¹ Docket No. 1176 (issued January 19, 2006). Appellant, then a 49-year-old rural carrier associate, filed a traumatic injury claim on June 16, 2000 alleging that he sustained a mild stroke on June 15, 2000 due to the heat and stress of deadlines. The Office accepted the claim for precipitated stroke on October 24, 2000.

found that the opinions of the Board-certified neurologists failed to address the issue of precipitation, which was the basis of the Office's acceptance. In addition, the Board found there was no conflict in the medical opinion evidence at the time of referral to Dr. Bruce A. Hartig, a Board-certified neurologist; therefore, Dr. Hartig did not examine appellant as an impartial medical examiner. The facts and the circumstances of the case as set forth in the prior Board appeal are hereby incorporated by reference.

Subsequent to the Board's decision, the Office referred appellant to Dr. Gregory Howell, a Board-certified neurologist, for a second opinion on whether his employment precipitated his stroke on June 15, 2000. Dr. Howell, based upon a review of the medical records, statement of accepted facts and physical examination, concluded that appellant sustained a left subcortical stroke while he was working. He opined:

“The underlying condition that precipitated this stroke is, again, most likely small vessel disease from hypertension, which had been previously undiagnosed and untreated.”

Dr. Howell determined that the stroke was precipitated by appellant's underlying undiagnosed hypertension. He concluded that “the stroke itself was not caused by [his] job or by a ‘heat stroke.’”

On July 5, 2006 the Office proposed to rescind acceptance of appellant's claim on the basis that his condition was not shown to be precipitated by his employment. By decision dated August 9, 2006, the Office rescinded its acceptance that appellant sustained a stroke precipitated by his employment on June 15, 2000.

LEGAL PRECEDENT

The Board has upheld the Office's authority to reopen a claim at any time on its own motion under 5 U.S.C. § 8128 and, where supported by the evidence, set aside or modify a prior decision and issue a new decision. The Board has noted, however, that the power to annul an award is not an arbitrary one and that an award for compensation can only be set aside in the manner provided by the compensation statute.² It is well established that, once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.³ This holds true where the Office later decides that it has erroneously accepted a claim for compensation. In establishing that its prior acceptance was erroneous, the Office is required to provide a clear explanation of its rationale for rescission.⁴

² *Cemeish E. Williams*, 57 ECAB ____ (Docket No. 06-274, issued March 16, 2006); *Andrew Wolfgang-Masters*, 56 ECAB ____ (Docket No. 05-1, issued March 22, 2005); *see also* 20 C.F.R. § 10.610.

³ *Kathryn E. Demarsh*, 56 ECAB ____ (Docket No. 05-269, issued August 18, 2005).

⁴ *George A. Rodriguez*, 57 ECAB ____ (Docket No. 05-490, issued November 18, 2005); *Delphia Y. Jackson*, 55 ECAB 373 (2004); *Paul L. Stewart*, 54 ECAB 824 (2003); *Alice M. Roberts*, 42 ECAB 747 (1991).

ANALYSIS

The Board finds that the Office has not established that its acceptance of appellant's work activities precipitated his June 15, 2000 stroke was erroneous. Dr. Howell's opinion did not address whether appellant's work activities precipitated his stroke which, as noted, was the basis of the Office's acceptance. He stated that the stroke was most likely precipitated by "small vessel disease from hypertension." This conclusion does not exclude appellant's work activities as a precipitating factor. As to the identified work activities, Dr. Howell concluded that they did not cause appellant's stroke, but provided no opinion as to whether they were a precipitating factor. The issue at hand is not whether the work activities caused the stroke, but whether they were a precipitating factor. As noted in the prior Board decision, "Precipitation is defined as 'A latent condition which would not have become manifest but for the employment is said to have been precipitated by factors of the employment.'"⁵ On the other hand, direct causation is defined by the Office in its procedure manual as a type of causal relationship that is shown when the injury or factors of employment, through a natural and unbroken sequence, result in the condition claimed.⁶ As Dr. Howell failed to address whether factors of appellant's employment precipitated or contributed to his June 15, 2000 stroke, his opinion is insufficient to support rescission of the Office's acceptance of appellant's claim.

CONCLUSION

The Office did not meet its burden of proof to rescind its acceptance that factors of appellant's employment precipitated his June 15, 2000 stroke for the reason that it did not procure medical evidence directly addressing this issue.

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2(d) (June 1995).

⁶ *Id.* at Chapter 2.805.2(a) (June 1995).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 9, 2006 is reversed.

Issued: February 26, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board