

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HOWARD H. HARGRODER and DEPARTMENT OF AGRICULTURE,
Hammond, LA

*Docket No. 00-399; Submitted on the Record;
Issued January 2, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has met his burden of proof to establish that he sustained a stroke causally related to factors of his federal employment.

On August 10, 1998 appellant, then a 64-year-old supervisory veterinary food inspector, filed an occupational disease claim alleging that he sustained a stroke and paralysis of the left side of his body, which he attributed to stress in the performance of duty. Appellant stopped work on June 30, 1998 and did not return.

By letter dated February 10, 1999, the Office of Workers' Compensation Programs requested that Dr. Steve Rees, a Board-certified physiatrist, and appellant's attending physician, review the enclosed statement of accepted facts and discuss whether the items listed as compensable factors of employment caused or contributed to appellant's cerebrovascular accident. In the statement of accepted facts, the Office listed as a compensable factor of employment the fact that appellant "had to participate in a meeting with the night plant manager, a plant employee who filed a complaint, the inspector against whom the complaint was filed and the union steward representing the inspector. This was a confrontational meeting and the claimant began to experience dizziness and paralysis within minutes after it ended." The Office further found that disputes at the employing establishment between employees and management as well as matters involving a complaint made against appellant in his position as supervisor constituted compensable factors of employment. The Office determined that appellant's allegation that other supervisors where he worked had health problems and that two other supervisors were forced to transfer to new positions following complaints against them did not constitute compensable factors of employment.

By decision dated April 27, 1999, the Office denied appellant's claim on the grounds that the medical evidence did not establish that he sustained a stroke causally related to factors of his federal employment. The Office noted that Dr. Rees had not responded to its request for additional information regarding appellant's condition.

By letter dated May 10, 1999, appellant requested a review of the written record by an Office hearing representative. In a decision dated August 20, 1999, the hearing representative affirmed the Office's April 27, 1999 decision.

The Board finds that appellant has not met his burden of proof to establish that he sustained a stroke causally related to factors of his federal employment.

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.¹

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or 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.² If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.³

In the instant case, the Office properly found that any stress resulting from appellant's fear over a possible transfer was not covered under the Act as it amounted to frustration over not being permitted to hold a particular assignment.⁴ Additionally, the Office found that appellant had not established that other supervisors left their positions due to employment-related health problems. The Office further properly determined that appellant's allegations that he sustained stress in dealing with complaints against him as a supervisor and from his involvement in disputes between employees and management constituted compensable factors of employment as they involved the performance of his day-to-day duties.⁵ The issue, therefore, is whether the

¹ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566; *Lillian Cutler*, 28 ECAB 125 (1976).

² *Margaret S. Krzycki*, 43 ECAB 496, 501-02 (1992); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

³ *Id.*

⁴ *Arthur F. Hougens*, 42 ECAB 455 (1991).

⁵ See *Lillian Cutler*, *supra* note 1.

medical evidence establishes that these factors of employment caused or contributed to appellant's stroke.

In a report dated July 22, 1998, Dr. Rees related that he had discussed with appellant the events leading up to his cerebrovascular accident. He noted that appellant had been assigned as a veterinarian at a facility that "had been a problematic spot for the [employing establishment] in recent years." He stated:

"I have reviewed [appellant's] statement about this as well. It is [appellant's] belief that there was a significant amount of stress involved in this situation. With his premorbid of medical history of diabetes and [his] perception of a significant amount of stress from this job, it is not unreasonable to believe that these stressors could be a factor in his subsequent cerebral vascular accident."

Dr. Rees' finding that work stress "could be a factor" in appellant's cerebrovascular accident is speculative in nature and, therefore, of little probative value.⁶ Further, he did not specifically discuss the employment factors determined by the Office to be compensable under the Act or provide medical rationale explaining how the work factors caused or contributed to his condition.⁷ The Office requested additional information from Dr. Reese; however, a response from the physician does not appear in the record.

In a report dated March 30, 1999, Dr. Oscar Rodriguez, a Board-certified internist, noted that appellant suffered a stroke at work in July 1998 and stated, "the reasons for the stroke are considered multi-factorial but the stress of his work probably played an important role in the timing of his acute cerebrovascular event." Dr. Rodriguez's finding that stress at work "probably" contributed to the timing of appellant's stroke is speculative and thus of little probative value. While the opinion of the physician supporting causal relationship need not be one of absolute medical certainty, neither can such opinion be speculative or equivocal. The opinion should be one of reasonable medical certainty.⁸ Dr. Rodriguez also did not provide an adequate description of the employment factors implicated by appellant, apart from referring to work stress in general terms, or otherwise explain how such factors could be responsible for appellant's condition. Moreover, the Board has held the fact that a condition manifests itself or worsens during a period of employment or that work activities produce symptoms revelatory of an underlying condition does not raise an inference of a causal relationship between a claimed condition and employment factors.⁹

As appellant has not submitted rationalized medical opinion evidence establishing that he sustained a stroke causally related to compensable factors of employment, he has not met his burden of proof.

⁶ *Jennifer L. Sharp*, 48 ECAB 209 (1996).

⁷ *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

⁸ *Norman E. Underwood*, 43 ECAB 719 (1992).

⁹ *William Nimitz, Jr.*, 30 ECAB 567 (1979).

The decisions of the Office of Workers' Compensation Programs dated August 20 and April 27, 1999 are hereby affirmed.

Dated, Washington, DC
January 2, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Valerie D. Evans-Harrell
Alternate Member