

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JUDY M. KESSINGER and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Bloomington, IL

*Docket No. 03-2164; Submitted on the Record;  
Issued December 2, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant has established that she sustained hypertension and a stroke while in the performance of duty.

On March 12, 2002 appellant, then a 59-year-old order entry clerk,<sup>1</sup> filed an occupational disease claim alleging that on December 6, 2001 she sustained a stroke. She alleged that on January 1, 2002 she realized that her condition was caused by factors of her federal employment. Appellant stated that her blood pressure was high on health day at the employing establishment in November 2001. She stopped work on December 6, 2001.

By letter dated May 13, 2002, the Office of Workers' Compensation Programs notified appellant that the evidence submitted was insufficient to establish her claim. The Office advised appellant of the type of factual and medical evidence that was necessary to establish her claim and requested that she submit such evidence in support of her claim. By letter of the same date, the Office requested that the employing establishment submit factual evidence regarding appellant's claim.

On June 7, 2002 appellant submitted additional factual and medical evidence in response to the Office's May 13, 2002 letter.

By decision dated June 24, 2002, the Office accepted that appellant's work duties on the telephone in a customer service capacity during the October/November 2001 rebate period constituted a compensable factor of employment. The Office, however, found the medical evidence of record insufficient to establish that appellant sustained a condition caused by the accepted employment factor. On May 5, 2003 appellant, through her attorney, requested reconsideration accompanied by factual and medical evidence.

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<sup>1</sup> The record indicates that effective December 2, 2001 appellant was temporarily promoted to supervisory clerk for a period not to exceed April 20, 2002.

In a May 16, 2003 letter, the Office requested that the employing establishment submit additional factual evidence. The employing establishment submitted a response on May 28, 2003. Appellant submitted a reply to the employing establishment by letter dated June 26, 2003. On July 21, 2003 the employing establishment responded to her June 26, 2003 letter.

By decision dated July 29, 2003, the Office denied modification of the June 24, 2002 decision.

The Board finds that appellant has failed to establish that she sustained hypertension and a stroke in the performance of duty.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which 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. The 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 the claimant.<sup>2</sup>

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 coverage of the Federal Employees' Compensation Act. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.<sup>3</sup>

Perceptions and feelings alone are not compensable. Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal

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<sup>2</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

<sup>3</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

employment.<sup>4</sup> To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) 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.<sup>5</sup>

In this case, appellant has attributed her work-related hypertension and the stroke she sustained on December 6, 2001 to stress she experienced in answering telephone calls regarding a tax rebate. Appellant stated that the period for the employing establishment's rebate program was November and December 2001. She described the duties of her order entry clerk position as answering telephones and inputting data for shipping forms to the public. After two years in this position, appellant stated that she accepted the position of manager wherein she trained, evaluated and helped people. She noted that after a \$600.00 rebate was being given to taxpayers, she received telephone calls from people who had questions about the rebate. Towards the latter part of the program, appellant stated that she received calls from people who mistakenly believed that they were entitled to the rebate and got mad and made unpleasant comments to her. Callers would be referred to other employing establishment employees to pull up their personnel record to help them understand the rebate or the lack of one.

Appellant stated that in the beginning of August 2001, she felt increased work pressure as a result of being given the added responsibility of answering taxpayer telephone calls. She noted that this responsibility made it more difficult for her to complete her managerial duties she had to perform on a daily basis. Appellant began to feel frustrated, tense and nervous as a result of her employment responsibilities. In addition, she felt panicked and overwhelmed which became more intense and regular as time passed. Appellant also suffered from headaches on a regular basis. She noted that during a health day forum held at the employing establishment on November 21, 2001 her blood pressure was determined to be high and it had to be monitored throughout the day. Appellant stated that her blood pressure did not return to normal until approximately 40 to 60 minutes after the conclusion of her workday. She attributed her headaches to the added stress of answering the telephones, which continued to increase over the next few months. Appellant felt helpless in her everyday routine because other workers and managers around her had similar additional responsibilities and no one was available to reduce her workload.

In a May 28, 2003 letter, Sue L. Floyd, an employing establishment supervisor, described appellant's position as an intermittent order entry clerk initially, then as a seasonal career conditional employee and then as a temporary supervisory clerk. She stated that after the tax law changes during the summer of 2001, appellant was recalled to work effective July 2, 2001. Her assignment was to answer telephone calls from the public and provide scripted information or transfer calls to customer service personnel who could provide more specific help to the taxpayers. Ms. Floyd noted that during this period appellant did not have any routine management duties or employees and no production guidelines were in place. Ms. Floyd stated

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<sup>4</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>5</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

that operators were in complete control of their call flow. She noted that on December 2, 2001 appellant again received a temporary promotion to a management position and on December 6, 2001 she suffered the health event that prevented her from returning to work either as an order entry clerk or supervisory clerk.

Ms. Floyd's statement corroborates appellant's description of her work duties, specifically, answering telephone calls about the tax rebate beginning in July 2001. As the requirement of answering telephone calls about the tax rebate arises in the performance of appellant's regular duties, the Board finds that appellant has established a compensable factor of employment.<sup>6</sup>

Appellant's burden of proof, however, is not discharged by the fact that she has established an employment factor which may give rise to a compensable disability under the Act. To establish her occupational disease claim, appellant must also submit rationalized medical evidence establishing that her hypertension and stroke were causally related to the accepted compensable employment factor.<sup>7</sup>

The Board finds that the medical evidence of record fails to establish that appellant's hypertension and stroke were caused by the accepted compensable employment factor. Appellant submitted an April 17, 2002 attending physician's report of Dr. Keith A. Kattner, a neurosurgeon, who diagnosed cerebellar infarct/basilar aneurysm due to appellant's employment activities. He explained that stress from her employment contributed to her hypertension, which increased the risk of infarct. Dr. Kattner, however, did not provide any medical rationale explaining how or why appellant's cerebellar infarct and basilar aneurysm were caused or aggravated by the stress from her employment. Further, he did not specifically describe the employment activities that were causing the stress at work.

In his December 20, 2002 report, Dr. Kattner noted the medical treatment appellant received in a hospital emergency room on December 8, 2001 when she presented with cephalgia around the left orbital region and diplopia. A computerized tomography (CT) scan revealed a possible aneurysm. Dr. Kattner noted that appellant underwent surgery to treat the aneurysm and afterwards she developed a right cerebellar infarction that was more than likely not related to the surgery since it was a left-sided approach. He stated that the etiologies of the infarction were either a cerebral angiography or appellant's history of hypertension. Dr. Kattner related that documented hypertension due to a stressful work environment could support the occurrence of a stroke. The Board finds this report of limited probative value because it is speculative as to the causal relationship between appellant's hypertension and her employment.<sup>8</sup> Dr. Kattner does not explain the physiological basis by which appellant's work activities contributed to her hypertension or resulted in the December 6, 2001 stroke.

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<sup>6</sup> See *Lillian Cutler*, *supra* note 3.

<sup>7</sup> *William P. George*, 43 ECAB 1159, 1168 (1992).

<sup>8</sup> See *Jennifer Beville*, 33 ECAB 1970 (1982); *Leonard J. O'Keefe*, 14 ECAB 42 (1962).

Appellant also submitted a December 8, 2001 report of Dr. Lori C. Wemlinger, a Board-certified internist, who noted appellant's chief complaint of left eye pain and double vision, a history of appellant's medical and family background and her findings on physical examination. Dr. Wemlinger diagnosed headache with some visual aberration with questionable basilar tipped aneurysm and a history of migraine headaches, rheumatic fever with murmur, peptic ulcer disease and kidney stones. In a report of the same date, Dr. Phillip Mitchell, a Board-certified internist, provided a review of appellant's medical background and his findings on physical examination. He diagnosed a headache and possible aneurysm based on a CT scan. The reports of Dr. Wemlinger and Dr. Mitchell are insufficient to establish appellant's claim inasmuch as the physicians did not provide an opinion explaining how appellant's hypertension or stroke was caused or aggravated by her employment responsibilities.

In a May 21, 2002 report, Dr. John L. Poag, II, a Board-certified internist, noted that appellant had been under his care since April 9, 2002. He provided a history of appellant's medical background including a recent stroke. Dr. Poag stated that appellant suffered from multiple medical problems, which seemed to have started in December 2000. He stated that before that time, to the best of his knowledge, she was emotionally stable and did not require medical or surgical treatment for any condition. Dr. Poag noted that appellant had migraine headaches, borderline depression, hypertension, obesity, visual problems, seizure disorder, basilar and posterior cerebral artery aneurysms, low back pain syndrome and generalized fatigue. Dr. Poag further noted that appellant's treatment for these conditions, which involved lifestyle changes. He concluded that considering he first saw appellant on April 9, 2002, which was well after the onset of her multiple medical conditions, there was a clear temporal relationship between appellant's conditions and her employment. The Board finds that Dr. Poag's report is insufficient to establish appellant's claim because he did not provide any medical explanation to support his stated conclusion that appellant's conditions were caused by her employment. Dr. Poag did not specifically address appellant's employment activities or explain how her work responsibilities caused or contributed to her diagnosed hypertension, resulting in the December 6, 2001 stroke.

In a June 4, 2002 report, Dr. Gregory A. Benbow, an osteopath and employing establishment physician, opined that appellant's stroke was not work related. Rather, he noted that, based on a review of appellant's medical records, she had Type II diabetes, with high-blood pressure and obesity. Dr. Benbow stated that neither these problems nor the kind of vascular changes which were necessary to cause a stroke happened during a several-month period of stress as alleged by appellant. He stated that her overall health condition took years to evolve to where it was at that time. Dr. Benbow also stated that no long-term effects of appellant's condition were linked to her job. He did not attribute appellant's stroke to the accepted employment factor.

Appellant's treating physician, Dr. Lawrence D. Kneezel, a Board-certified internist, stated in a November 8, 2002 letter, that he had been treating appellant intermittently since 1980 for migraine headaches. He last saw appellant in April 2001, prior to her stroke. Dr. Kneezel noted that appellant did not mention a headache at the time she was being treated for vertigo related to apparent otitis. He stated that appellant had a history of high blood pressure and noted that it was difficult for him to respond to a claim alleging that increased stress at appellant's employment could have caused or contributed to symptoms that would cause vascular changes

necessary to cause a stroke. Dr. Kneezel found it difficult to document by appellant's medical record and he was not even sure how to do it in her case. He did not attribute appellant's stroke to the accepted employment work duties.

The Board finds that appellant has failed to submit rationalized medical evidence establishing that her hypertension and stroke were caused by the accepted employment factor. Therefore, she has failed to satisfy her burden of proof in this case.<sup>9</sup>

The July 29, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
December 2, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>9</sup> On appeal appellant contends that there is a conflict in the medical opinion evidence between her treating physicians and the employing establishment's physician which requires resolution by an impartial medical examiner pursuant to 5 U.S.C. § 8123(a). Section 8123 of the Act provides that if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician, who shall make an examination. In this case, no Office referral physician has submitted a medical opinion in this case. As noted, the medical evidence of record is found insufficient to warrant further development.