

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

VICKY A. HENDERSON, Appellant)

and)

DEPARTMENT OF THE TREASURY,)
INTERNAL REVENUE SERVICE,)
San Diego, CA, Employer)

Docket No. 04-246
Issued: August 10, 2004

Appearances:
Vicky A. Henderson, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On November 6, 2003 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated September 12, 2003 which found that appellant had not established an injury in the performance of duty. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained a stress-related condition in the performance of duty.

FACTUAL HISTORY

Appellant, a 58-year-old revenue officer, filed a claim for benefits based on a stress-related condition on April 23, 2003. She stated that she experienced a stroke on March 31, 2003 due to stress caused by the employing establishment's failure to comply with her physician's restrictions regarding her workload. Appellant asserted that the proximate cause of her stroke

occurred on March 31, 2003, when her group manager telephoned her while she was working at home and asked her to come into the office at 5:00 p.m. for a meeting. Appellant submitted a July 14, 2003 report from Dr. J. Rochelle Parker, a specialist in family practice, who stated that beginning in December 2001 appellant began experiencing symptoms of right-sided weakness, numbness and tingling, loss of hand and foot coordination on her right side and blurred vision. Appellant related that she was under significant stress at work because she had a new supervisor who was not complying with her work restrictions; these restrictions entailed the assignment of no more than 34 cases at a time. Dr. Parker stated that appellant had suffered a stroke shortly thereafter. She stated:

“[Appellant] has had significant work stressors and patient has been an employee of the [employing establishment] for the past 16 years with a good record ... until approximately a year or year and a half ago. I believe that the stressors played a significant role in her inability to work; however, it is unclear that the stressors led to her stroke. Stress can transiently increase blood pressure; however, it is unclear if those transient increases could lead to stroke. I believe that the stroke was secondary to elevated blood pressure, although [appellant’s] blood pressures were mildly to moderately elevated.”

By letter dated August 11, 2003, the Office advised appellant that she needed to submit additional information in support of her claim. The Office requested that she submit additional medical evidence in support of her claim, including a comprehensive medical report describing how the claimed incident on March 31, 2003 resulted in the diagnosed condition and provide factual evidence, which would establish that she had developed a stress-related condition caused by factors of her employment.

By decision dated September 12, 2003, the Office denied appellant’s claim on the grounds that she did not establish any compensable employment factors.¹

LEGAL PRECEDENT

To establish that a stress-related or emotional condition was sustained in the performance of duty, there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed condition.² There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.³

¹ Although the Office referred to the medical evidence in its decision, a complete reading of the decision reveals that the denial of appellant’s claim was based on her failure to establish any employment factors. The record contains a June 5, 2003 statement, in which appellant further described the incidents and conditions which she believed caused her to sustain a stress-related condition. However, the statement was not received by the Office prior to September 12, 2003.

² See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

³ See *Ruth C. Borden*, 43 ECAB 146 (1991).

Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁴ On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.⁵

ANALYSIS

The Board finds that appellant has not alleged that her inability to perform her regular or specially assigned duties caused her stress resulting in stroke, but rather that administrative actions taken by management: her supervisor's noncompliance with work restrictions and her supervisor's request that she attend a 5:00 p.m. meeting caused her stress condition.

Although the supervisor's handling of work restrictions and meeting schedules is generally related to appellant's employment, these are managerial functions. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.⁶ In the instant case, appellant has presented no evidence that the employing establishment acted unreasonably or committed error with regard to these incidents of administrative managerial functions. Regarding appellant's allegation that her supervisor did not honor her physician's work restrictions, appellant has not provided sufficient detail or corroboration to establish this allegation. Although the Office requested on August 11, 2003 that appellant provide further factual description of her claim, appellant has only provided a general allegation and has not explained with any detail the error or abuse committed by requiring that she work outside her work restrictions. As part of the managerial function, a supervisor must assign work. Appellant did not submit any evidence to substantiate that her work assignments were in error or were abusive. Furthermore, while appellant alleged that she was told to come to a 5:00 p.m. meeting on March 31, 2003, she has not explained or established with any corroborative evidence why this request was in error or abusive. Management's request for a meeting, even a 5:00 p.m. meeting, standing alone does not establish error or abuse. The Board will not speculate that this request for a meeting was in some way abusive or in error. Appellant has not provided any additional information or corroborating evidence, such as witness statements, regarding the circumstances of her work assignments or of the meeting request so as to establish the context under which they were made.⁷

Accordingly, such personnel matters were not compensable factors of employment in the absence of agency error or abuse.

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Id.*

⁶ *See Alfred Arts*, 45 ECAB 530, 543-44 (1994).

⁷ *See William P. George*, 43 ECAB 1159, 1167 (1992).

The Board notes that, since appellant has not established a compensable work factor, the medical evidence will not be considered.⁸

CONCLUSION

The Board finds that the Office properly found that appellant failed to meet her burden of proof to establish that she sustained a stress-related condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the September 12, 2003 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: August 10, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁸ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).