



## **FACTUAL HISTORY**

On December 24, 2001 appellant, then a 46-year-old administrative support assistant and controlled correspondence coordinator, filed a claim alleging that she sustained cerebrovascular accidents on June 29 and November 20, 2001 due to job stress and overwork. Her duties included preparation of time, attendance and travel records for six staff personnel, providing back-up assistance and the tracking and timely completion of all region III congressional or “controlled” correspondence.<sup>1</sup> Appellant stated that her “very heavy and hectic” workload “became too much to bear emotionally and [that] this resulted in a stress-induced stroke.” Her supervisor, Robert J. Mitkus, characterized appellant’s account of her duties as “accurate.” Appellant stopped work on June 29, 2001 and returned to work on November 5, 2001 on a part-time basis. Following a probable second CVA on November 20, 2001, appellant was off work through November 2002, when she returned to part-time work.

In a February 27, 2002 letter, the Office advised appellant of the evidence needed to establish her claim, including a detailed description of all work and nonwork factors which she believed caused or contributed to her condition. The Office also requested appellant’s health history, a diary of her activities for the week preceding the June 29, 2001 CVA and a report from her attending physician explaining how and why work factors caused or contributed to the CVAs.

In a March 13, 2002 letter, appellant asserted that her workload was too much for one person, as congressional correspondence duties took up 85 percent of her workday, leaving inadequate time for her other assignments. She explained that she had to work overtime to meet 7- to 10-day deadlines for controlled correspondence and tracking reports. Appellant commented that other regional offices divided correspondence work among several employees, who earned more than she did for doing less work. Appellant stated that she had to maintain a “professional demeanor” while dealing with a “variety of personalities” among members of the public, elected officials and workers in other offices. She noted no nonoccupational stressors. Appellant recalled no unusual incidents prior to June 29, 2001, when she experienced headaches while updating the correspondence tracking system. Appellant continued working, preparing instructions for a temporary replacement as she was about to go on a two-week vacation. At 1:00 p.m., she felt weak and experienced numbness and paresthesias of her face, left arm and leg. A coworker called a nurse and appellant was taken to the hospital.

In a July 27, 2001 report, Dr. Steven Dinsmore, an attending Board-certified neurologist, noted appellant’s administrative duties and diagnosed a June 29, 2001 right thalamic infarct CVA, with left hemi-sensory deficit producing clumsiness of the left hand. In a December 21, 2001 report, Dr. Dinsmore noted that stress was appellant’s only headache trigger and that the November 5, 2001 return to work was stressful.

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<sup>1</sup> The job description for controlled correspondence coordinator stated that the incumbent tracks and monitors all executive and congressional correspondence using a computerized tracking system, procures services and supplies, maintains leave and attendance records for assigned employees, makes travel arrangements for assigned employees, performs filing and other clerical tasks and edits an annual region-wide handbook. The incumbent must “work effectively under the pressure of sensitive time frames and rigid deadlines,” be skilled at dealing with senior government officials including members of Congress, perform “complex and sensitive analyses and coordination of the highest order” and have frequent contact with elected officials, executive personnel and private citizens.

On November 20, 2001 appellant had a migraine with possible associated stroke, for which she received hospital treatment. In a December 1, 2001 report, Dr. Allen Clowers, an attending osteopath, noted residual left-sided weakness, paresthesias and headaches due to the June 29, 2001 CVA. He explained, in a December 24, 2001 report, that the “stress of the job can cause an increase in blood pressure which can aggravate stroke.” In a March 9, 2002 report, Dr. Clowers stated that “stressors of the job caused [appellant] to have a second, similar event” on November 20, 2001. He held appellant off work for 12 months to recover “so that she will be prepared to handle the stress that is associated with her job.”

By decision dated September 18, 2002, the Office denied appellant’s claim on the grounds that she had not established that the strokes occurred in the performance of duty. The Office found that appellant established as factual that she chose to work additional hours and that other employees were paid a higher salary. However, the Office found that these were not compensable factors of employment.

Appellant disagreed with this decision and requested an oral hearing, held on April 8, 2003. At the hearing, appellant testified that, in October 1999, she was promoted from a clerical position to congressional liaison, with additional duties of tracking, photocopying and proofreading 5 to 25 pieces of congressional correspondence per day, all on 5- to 7-day deadlines. The correspondence was largely composed of complaint letters. She explained that senior officials would “embarrass” her regional director during a weekly teleconference if correspondence was late. This was stressful for appellant as meeting the deadlines and having the director “look good at all times” was her responsibility, yet two to five pieces of correspondence were overdue each month. Appellant recalled that, from June 2000 to June 2001, she worked an extra 1 to 5 hours a week unpaid overtime to process 900 letters by deadline.<sup>2</sup> Appellant stated that on June 29, 2001, she arrived early at 6:00 a.m. to create a required computer desktop for her temporary replacement, in addition to processing congressional correspondence, photocopying, taking documents to other offices and preparing time sheets. She felt dizzy while photocopying at approximately 10:30 a.m., but did not stop working until approximately 1:00 p.m., when her left side went numb.

The hearing representative left the record open for 30 days to allow appellant time to submit records from her 2 hospitalizations. Appellant did not submit these records, but provided a May 20, 2003 report from Dr. Clowers, stating that appellant had no signs or risk factors of cerebrovascular or cardiovascular disease prior to June 29, 2001. Dr. Clowers opined that “with a reasonable degree of medical certainty ... the original CVA of June 29, 2001 was caused or precipitated by the stressors of her employment.”

By decision dated June 19, 2003 and finalized June 20, 2003, an Office hearing representative affirmed the September 18, 2002 decision. The hearing representative found that appellant had not established any compensable factors of employment, noting that while appellant “had a busy workday ... many employees have such and such does not necessarily

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<sup>2</sup> Appellant asserted that she came in to work 30 minutes to 1 hour early twice a week and stayed 1 hour later twice a week. She also asserted that she worked two hours overtime every other week.

constitute overwork.” The hearing representative further found that appellant’s work assignments and salary were administrative functions of the employer not considered to be within the performance of duty, and that appellant’s desire for a higher salary and less work was, therefore, noncompensable. The hearing representative found no error or abuse in the employing establishment’s setting of appellant’s pay rate. The hearing representative concluded that, as appellant had not established a compensable factor of employment, the medical record need not be considered.

### **LEGAL PRECEDENT**

When an employee experiences an emotional reaction to his or her regular or specially assigned work duties or to a requirement imposed by the employment and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment and comes within the scope of coverage of the Federal Employees’ Compensation Act.<sup>3</sup>

The Board has held that a variety of work factors are compensable under the Act. Among them, overwork is a compensable factor of employment if appellant submits sufficient evidence to substantiate this allegation.<sup>4</sup> Also, in certain circumstances, working overtime is sufficiently related to regular or specially assigned duties to constitute a compensable employment factor.<sup>5</sup> Additionally, conditions related to stress resulting from situations in which an employee is trying to meet his or her position requirements are compensable.<sup>6</sup> In *Penelope C. Owens*,<sup>7</sup> the claimant experienced stress and depression due to making a transcription error during assigned computer data entry. As the employee’s error related to the performance of her assigned duties as a distribution clerk and arose out of the nature of her work, the Board held that she established a compensable work factor. Similarly, in *Joseph A. Antal*,<sup>8</sup> the Board held that emotional reactions to situations in which an employee is trying to meet the production standards of his position requirements are compensable.

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<sup>3</sup> *Jamel A. White*, 54 ECAB \_\_\_\_ (Docket No. 02-1559, issued December 10, 2002); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> *Bobbie D. Daly*, 53 ECAB \_\_\_\_ (Docket No. 01-2115, issued July 25, 2002); *Robert W. Wisenberger*, 47 ECAB 406, 408 (1996); *Chester R. Henderson*, 42 ECAB 352 (1991); *Manuel W. Vetti*, 33 ECAB 750 (1982). See *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984) (the Board held that an unusually heavy workload is covered under the Act).

<sup>5</sup> *Ezra D. Long*, 46 ECAB 791 (1995).

<sup>6</sup> *Trudy A. Scott*, 52 ECAB 309 (2001).

<sup>7</sup> 54 ECAB \_\_\_\_ (Docket No. 03-1078, issued July 7, 2003).

<sup>8</sup> 34 ECAB 608, 612 (1983).

The Board has also held that conditions sustained due to a desire for different work duties<sup>9</sup> or a higher salary,<sup>10</sup> are not compensable. The assignment of work tasks and determination of salaries are administrative functions of the employer and are not considered to be within the performance of duty unless error or abuse is shown.<sup>11</sup>

To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.<sup>12</sup> When working conditions, such as those listed above, 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.<sup>13</sup> When the matter alleged 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.<sup>14</sup>

### ANALYSIS

Appellant alleged that emotional stress caused her cerebrovascular accidents due to overwork, including working unpaid overtime. In the December 24, 2001 claim form, appellant listed timekeeping, attendance and travel recordkeeping duties, as well as her responsibilities for tracking and processing congressional correspondence. She characterized her work as “very heavy and hectic,” a characterization supported by her supervisor as accurate.<sup>15</sup> In a March 13, 2002 letter, appellant asserted that her workload was too much for one person. She alleged, at the April 8, 2003 hearing, that she had to work unpaid overtime for one to five hours per week to meet correspondence deadlines. While appellant has established that her position required intense work and adherence to frequent deadlines, she did not submit sufficient factual information to demonstrate overwork. In particular, appellant did not provide time and attendance records documenting overtime work and describing the specific tasks or volume of correspondence which necessitated this overtime. Without such corroboration, appellant has not established overwork as a compensable factor of employment.<sup>16</sup>

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<sup>9</sup> *Katherine A. Berg*, 54 ECAB \_\_\_\_ (Docket No. 02-2096, issued December 23, 2002).

<sup>10</sup> See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>11</sup> *Hasty P. Foreman*, 54 ECAB \_\_\_\_ (Docket No. 02-723, issued February 27, 2003).

<sup>12</sup> *Katherine A. Berg*, *supra* note 9; *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>13</sup> *Marlon Vera*, 54 ECAB \_\_\_\_ (Docket No. 03-907, issued September 29, 2003); see *Barbara Bush*, 38 ECAB 710 (1987).

<sup>14</sup> See *Leroy Thomas, III*, 46 ECAB 946, 954 (1995); *Alton L. White*, 42 ECAB 666, 669-70 (1991).

<sup>15</sup> The Board notes that appellant’s recounting of her duties is very similar to her official position description, *supra* note 1.

<sup>16</sup> *Chester R. Henderson*, *supra* note 4.

Appellant attributed her condition, in part, to the stress of having to maintain a professional demeanor while dealing with members of the public and elected officials. This public contact was part of her regularly assigned duties as a congressional liaison. Appellant has established a compensable employment factor, as this relates to public contact required in the performance of her regularly assigned duties. Similarly, appellant testified, at the April 8, 2003 hearing, that it was her responsibility to ensure the timely processing of controlled congressional correspondence. She experienced stress because letters of correspondence would become overdue, which caused senior officials to criticize her regional director during weekly teleconferences. The Board finds that appellant has established that she sustained stress in trying to meet the assigned correspondence duties of her position.<sup>17</sup> Under *Cutler*, as these matters pertain to her regularly assigned duties, they constitute compensable employment factors.

Appellant noted that her counterparts in other regional offices earned more money for performing less work. However, her desire for a lighter workload or a higher salary, pertains to administrative matters that are not considered to be within the performance of duty. As appellant has not demonstrated error or abuse regarding her salary of work assignments, appellant has not established that either of these matters is compensable.<sup>18</sup>

The Board finds that appellant has established compensable employment factors under *Cutler* due to the public contact and controlled correspondence requirements of her federal employment. Therefore, the medical record must be examined to ascertain whether appellant's physicians provided adequate rationale to establish a causal relationship between the two compensable factors and the June 29 and November 20, 2001 CVAs. Dr. Dinsmore, an attending Board-certified neurologist, noted appellant's administrative duties, that her November 5, 2001 return to work was stressful and that stress triggered appellant's headaches. Dr. Clowers, an attending osteopath, stated that work stress caused or aggravated hypertension which precipitated the June 29 and November 20, 2001 CVAs. However, neither physician specifically addressed the two compensable employment factors of public contact and controlled correspondence required in her employment on how such factors caused or contributed to her medical condition. Therefore, their opinions are insufficient to establish causal relationship in this case.<sup>19</sup>

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<sup>17</sup> *Penelope C. Owens*, *supra* note 7; *Joseph A. Antal*, *supra* note 9.

<sup>18</sup> *Thomas D. McEuen*, *supra* note 12; *Hasty P. Foreman*, *supra* note 13; *Ruthie M. Evans*, *supra* note 14.

<sup>19</sup> *Claudio Vasquez*, 52 ECAB 496 (2001).

**CONCLUSION**

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty, as she submitted insufficient medical evidence to establish a causal relationship between the two compensable employment factors and the claimed stress condition or CVAs.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 19, 2003 is hereby affirmed.

Issued: January 23, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member