United States Department of Labor
Employees' Compensation Appeals Board

DAVID R. PRONK, Appellant	)	
and	)	**Docket No. 05-388**
	)	**Issued: June 16, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Windom, MN, Employer	)	

Appearances:
Larry J. Peterson, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On December 1, 2004 appellant filed a timely appeal from the August 30, 2004 merit decision of the Office of Workers' Compensation Programs, which denied his claim that he sustained a stroke and an emotional condition in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the Office's decision.

ISSUE

The issue is whether appellant's stroke on December 16, 2000 or his episode of major depression on or about March 1, 2002 was causally related to compensable factors of employment.

FACTUAL HISTORY

On March 5, 2002 appellant, then a 50-year-old part-time flexible distribution clerk, filed a claim alleging that he had a nervous breakdown as a result of his federal employment: "Stress cause[d] at work with another employee. March 1, 2002 went to work ending at [emergency room]." The Office requested that he submit additional information to support his claim,

including a detailed description of the employment conditions that he believed contributed to his condition and a comprehensive medical report providing an opinion on whether factors of employment caused or aggravated a diagnosed psychological disorder.

Appellant alleged that inconsistent hours and work schedules, leading to sleep disturbance and fatigue, in addition to labor-management unrest, contributed to a stroke he suffered on December 16, 2000. He submitted his work schedule for the year prior to his stroke. Appellant also submitted a June 12, 2002 report from his family physician, Dr. P. Andy Ruth:

> "I have reviewed [appellant's] medical record as well as [his] work schedule for one year prior to his stroke. I am aware that [his] work environment was difficult and sometimes hostile. As I look back on [appellant's] medical care prior to his stroke, however, it is apparent that most of his medical problems revolved around acute and chronic bronchitis due to chronic cigarette abuse. I also note that his father had a myocardial infarction at a young age and suffered a stroke while in his 70's. I would like to also note that [appellant] had normal blood pressures throughout the time prior to his stroke and fortunately continues to have normal blood pressures without hypertension.
>
> "It is my opinion that the major risk factors for stroke include: Hypertension, family history and cigarette smoking. I would not consider stress nor hard work a major risk factor. It would, however, be reasonable to conclude that his work was one of the aggravating factors of the underlying condition that led to his stroke on December 16, 2000."

Appellant also submitted an August 14, 2002 report from Dr. Ronald F. Kline, the emergency room physician who saw him on December 16, 2000. He stated: "I would not consider stress or hard work a major risk factor, however, it may be reasonable to conclude that [appellant's] unusual work schedule might be one of the aggravating factors of the underlying condition that led to his stroke on December 16, 2000."

In a decision dated September 6, 2002, the Office denied appellant's claim. The Office found that erratic shift changes were not compensable because his reaction came from the constant change of work hours and his desire to work a different shift, not to the inability to do his assigned duties. The Office also found that appellant's allegations of labor-management unrest were unsupported and not compensable factors of employment.

Appellant requested an oral hearing before an Office hearing representative. He argued that his day-to-day work duties from December 1999 through March 2002 constituted substantial, aggravating or accelerating factors in his December 16, 2000 stroke and in an episode of major depression on March 1, 2002. To support his claim appellant submitted an April 1, 2002 consultation note from Dr. Jeffrey D. Rome, a psychiatrist, who offered a principal diagnosis of major depression, single episode, moderate to severe and who noted as follows: "[Appellant's] condition has deteriorated significantly, apparently related to the stresses which he faces in his work at the [employing establishment]." On April 25, 2003 Dr. Rome added: "In my opinion, I believe that there is reasonable medical probability that [appellant's] work

environment has contributed to his depressive illness. There is a well-established link between psychosocial stresses and depressive illness."

After the hearing, which was held on May 13, 2003, the employing establishment asserted that it did not administratively err in scheduling appellant's hours of work and that his emotional reaction to a shift change was not within the performance of duty.

Appellant's supervisor offered general information on schedules for part-time flexible clerks. She stated that she would try to switch schedules between a.m. and p.m. tours every two or three weeks and that she tried to rotate the clerks equally, but that sick leave was unpredictable and if a clerk was on leave, "this may throw the rotation." The supervisor stated that, if the schedule was changed, there was always a reason for it. The supervisor acknowledged that appellant occasionally had to work the day shift and then come back at night; four times in two years he was scheduled to work back to back shifts. The supervisor also acknowledged a personality conflict between appellant and a coworker, Diane Duerkson, though she characterized the problems as minor and stated that appellant tended "to blow situations way out of proportion."

The postmaster submitted a similar statement, acknowledging that appellant was a part-time flexible employee who did not work regular hours. He noted that most complaints about Ms. Duerkson were unfounded: a workplace intervention team determined that "everything was simply personality conflicts."

Appellant submitted statements from coworkers and his wife to support the conflicts he had with Ms. Duerkson. He also submitted his own notes from July 28, 2001 to February 7, 2002. One coworker noted that erratic scheduling became worse when the supervisor began work in 1998: "She seemed incapable of creating a schedule that gave any regular or predictable time off to any of the part-time flexible's." The postmaster also noted that Ms. Duerkson and appellant did not get along and had constant arguments and discussions. This continued and even intensified, he stated, after appellant returned to work from his stroke, so much so that they were assigned to different shifts and ordered not to talk to one another when they later worked together again. Another coworker observed that schedules were sometimes changed with little or no notice. She also observed that appellant had a continuous conflict with Ms. Duerkson, who immediately upon her hiring in July 2000, wanted to change all the routines.

In a decision dated August 5, 2003, the Office hearing representative affirmed the denial of appellant's claim as there had been no finding of error or abuse on the part of management and no finding that Ms. Duerkson was harassing or acting abusively toward appellant.

Appellant requested reconsideration. He submitted additional statements from coworkers and updated treatment notes.

In a decision dated August 30, 2002, the Office reviewed the merits of appellant's claim but denied modification of its prior decision. The Office found that the evidence submitted did not establish that there was anything more than a conflict going on between appellant and Ms. Duerkson. The Office also found there was no evidence to show error or abuse in scheduling.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[1] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of performance."[2] "In the course of employment" relates to the elements of time, place and work activity. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in his employer's business, at a place where he may reasonably be expected to be in connection with his employment and while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto. The employee must also establish an injury "arising out of the employment." To arise out of employment, the injury must have a causal connection to the employment, either by precipitation, aggravation or acceleration.[3]

Causal relationship is a medical issue[4] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's opinion on whether there is a causal relationship between the claimant's diagnosed condition and the implicated factors of employment. The opinion of the physician must be based on a complete factual and medical background, 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.[5]

When an employee experiences emotional stress in carrying out his employment duties or has fear and anxiety regarding his ability to carry out his duties and the medical evidence establishes that the disability resulted from his emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability resulted from his emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of his work. By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of a reduction-in-force

[1] 5 U.S.C. § 8102(a).

[2] This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers' compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

[3] *See Eugene G. Chin*, 39 ECAB 598 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp (Joseph L. Barenkamp)*, 5 ECAB 228 (1952).

[4] *Mary J. Briggs*, 37 ECAB 578 (1986).

[5] *Victor J. Woodhams*, 41 ECAB 345 (1989).

or frustration from not being permitted to work in a particular environment or to hold a particular position.[6]

The Board has held that a change in an employee's duty shift is a factor of employment to be considered in determining if an injury has been sustained in the performance of duty.[7]

Workers' compensation law does not cover an emotional reaction to an administrative or personnel action, however, unless the evidence shows error or abuse on the part of the employing establishment.[8] The Board has held that actions of an employer which the employee characterizes as harassment or discrimination may constitute a factor of employment giving rise to coverage under the Act, but there must be some evidence that harassment or discrimination did in fact occur. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.[9] Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must substantiate such allegations with probative and reliable evidence.[10] The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.[11]

The friction and strain of close contact may supply the necessary work connection by increasing the probability of quarrels among employees:

> "This view recognizes that work places men under strains and fatigue from human and mechanical impacts creating frictions which explode in myriads of ways, only some of which are immediately relevant to their tasks. Personal animosities are

[6] *Lillian Cutler*, 28 ECAB 125 (1976).

[7] *Charles J. Jenkins*, 40 ECAB 362, 366 (1988) (remanding the case for further development of the medical evidence on whether the claimant had an emotional or psychological condition causally related to his employment); *Candace Boyd*, Docket No. 93-2426 (issued June 6, 1995) (where the claimant indicated that working the night shift disrupted her sleep and caused fatigue, the Board held that this allegation related to the performance of her regular or specially assigned duties and, therefore, arose out of her employment); *see John W. Slonaker*, 35 ECAB 997 (1984) (finding that the weight of the medical evidence established that the claimant's disability was causally related to factors of his employment, which included a rotating schedule which curtailed his sleep); *Giles S. Ruch*, Docket No. 95-1381 (issued July 16, 1997) (noting with approval that the Office had accepted as a compensable factor of employment the claimant's allegation that he was unable to obtain sufficient sleep during the hours when he was not performing his night shift job).

[8] *Thomas D. McEuen*, 42 ECAB 566, 572-73 (1991), *reaff'g*, 41 ECAB 387 (1990).

[9] *See Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

[10] *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

[11] *Paul Trotman-Hall*, 45 ECAB 229 (1993) (concurring opinion of Michael E. Groom, Alternate Member).

> created by working together on the assembly line or in traffic. Others initiated outside the job are magnified to the breaking point by its compelled contacts. No work is immune to these pressures and impacts upon temperament. They accumulate and explode over incidents trivial and important, personal and official. But the explosion point is merely the culmination of the antecedent pressures. That it is not relevant to the immediate task, involves a lapse from duty or contains an element of violation or illegality does not disconnect it from them, nor nullify their causal effect in producing its injurious consequences."[12]

The Board has held that this principle applies to mental or emotional injuries as well as to assaults.[13] As with assaults, when the subject matter of a verbal altercation is imported into the employment from a claimant's domestic or private life and there is no indication that work contributed to or facilitated the dispute, the dispute is not a compensable factor of employment and any injury resulting there from does not arise out of employment.[14]

ANALYSIS

Appellant alleged, but did not prove error or abuse by the employing establishment in any administrative or personnel matter. The Office denied error or abuse in scheduling his hours, in responding to the conflicts he had with his coworker, Ms. Duerkson or in handling any issue relating to general labor-management unrest. There is no grievance decision or other administrative ruling to support that the employing establishment's actions in any of these matters were erroneous. The record is thus, one of allegations made and allegations denied. The Board finds that the evidence fails to establish a compensable factor of employment based on administrative error or abuse.

Further, none of the medical opinions appellant submitted attributed his stroke or his diagnosed depression to any specific instance of administrative error or abuse. Vague references to his "work environment" or "the stresses which he faces in his work" are insufficient to establish the element of causal relationship.[15] Both Dr. Ruth, appellant's family physician, and Dr. Kline, the emergency room physician, appeared reluctant to attribute his stroke to stress or hard work. So even if the factual evidence were to establish a compensable factor of employment based on administrative error or abuse and even if appellant's day-to-day work

[12] 1 A. Larson, *Larson's Workers' Compensation Law* § 8.01[6][a] (May 2004), quoting *Hartford Acc. & Indem. Co. v. Cardillo*, 72 D.C. App. 52, 112 F.2d 11, 17 (1940). *See generally Robert L. Williams*, 1 ECAB 80, 86 (1948) (the true principle is that compensation shall be paid for disability or death having its origin in the employment -- whether the act that gives rise to the injury is one flowing directly from an action in the line of the duty, such as from an act directly forwarding the work or whether it arises out of environmental factors in the employment or from ordinary random conduct of employees interacting in association, conduct which may not be immediately relevant to the task at hand or may even constitute a hindrance to the flow of the work).

[13] *Monica M. Lenart*, 44 ECAB 772, 774 n.5 (1993).

[14] *See Edward Savage, Jr.*, 46 ECAB 346 (1994).

[15] *Kathrine W. Brown*, 10 ECAB 618, 620 (1959) (finding that the actual circumstances upon which the physician predicated his conclusion that the claimant was concerned with job insecurity and that "this insecurity could have been the cause of the ulcer" were not determinable since the report did not contain a recital of those circumstances).

duties can be accepted as factual, the medical evidence would not establish his entitlement to compensation.

What the factual evidence does establish is that appellant, as a part-time flexible clerk, worked irregular hours prior to his stroke on December 16, 2000. His supervisor and postmaster acknowledged this. Appellant submitted a day-by-day accounting of his work hours for the year prior to his stroke and the employing establishment did not show that the accounting was inaccurate. Without attempting to quantify how erratic this schedule was or how many times he was made to work back-to-back shifts, the Board finds that the evidence in this case establishes many changes is work shift during the year prior to his stroke. As appellant attributes his stroke at least in part to sleep disturbance and fatigue resulting from his irregular hours and schedule, the Board finds that he has established a compensable factor of employment.

Further, appellant submitted medical opinion evidence to support that this "unusual work schedule might be one of the aggravating factors of the underlying condition that led to his stroke on December 16, 2000" as Dr. Kline reported on August 14, 2002. This report raises the possibility that there was a connection between his work schedule and his stroke, but the opinion is both equivocal and speculative. Dr. Kline offered no medical reasoning to show that an aggravation occurred as a matter of fact, nor did he explain how sleep disturbance and fatigue aggravated such underlying conditions as hypertension or cigarette smoking. Although the medical opinion of a physician supporting causal relationship need not reduce the cause or etiology of a disease or condition to an absolute medical certainty, neither can such opinion be speculative or equivocal.[16] Medical conclusions unsupported by rationale are generally of little probative value.[17] For this reason the Board finds that appellant has not met his burden of proof to establish a causal relationship between his changes in work shift and the stroke he suffered on December 16, 2000.[18]

What the factual evidence also establishes is that the relationship between appellant and his coworker, Ms. Duerkson, was one of friction and strain. While there is no statement from Ms. Duerkson herself, appellant's account of the animosity is echoed by the statements of his supervisor, the postmaster and his other coworkers, who described the conflict and arguments as constant and continuing. The record shows that a workplace intervention team separated the two for a time and that they were instructed not to communicate with one another when they later worked the same shift. As there is no evidence to suggest that this conflict was imported into the

[16] *Philip J. Deroo*, 39 ECAB 1294 (1988); *Jennifer Beville*, 33 ECAB 1970 (1982) (statement of a Board-certified internist that the employee's complaints "could have been" related to her work injury was speculative and of limited probative value).

[17] *E.g., Connie Johns*, 44 ECAB 560 (1993) (holding that a physician's opinion on causal relationship must be one of reasonable medical certainty, supported with affirmative evidence, explained by medical rationale and based on a complete and accurate medical and factual background). *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (discussing the factors that bear on the probative value of medical opinions).

[18] Dr. Ruth reviewed appellant's work hours for the year prior to the stroke and reported on June 12, 2002 that while neither stress nor hard work were major risk factors for stroke, it would be reasonable to conclude that appellant's "work" was one of the aggravating factors of the underlying condition that led to his stroke on December 16, 2000. Apart from not specifically attributing the stroke to the work hours reviewed, Dr. Ruth's report suffers the same deficiencies as Dr. Kline's.

workplace from appellant's domestic or private life and as it appears that it was the workplace that brought these coworkers together and compelled their contact, the Board finds that the evidence is sufficient to establish a compensable factor of employment based on friction and strain between coworkers. To be clear, this conflict is no less compensable for being a personality conflict.

The medical evidence, however, does not establish that the friction and strain between appellant and Ms. Duerkson caused or contributed either to his stroke or to his diagnosed depression on or about March 1, 2002. Neither Dr. Ruth, nor Dr. Kline attributed these conditions to any such conflict and neither discussed at any length or in any detail the animosity between the two. Dr. Rome, the psychiatrist, reported on April 25, 2003 that there is a well-established link between psychosocial stresses and depressive illness and he concluded that there was a reasonable medical probability that appellant's work environment contributed to his depressive illness. But he did not specifically discuss the relationship between him and Ms. Duerkson and did not relate his depression to this relationship. Medical conclusions based on inaccurate or incomplete histories are of little probative value.[19]

So while the record in this case establishes two compensable factors of employment -- changes in work shift affecting appellant's circadian rhythm and friction and strain between coworkers -- the medical opinion evidence does not establish a causal relationship between these factors and appellant's stroke on December 16, 2000 or his depressive illness on or about March 1, 2002. The Board, therefore, finds that appellant has not met his burden of proof.

CONCLUSION

Appellant has not met his burden of proof to establish that his stroke on December 16, 2000 or his episode of major depression on or about March 1, 2002 was causally related to compensable factors of employment. The Board will affirm the Office's denial of compensation benefits.

[19] *See James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete).

ORDER

IT IS HEREBY ORDERED THAT the August 30, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 16, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member