

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

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**JOHN E. KING, Appellant**

**and**

**U.S. POSTAL SERVICE, ATLANTIC BEACH  
STATION, Atlantic Beach, FL, Employer**

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**Docket No. 05-1176  
Issued: January 19, 2006**

*Appearances:*  
*John E. King, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On May 2, 2005 appellant filed a timely appeal of a March 8, 2005 merit decision of the Office of Workers' Compensation Programs that rescinded its acceptance that he sustained a stroke while in the performance of duty on June 15, 2000. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

**ISSUE**

The issue is whether the Office met its burden of proof to rescind its acceptance that appellant sustained a stroke in the performance of duty on June 15, 2000.

**FACTUAL HISTORY**

On June 16, 2000 appellant, then a 49-year-old rural carrier associate, filed a claim for a traumatic injury sustained on June 15, 2000. He listed the nature of the injury as a mild stroke and the cause as unknown. In response to an Office inquiry why he believed this condition was related to his employment, appellant stated that his job was overbearing and overwhelming, that the mail volume on his route kept growing, that he was unable to sleep the night before his

stroke, and that it was very hot on the day the injury occurred. He attributed his stroke to the stress of dealing with deadlines, not knowing what to do in his job, and heat.

On June 15, 2000 appellant was taken by ambulance to a hospital emergency room, where Dr. Scott A. Derkum, a Board-certified internist, diagnosed an acute left-sided cerebrovascular accident, likely secondary to small vessel disease. He noted a history of hypertension many years ago, resolved with weight loss. A computerized tomography (CT) scan of appellant's brain on June 15, 2000 showed no acute hemorrhage. On June 16, 2000 a magnetic resonance imaging (MRI) scan showed an acute infarct involving the left deep white matter in the region of the posterior limb of the left internal capsule and an intracranial magnetic resonance angiogram showed no significant abnormality in circulation. In a June 16, 2000 report, Dr. Karen K. Thalinger, a Board-certified neurologist, stated that appellant's symptoms of clumsiness of his right hand, inability to write and some slurring of his speech on June 15, 2000 indicated that he sustained a deep left hemisphere brain stem ischemic event. She stated that appellant had no prior history of neurological symptoms, and that his only risk factor was a history of hypertension 15 years ago, for which he took medication briefly. In a July 7, 2000 report, Dr. Thalinger diagnosed deep left hemisphere infarct due to hypertensive vascular disease.

In an August 18, 2000 report, Dr. Thalinger noted that appellant's stroke occurred while at work on his mail route, and that extensive evaluation revealed no underlying cause. She concluded: "It is felt that extreme stress on his job and work in the heat were definitely contributing factors. Exposure to heat and dehydration are known to be contributors to stroke." In an October 17, 2000 report on an Office form, Dr. Thalinger indicated that appellant's condition was related to heat exhaustion and dehydration.

By decision dated October 24, 2000, the Office found that appellant was not entitled to continuation of pay because his condition was not caused by events during a single day. It accepted his claim for an occupational injury. The accepted condition was "precipitated stroke."

In a May 10, 2001 report, Dr. Patrick K. Dobbins, who specializes in occupational medicine, stated that it appeared appellant's claim may have been approved erroneously, as he delivered mail from the air-conditioned cab of his privately-owned vehicle, did not walk in the heat, and was not subjected to stress not common to all new rural carrier associates. Appellant returned to limited duty on May 25, 2001.

On August 20, 2001 appellant was hospitalized for a likely transient ischemic attack. On August 31, 2001 he filed a claim for compensation beginning August 20, 2001 for an occupational disease and for a recurrence of disability related to his June 15, 2000 injury. In a May 15, 2002 decision, an administrative law judge for the Social Security Administration found that appellant did not retain the residual functional capacity to perform even sedentary work and was under a disability since June 15, 2000. In a July 25, 2002 deposition, Dr. Thalinger testified that appellant was at greater risk for a second stroke than somebody who never had one, as the same reason that caused the initial stroke, the hardening of the arteries and high blood pressure, was still there. By decision dated December 23, 2002, an Office hearing representative found that the evidence failed to support a new injury on August 20, 2001.

On April 8, 2003 the Office referred appellant, his medical reports and a statement of accepted facts to Dr. Gerard Gerling, a Board-certified neurologist, for a second opinion on whether his current condition and his August 20, 2001 cerebral vascular accident were related to his June 15, 2000 employment injury. In a May 14, 2003 report, Dr. Gerling set forth a history that appellant had a preemployment physical examination in 2000 that led to the conclusion that he had no preexisting chronic illnesses. At the time of the June 15, 2000 stroke, appellant was “not known to have risk factors for cerebral vascular disease and therefore was not prohibited from engaging in the physical activities as a postal worker.” His hospitalization on June 15, 2000 showed that he was hypertensive and that he required treatment for this condition since then. Dr. Gerling stated that review of the records, history and physical examination revealed that appellant had significant risk factors of hyperlipidemia, increased body mass index, and essential hypertension for atherosclerotic disease and complications such as cerebrovascular accident, and that these risk factors were present when he began his new occupation as a postal worker in 2000. He concluded that appellant’s “strokes occurred at work as a result of atherosclerotic risk factors rather than directly a result of any work-related activities.”

On July 7, 2003 the Office referred appellant, the case record and a statement of accepted facts to Dr. Eric Gabriel, a Board-certified neurologist, to resolve a conflict of medical opinion on the question of whether his stroke was related to his employment. In an August 20, 2003 report, Dr. Gabriel concluded that the stroke appellant experienced was typically associated with arteriosclerotic small vessel disease and not typically caused by stress or excessive heat. He stated that the most likely cause for appellant’s stroke “would be the natural history of underlying cardiovascular disease that in no way could be interpreted as a work-related injury.” By decision dated April 7, 2004, the Office terminated appellant’s medical benefits for the effects of the June 15, 2000 injury. Appellant requested a review of the written record, and an Office hearing representative, in an October 18, 2004 decision, found that the conflict of medical opinion remained unresolved, as it was not possible to determine if Dr. Gabriel was chosen through the Office’s rotation system.

On December 16, 2004 the Office referred appellant, the case record and a statement of accepted facts to Dr. Bruce A. Hartwig, a Board-certified neurologist, to resolve the conflict of medical opinion. In a December 30, 2004 report, Dr. Hartwig stated that appellant’s job required him to deliver mail to several commercial buildings both inside and out, that appellant felt he had a heat stroke but CT and MRI scans of the brain showed evidence of a left posterior internal capsule infarct. Upon hospitalization on June 15, 2000, appellant was diagnosed with hypertension but it was unclear whether this condition was preexisting. Dr. Hartwig stated that appellant’s neurological examination was normal with no apparent residual deficit from his June 15, 2000 internal capsule infarct. Dr. Hartwig concluded: “This type of stroke is associated with small vessel disease and usually secondary to hypertension or diabetes and not related to a heat stroke. Therefore I do not feel that his stroke was work related but secondary to a complication from hypertension.”

On January 31, 2005 the Office proposed to rescind its acceptance of appellant’s claim on the basis that his condition was shown not causally related to his employment. By decision dated March 8, 2005, the Office rescinded its acceptance that appellant sustained a stroke in the performance of duty on June 15, 2000.

## LEGAL PRECEDENT

The Board has upheld the Office's authority to reopen a claim at any time on its own motion under section 8128(a) of the Act and, where supported by the evidence, set aside or modify a prior decision and issue a new decision.<sup>1</sup> The Office's regulations state: "If the Director determines that a review of the award is warranted (including, but not limited to circumstances indicating a mistake of fact or law or changed conditions), the Director (at any time and on the basis of existing evidence) may modify, rescind, decrease or increase compensation previously awarded, or award compensation previously denied."<sup>2</sup> Once the Office accepts a claim, it has the burden of justifying the termination or modification of compensation benefits. This holds true where, as here, the Office later decides that it erroneously accepted a claim.<sup>3</sup> To satisfy its burden, the Office cannot merely second-guess the initial set of adjudicating officials but must establish through new evidence, legal arguments or rationale, that its acceptance was erroneous.<sup>4</sup>

## ANALYSIS

The Office has not established that its acceptance that appellant's work activities precipitated his June 15, 2000 stroke was erroneous. The opinions of the Board-certified neurologists upon whom the Office relied to rescind its acceptance did not address precipitation, which was the basis of the Office's acceptance. Dr. Gerling, who rendered a second opinion, stated that appellant's stroke was not "directly a result" of his work activities. This opinion addresses only direct causation, which the Office defines in its procedure manual as a type of causal relationship that "is shown when the injury or factors of employment, through a natural and unbroken sequence, result in the condition claimed."<sup>5</sup> Precipitation is defined as "A latent condition which would not have become manifest but for the employment is said to have been precipitated by factors of the employment."<sup>6</sup> As Dr. Gerling's report did not address whether a latent condition was made manifest by the employment and thus did not address the basis of the Office's acceptance of the claim, it did not create a conflict of medical opinion with appellant's attending Board-certified neurologist, Dr. Thalinger, who stated in an August 18, 2000 report that extreme stress on the job and working in the heat were definite contributing factors to appellant's June 15, 2000 stroke.

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<sup>1</sup> *Linda L. Newbrough*, 52 ECAB 323 (2001); *Eli Jacobs*, 32 ECAB 1147 (1981).

<sup>2</sup> 20 C.F.R. § 10.601.

<sup>3</sup> *Alfonso Martinisi*, 33 ECAB 841 (1982); *Jack W. West*, 30 ECAB 909 (1979).

<sup>4</sup> *Alfonso Walker*, 42 ECAB 129 (1990).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2(a) (June 1995).

<sup>6</sup> *Id.*, Chapter 2.805.2d (July 2000).

As there was no conflict of medical opinion at the time of the referral to Dr. Hartwig, he did not examine appellant as an impartial specialist.<sup>7</sup> He concluded that the stroke was not work related because the type of stroke appellant sustained was associated with small vessel disease and usually secondary to hypertension or diabetes and not related to a heat stroke. Like Dr. Gerling's report, Dr. Hartwig's report addresses the underlying cause, which all physicians, including appellant's attending physician, agree is the condition of his circulatory system. Dr. Hartwig did not address whether factors of appellant's employment precipitated or contributed to his June 15, 2000 stroke, and his opinion thus does not support rescission of the Office's acceptance of appellant's claim or create a conflict of medical opinion.

### **CONCLUSION**

The Office did not meet its burden of proof to rescind its acceptance that factors of appellant's employment precipitated his June 15, 2000 stroke, for the reason that it did not procure medical evidence directly addressing this issue.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the March 8, 2005 decision of the Office of Workers' Compensation Programs is reversed.

Issued: January 19, 2006  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>7</sup> In situations where there are opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight. *James P. Roberts*, 31 ECAB 1010 (1980).