

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

JOHN P. ORIGER, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
North Judson, IN, Employer**

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**Docket No. 06-926
Issued: July 14, 2006**

Appearances:
John P. Origer, 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 March 6, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' March 8, 2005 merit decision denying his occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a stroke in the performance of duty on May 7, 2003.

FACTUAL HISTORY

On May 28, 2003 appellant, then a 45-year-old mail carrier, filed an occupational disease claim alleging that he sustained a stroke on May 7, 2003 due to stress from incidents and

conditions at work. Appellant alleged that he sustained stress since March 21, 2003 when he was unfairly accused of sexual harassment by a coworker, Leslie Zank.¹

In an accompanying statement, appellant described the claimed stressors at work. He claimed that he was “devastated” when he was advised of the baseless charges of Ms. Zank by his postmaster, John Kreisler, on March 21, 2003. Appellant indicated that he had lived all his life in a small community of 2,000 people and stated that he was concerned about what people would say and think about the charges. He alleged that the employing establishment unnecessarily prolonged its investigation of the sexual harassment claim, thus prolonging his stress due to the unwarranted accusations. Appellant asserted that he had to continue working beside Ms. Zank everyday in very close quarters.²

Medical evidence from the period of appellant’s stroke shows that he had suffered a large right cerebellar infarction. This finding was confirmed by computerized tomography and magnetic resonance imaging testing. The results of echocardiography testing showed a large patent foramen ovale.

In an undated report, received by the Office on June 6, 2003, Dr. Dennis Dalphond, an attending Board-certified family practitioner, stated that diagnostic testing showed that appellant had a large congenital patent foramen ovale which allowed for clot formation with subsequent embolization. He stated:

“The only factor in [appellant’s] life that was new or unusual this spring was that he was dealing with an unusually severe degree of stress that was all work related. In fact, I had seen him twice over the four weeks prior to his stroke for an anxiety disorder that had developed as a result of the extreme pressure that he was under at work. Stress and anxiety can cause, influence and modify the course of many, if not all, medical conditions and the more extreme the stress that more of a factor it becomes. I believe that in [appellant’s] illness there were two factors at play, the PFO [patent foramen ovale] and the severe job-related stress, and that both were required to result in this injury.... The pressure that he was subjected to at work contributed directly and to a great extent to the stroke that he experienced on [May 7, 2003].”

In a statement dated July 12, 2003, appellant further discussed his claimed stressors at work. He provided further details of the meeting on March 21, 2003 when Mr. Kreisler advised him that Ms. Zank had accused him of sexual harassment. Appellant claimed that his interview with postal inspectors on March 24, 2003 regarding the charges was “gut-wrenching.” He claimed that he sustained stress because Mr. Kreisler would not provide him with details of the charges prior to the March 24, 2003 interview. Appellant indicated that the charges which were read to him at the March 24, 2003 interview were “degrading and embarrassing.” He

¹ Appellant stopped work on May 7, 2003. He indicated that he worked closely with Ms. Zank because she was his substitute mail carrier.

² Appellant indicated that he had to work with Ms. Zank for about two hours per day and noted that he refrained from speaking with her but had to write her short notes.

alleged that he sustained stress due to having to deliver a high volume of mail during short periods, often under adverse transportation conditions. Appellant claimed that the fact that there were time differences between certain counties for six months per year caused further stress during the delivery of mail.

In October 2003, the Office referred appellant to Dr. Kevin Kristi, a Board-certified neurologist, for further evaluation of his claimed condition. The Office provided him with a statement of accepted facts which briefly discussed appellant's work duties and the particulars of being advised by Mr. Kreischer on March 21, 2003 regarding the sexual harassment charges and attending an interview on March 24, 2003. Under the heading "Incidents which occurred in the performance of duty" the Office listed "Performing the duties of a rural letter carrier March 21, 2002 until May 7, 2003" and "The interview in March 24, 2003 at 3:30 p.m." Under the heading "Incidents which occurred that are not factors of employment" the Office listed "The investigation into the allegation of improper behavior" and "Feeling of betrayal and loss of face in the community."

In a report dated November 15, 2003, Dr. Kristi provided a description of stressors reported by appellant, including the difficulties of performing his mail delivery job, being accused of sexual harassment by Ms. Zank and having to work in close proximity to Ms. Zank after the charges were made. He discussed the occurrence of the May 7, 2003 stroke and stated:

"The cause for the stroke was assessed by his neurologist, and later cardiologist, to be patent foramen ovale. This is, of course, a congenital heart defect that [appellant] had since his birth. His chances of stroke would not be obviously increased by the effect of stress on this. Even if one assumes that the stress-induced hypertension persistently elevating his blood pressure, one could not find an acceptable mechanism for the patent foramen ovale to cause this stroke. Although [appellant] has no other risk factors for stroke, other than his patent foramen ovale, I have seen a number of these patients who present with spontaneous episodes in their 30s and 40s, and so this event while not a common situation, is not vanishingly rare by any sense of the imagination."

By decision dated January 8, 2004, the Office denied appellant's claim on the grounds that the weight of the medical evidence regarding the cause of his stroke rested with the opinion of Dr. Kristi.³ The Office stated, "It was determined that performing the duties of a rural letter carrier March 21, 2003 until May 7, 2003 and the interview on March 24, 2003 at 3:30 p.m. were factors of employment that occurred in the performance of duty."

Appellant submitted a January 29, 2004 statement in which he took issue with the opinion provided by Dr. Kristi. He requested a hearing before an Office hearing representative but did not appear at the hearing which had been scheduled for September 23, 2004. Appellant submitted an October 13, 2004 statement in which he indicated that attending physicians other than Dr. Dalphond had supported his claim but he did not submit any additional medical evidence.

³ The Office indicated that the opinion of Dr. Dalphond was of limited probative value.

By decision dated and finalized March 8, 2005, the Office hearing representative affirmed the Office's January 8, 2004 decision. The Office hearing representative indicated that the Office properly found that the postmaster advising appellant regarding the sexual harassment charges constituted a compensable employment factor but the medical evidence did not show that the claimed condition arose from any accepted employment factor.

LEGAL PRECEDENT

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's stress-related reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction in force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁴

In cases involving stress-related conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or 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, and which working conditions are not deemed factors of employment and may not be considered.⁵ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted 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.⁶

In determining whether a claimant has discharged his burden of proof and is entitled to compensation benefits, the Office is required by statute and regulation to make findings of fact.⁷ Office procedure further specifies that a final decision of the Office must include findings of fact and provide clear reasoning which allows the claimant to "understand the precise defect of the

⁴ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566; *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Margaret S. Krzycki*, 43 ECAB 496, 501-02 (1992); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁶ *Id.*

⁷ 5 U.S.C. § 8124(a) provides: "The [Office] shall determine and make a finding of facts and make an award for or against payment of compensation." 20 C.F.R. § 10.126 provides in pertinent part that the final decision of the Office "shall contain findings of fact and a statement of reasons."

claim and the kind of evidence which would tend to overcome it.”⁸ These requirements are supported by Board precedent.⁹

ANALYSIS

Appellant alleged that he sustained a stroke on May 7, 2003 due to stress from incidents and conditions at work, including being charged with sexual harassment by Ms. Zank, his substitute mail carrier and performing his mail delivery duties. The Office accepted two compensable employment factors which it characterized as “Performing the duties of a rural letter carrier March 21, 2002 until May 7, 2003” and “The interview in March 24, 2003 at 3:30 p.m.” The Office denied appellant’s claim finding that the weight of medical evidence rested with the opinion of Dr. Kristi, a Board-certified neurologist who served as an Office referral physician.

The Board finds that the Office has not adequately articulated its findings regarding which of appellant’s specific claimed employment factors are accepted and which are not. The Board notes that the Office entirely failed to address several factors which appellant claimed contributed to the occurrence of his stroke on May 7, 2003. For example, appellant claimed that after Ms. Zank charged him with sexual harassment in March 2003 he was forced to work in close quarters with her for about two hours per day. The Office did not address this claimed factor or otherwise explain why this circumstance would not be sufficiently related to appellant’s work duties to constitute an employment factor. The Office also did not address appellant’s claim that the employing establishment unnecessarily prolonged its investigation of the sexual harassment claim, thus prolonging his stress due to the unwarranted accusations. Although investigations are administrative functions which are not generally related to the employment, an employment factor may be found if it is determined that the employing establishment committed error or abuse in the handling of such administrative matters.¹⁰ The Office did not perform an analysis of whether the employing establishment committed error or abuse in the handling of its investigation of the sexual harassment charges against appellant.

In fact, the employing establishment’s assessment of which claimed factors were compensable employment factors and which were not is largely devoid of any rationale. The Office merely stated in the statement of accepted facts provided to Dr. Kristi that the “Incidents which occurred in the performance of duty” were “Performing the duties of a rural letter carrier March 21, 2002 until May 7, 2003” and “The interview in March 24, 2003 at 3:30 p.m.” and that “Incidents which occurred that are not factors of employment” were “The investigation into the allegation of improper behavior” and “Feeling of betrayal and loss of face in the community.” The Office’s January 8, 2004 and March 8, 2005 decisions contained even sparser analyses of the factual elements of appellant’s claim. The Office did not adequately explain how the relevant legal precedent led it to reach its conclusions regarding the accepted employment factors. For example, it did not explain why the March 24, 2003 investigative interview was a

⁸ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4 (July 1997).

⁹ See *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

¹⁰ See *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

compensable employment factor, but the postmaster advising appellant of the sexual harassment charges on March 21, 2003, and other aspects of the investigation, were not considered compensable employment factors.¹¹

As noted above, the Office, as part of its adjudicatory function, must make reasoned 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, and which working conditions are not deemed factors of employment and may not be considered. The Office must also include findings of fact and provide clear reasoning in final decisions which allows the claimant to “understand the precise defect of the claim and the kind of evidence which would tend to overcome it.”¹²

Because the Office analyzed the medical evidence before making adequate fact findings, the Board is unable to determine precisely what claimed occurrences alleged by appellant as causing his stroke can be considered by a physician in rendering an opinion on causal relationship. Therefore, the case must be remanded for the Office, as part of its adjudicatory function, to make detailed findings regarding appellant’s allegations, in conformance with its regulations and Board precedent.¹³ After such development it deems necessary, the Office should issue an appropriate decision regarding appellant’s claim that he sustained an employment-related stroke on May 7, 2003.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant met his burden of proof to establish that he sustained a stroke in the performance of duty on May 7, 2003.

¹¹ The Office hearing representative improperly indicated in her March 8, 2005 decision that the Office had found that the postmaster’s advising of appellant regarding the sexual harassment charges constituted a compensable employment factor.

¹² See *supra* notes 5 through 8 and accompanying text.

¹³ See *Jimmy B. Copeland*, 43 ECAB 339, 344-46 (1991).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' March 8, 2005 decision is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: July 14, 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