

off work until Dr. Robert Weinberg, a Board-certified internist, released him to return on April 4, 2008.

In a January 11, 2008 discharge summary, the attending emergency room physician, Dr. David Thaler, a Board-certified neurologist, diagnosed left basal ganglia stroke and patent foramen ovale. He obtained a history that appellant woke up at 1:00 a.m. for work, had a shower and laid his prayer mat on the floor. Before he knelt down, appellant noticed weakness in his right arm and tightness in his mouth. He continued to pray but found his words not coming out right. Appellant did not speak with anyone else, got dressed and drove himself to work. He stated that he came close to having an accident twice. At work, appellant tried to speak to an inmate but found he could not. He was then brought to the emergency department. Dr. Thaler noted on January 1, 2008 that appellant drove to John F. Kennedy airport and back in the same day and, during the prior week, he drove to New York City and back in the same day. Three weeks ago, appellant flew back from Finland. Dr. Thaler advised that for the prior few days appellant also had posterior heel pain on the right followed by calf pain and tenderness. Appellant had no prior history of deep vein thrombosis (DVT) or pulmonary embolism. Dr. Thaler stated that appellant was admitted for a possible stroke. The results of the physical examination and that computerized tomography scans of the head, brain and neck were reported as normal. The magnetic resonance imaging scan revealed an acute infarct of the left corona radiate and basal ganglia without acute hemorrhage and the transesophageal echocardiogram indicated a patent foramen ovale. Appellant also submitted statements from his coworkers.

In a letter dated February 21, 2008, the Office advised appellant to submit additional factual and medical information to establish his claim. This included a comprehensive medical report from his treating physician, which contained an explanation as to how exposure or incidents in his federal employment contributed to his diagnosed condition.

In a February 25, 2008 statement, appellant indicated that he was on duty reviewing travel documents to transport two detainees from Boston to John F. Kennedy Airport in New York when he had his stroke. He believed that the nature of his work and extensive travel caused or contributed to the stroke. Appellant stated that consecutive travel assignments required him to sit and remain on constant alert for 8 to 16 hours at a time without sleep and that he sat for prolonged periods of time without standing or walking. He developed left foot and heel pain on December 14, 2007, following a 24-hour flight from Finland. Appellant submitted his work schedule beginning with the trip to Finland through the date of the stroke. This included several long trips by car.

In the January 10, 2008 staff admission note, Dr. Thaler reiterated the history of presenting illness and appellant's travel for work by air and car. He stated that appellant's acute lenticulostriate territory infarct on the left occurred at approximately 1:30 a.m. and had completely resolved except for perhaps mild dysfluency in his second language. Dr. Thaler stated appellant's history of recent long car trips and a painful right calf were suggestive of DVT. Copies of appellant's progress notes, diagnostic testing and occupational and physical therapy reports also were received. Doppler studies performed on January 11, 2008 were normal and showed no evidence of DVT in either extremity. Coronary testing showed a patent foramen ovale.

In notes date January 18 through May 2, 2008, Dr. Weinberg monitored appellant's coagulant medications. On March 25, 2008 he advised that appellant could return to work in two weeks with restrictions on road trips of more than two hours' duration. In an April 4, 2008 letter, Dr. Weinberg released appellant to work. He advised that appellant was to avoid road trips of more than two hours' duration and could not travel by air two days in a row. Dr. Weinberg indicated when traveling by air, appellant was to stand and walk a few steps every two hours of the flight. He further stated that appellant may need an endovascular procedure to patch the open foramen ovale in his heart. If not, then appellant was to remain on Coumadin or another blood thinner.

By decision dated May 5, 2008, the Office denied appellant's claim. It accepted that his job as an immigration enforcement agent involved traveling by air and automobile. However, medical evidence was insufficient to establish that appellant's stroke resulted from the accepted employment factors.

On May 27, 2008 appellant requested a review of the written record before an Office hearing representative. In February 13 and July 10, 2008 reports Dr. Thaler noted appellant's status following his discharge on January 11, 2008. In a May 23, 2009 report, Dr. Weinberg stated, "[i]n reviewing [appellant's] condition, it seems very likely that his stroke was caused by a blood clot in the legs, which traveled up to the heart and through his patent ductus arteriosus to the left side of the heart and thence up the carotid artery to the brain. His work required him to make long overseas flights to Europe and Africa and back in two to three days. In the two[-]month period prior to his stroke, [appellant] flew to Europe and back and the very next day went back to Europe. This kind of long, confined flight is well known to cause blood clots in the legs and is very likely to be what set off the above chain of events leading to his stroke."

In an October 21, 2008 decision, an Office hearing representative affirmed the May 5, 2008 decision, finding that the medical evidence failed to establish that appellant's stroke was causally related to his accepted employment factors.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim, including the fact that an injury was sustained in the performance of duty as alleged² and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the

¹ 5 U.S.C. §§ 8101-8193.

² *Joseph W. Kripp*, 55 ECAB 121 (2003); *see also Leon Thomas*, 52 ECAB 202, 203 (2001). When an employee claims that he sustained injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury. *See also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (2002) (Occupational disease or Illness and Traumatic injury defined).

³ *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶ The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.⁷

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁸ An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.⁹

ANALYSIS

Appellant alleged that his work duties as an immigration enforcement agent involved extensive travel assignments by air and automobile which caused or contributed to his stroke on January 10, 2008. The Office found, and the record supports, that appellant's position involved traveling by air and automobile. However, the medical evidence of record fails to establish that the stroke he sustained on January 10, 2008 was caused or aggravated by the accepted travel or work duties.

In a January 10, 2008 report, Dr. Thaler stated appellant's history of recent long car trips and a painful right calf were suggestive of DVT. However, he did not adequately explain how this condition was caused by appellant's employment. Moreover, Doppler examinations of both lower extremities showed no evidence of DVT. The medical record is also lacking any

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Id.* For a definition of the term injury, see 20 C.F.R. § 10.5(a)(14).

⁷ *Id.*

⁸ *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁹ *Phillip L. Barnes*, 55 ECAB 426 (2004).

explanation of how any DVT, if present, caused or contributed to appellant's left basal ganglia stroke or other condition. Dr. Thaler provided no other opinion on the cause of appellant's diagnosed conditions. The Board has held that medical evidence which does not offer any opinion regarding the cause of an employee's conditions is of limited probative value on the issue of causal relationship.¹⁰

In a May 23, 2008 letter, Dr. Weinberg stated that it was very likely that appellant's stroke was caused by a blood clot to the legs which traveled up through the patent ductus arteriosus to the left side of the heart and up the carotid artery to the brain. He opined that appellant's long overseas flights to Europe and Africa and back in two to three days was very likely to be what set off the chain of events leading to his stroke. Dr. Weinberg stated that long, confined flights were well known to cause blood clots in the legs. His hypothesis was not expressed to a reasonable degree of medical certainty, but rather, is equivocal and speculative in nature. Dr. Weinberg did not sufficiently explain the causal relationship between appellant's diagnosed conditions and factors of his employment. His opinion was not expressed to a reasonable degree of medical certainty, but is speculative.¹¹ Moreover, Dr. Weinberg has not provided a rationalized explanation as to how appellant's employment activities caused or contributed to his diagnosed conditions. While he generally stated long flights could cause blood clots in the legs which could then travel up the body to eventually cause a stroke, he failed to explain how, in this specific case, conditions of appellant's employment resulted in his diagnosed conditions.¹² Therefore, Dr. Weinberg's report is of diminished probative value.

The Board notes that the remaining medical evidence of record does not contain an opinion as to the cause of appellant's diagnosed conditions. Accordingly, it is insufficient to establish appellant's claim.

There is no probative, rationalized medical evidence explaining how appellant's diagnosed stroke or related conditions were caused or aggravated by his employment. Thus, appellant has not met his burden of proof in establishing that his diagnosed conditions were causally related to his federal employment.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained an injury while in the performance of duty.

¹⁰ *Willie M. Miller*, 53 ECAB 697 (2002). See also *Michael E. Smith*, 50 ECAB 313 (1999).

¹¹ *D.D.*, 57 ECAB 734 (2006) (medical opinions that are speculative or equivocal in character are of diminished probative value).

¹² See *S.E.*, 60 ECAB ____ (Docket No. 08-2214, issued May 6, 2009) (where the Board found that a physician's opinion was speculative and provided insufficient medical rationale to support that appellant's DVT was due to work-related air travel; the Board noted that, while the physician referenced a clear link between air travel and DVT in medical literature, he did not explain the process by which appellant's travel would have caused or aggravated DVT, nor did he explain how the referenced medical literature applied to appellant's situation).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs decision dated October 21, 2008 is affirmed.

Issued: December 17, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board