

not have jurisdiction to review the Office's August 7, 1997 merit decision.¹ In the second appeal, the Board found that the Office properly determined that appellant's June 11, 2000 request for reconsideration was untimely filed and did not establish clear evidence of error.² In the third appeal, the Board found that the Office's November 25, 2005 decision properly denied appellant's February 18, 2005 request for reconsideration decision as untimely. However, as the Office did not address his argument that he had timely filed a hearing request on August 21, 1997, the Board remanded the case to the Office for further review. It was directed to conduct a merit review if it denied appellant's request for a hearing.³ In the fourth appeal, the Board affirmed the Office's November 20, 2006 decision, which denied appellant's request for a hearing. However, the Board set aside a September 29, 2006 merit decision as the Office did not address appellant's contention that he timely filed a request for a hearing on August 21, 1997. The Board remanded the case to the Office to address his evidence and argument.⁴ The findings of fact and conclusions of law from the prior decisions are hereby incorporated by reference.

The record reflects that on February 19, 1997 appellant, then a 49-year-old mail handler, filed a claim alleging that the January 13, 1997 cerebral vascular accident (CVA) he sustained at work was caused or aggravated by his employment. The work factors he identified were "excessive work habits." At a telephonic hearing was held on November 8, 2007, appellant testified that on January 13, 1997 he was pulling all-purpose containers with his mule to make room for incoming business mail when the stroke occurred. He testified that, when he showed up for work, the worksite was messy from the previous tour. Appellant indicated that two trucks loaded with mail were expected and there was no room on the east dock. He became angry which caused stress and contributed to his stroke. Prior to his stroke, appellant worked 10 to 12 hours a day, six to seven times a week. He contended that he was not paid for all the time he worked, which was an additional stressor contributing to his stroke. Appellant stated that he was cleared to return to work three months after the stroke, but he did not return to work until January 2, 1998. His wife testified that Dr. Jody K. Meek, a Board-certified psychiatrist, advised that the stroke was work related. She contended that appellant was mistreated upon returning to work.

In a January 9, 2007 report, Dr. M. Shahidul Islam, a Board-certified psychiatrist, diagnosed post status stroke and anxiety disorder. Appellant reported to the physician that he was under serious stress during the 1997 holiday season. He had no help and became extremely angry due to the work overload, which led to a stroke, hospitalization and treatment for the stroke. Dr. Islam noted that appellant had no history of high blood pressure. He stated that people can experience a stroke or heart attack due to serious stress. Dr. Islam stated that the mind and body always work together and, when the mind is under too much pressure, the body can react in a different outburst. He opined that it was possible that appellant may have had a

¹ Docket No. 99-0602 (issued May 11, 2000).

² Docket No. 02-695 (issued June 18, 2003).

³ Docket No. 06-767 (issued September 11, 2006).

⁴ Docket No. 07-405 (issued June 18, 2007). On February 28, 2007 the Board issued an Order Dismissing Appeal in Docket No. 07-870. The Board noted two appeals were docketed for one Office file number and allowed Docket No. 07-405 to proceed. Docket No. 07-870 (issued February 28, 2007).

stroke due to his work situation. In a July 9, 2007 report, Dr. Islam advised that stress can raise the blood pressure to a point that can rupture the blood vessels and cause a stroke. He opined that appellant was under stress during the January 1997 period, working by himself and becoming upset about his work situation, which may have caused his blood pressure to rise and result in a stroke. Dr. Islam stated that it was well documented that people can sustain a heart attack or stroke due to stress along with other physical conditions.

Appellant also submitted copies of speech-language pathologists reports, copies of medical bills from 1997; a Shreveport Fire Department Emergency Medical Services Incident Report; and other medical reports and diagnostic studies pertaining to his hospitalization and treatment of his CVA. In a February 7, 1997 report, Dr. Meek diagnosed delirium, Wernicke's aphasia and social change secondary to CVA.

By decision dated January 3, 2008, an Office hearing representative affirmed the denial of appellant's claim, finding there was no evidence that his January 13, 1997 stroke was caused by a compensable factor of employment.

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 employment but nevertheless does not come within the coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act.⁵ On the other hand, the disability is not covered where it results from such factors as an employee's fear of reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.⁶

When working conditions 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 work factors of employment, which may be considered by a physician when providing an opinion on causal relationship and which are not deemed compensable factors of employment and may not be considered.⁷ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.⁸ As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.⁹ Where the claimant alleges compensable factors of employment, he must substantiate

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *J.C.*, 58 ECAB ____ (Docket No. 07-530, issued July 9, 2007); *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *M.D.*, 59 ECAB ____ (Docket No. 07-908, issued November 19, 2007); *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁸ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁹ See *Charles E. McAndrews*, 55 ECAB 711 (2004).

such allegations with probative and reliable evidence.¹⁰ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.¹¹

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹² Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.¹³ 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 compensable employment factors identified by the claimant.¹⁴

ANALYSIS

The evidence establishes that appellant sustained a CVA or stroke while at work on January 13, 1997. The issue is whether his stroke was caused or contributed to by his federal employment. Appellant noted that when he arrived at work that day he found that the previous tour had left the East Dock messy with no room for the incoming mail expected from two trucks. He pulled all purpose containers to make room for incoming business mail at the time of the stroke. The Board has held that conditions related to stress from situations in which an employee is performing his regular or specially assigned duties are compensable.¹⁵ The evidence establishes that appellant was performing his regular assigned work duties at the time of the stroke. The employing establishment did not dispute appellant's description of the work he was performing and there is no contrary evidence of record. Under *Cutler*,¹⁶ appellant has established a compensable work factor. However, appellant must also establish a causal connection between this compensable factor of employment and his diagnosed medical condition.¹⁷

Appellant submitted two medical reports from Dr. Islam, who stated that it was possible that he may have developed a stroke due to the situation at work on January 13, 1997. However, Dr. Islam's reports are insufficient to establish appellant's claim. The Board has held that medical opinions which are speculative or equivocal in character are of diminished probative

¹⁰ *Joel Parker, Sr.*, 43 ECAB 220 (1991).

¹¹ *See Charles D. Edwards*, 55 ECAB 258 (2004).

¹² *D.E.*, 58 ECAB ____ (Docket No. 07-27, issued April 6, 2007).

¹³ *D.D.*, 57 ECAB 734 (2006).

¹⁴ *Gary J. Watling*, 52 ECAB 278 (2001); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

¹⁵ *Beverly R. Jones*, 55 ECAB 411 (2004).

¹⁶ *Lillian Cutler*, *supra* note 6.

¹⁷ *Doretha M. Belnavis*, 57 ECAB 311 (2006); *Beverly R. Jones*, *supra* note 15.

value.¹⁸ Dr. Islam's opinion is speculative regarding causal relation. On January 9, 2007 report Dr. Islam relied on appellant's account of his history and opined it was "possible" appellant may have sustained a stroke due his work situation. On July 9, 2007 Dr. Islam opined that appellant was under stress during the period January 1997, noting and that he was working by himself and became upset which "may have" raised his blood pressure and resulted in a stroke. He noted that people can have a stroke or heart attack due to serious stress and that, when the mind is under too much pressure, the body can react in a different outburst. The Board finds that Dr. Islam opinion is not well rationalized in explaining how appellant's work duties contributed to his stroke. Dr. Islam's opinion is not supported by a complete factual and medical history or rationale explaining the nature of the relationship between the diagnosed condition and the established factors of employment. He merely noted that appellant was under stress during the holiday season in 1997 and became upset. Dr. Islam did not provide a detailed history of the work in which appellant was engaged. Lacking a detailed awareness of appellant's work factors, Dr. Islam failed to describe with any specificity how the work appellant was doing caused or aggravated his stroke. A mere conclusion, without medical rationale explaining why a physician believes that a claimant's accepted work factors resulted in a diagnosed condition, is not sufficient to meet appellant's burden of proof. The medical evidence must include a complete factual history and medical rationale explaining how the physician reached his conclusion.¹⁹ Dr. Islam's reports are insufficient to establish causal relation.

While Dr. Meek diagnosed conditions secondary to the CVA, she failed to provide medical rationale explaining the causal relationship between appellant's diagnosed condition and the accepted employment factor.²⁰ The Board finds that Dr. Meek's report is also insufficient to establish appellant's claim.

The other medical evidence of record, including diagnostic studies provide no opinion on the issue of causal relationship and are insufficient to establish appellant's claim. The reports from a speech therapist are of no probative value as a speech therapist is not a physician under the Act.²¹

The Board finds that appellant has not submitted sufficient medical evidence to establish that his stroke was 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.

¹⁸ *L.R. (E.R.)*, 58 ECAB ___ (Docket No. 06-1942, issued February 20, 2007); *Kathy A. Kelley*, 55 ECAB 206 (2004).

¹⁹ *Beverly A. Spencer*, 55 ECAB 501 (2004).

²⁰ *Caroline Thomas*, 51 ECAB 451 (2000).

²¹ *See* 5 U.S.C. § 8101(2); *Paul Foster*, 56 ECAB 208 (2004); *Thomas R. Horsfall*, 48 ECAB 180 (1996).

ORDER

IT IS HEREBY ORDERED THAT the January 3, 2008 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: January 2, 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