United States Department of Labor
Employees' Compensation Appeals Board

M.T., Appellant	)	
and	)	**Docket No. 09-208**
	)	**Issued: November 9, 2009**
DEPARTMENT OF THE ARMY, ARMY RESERVE, Fort Buchanan, PR, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 27, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated September 25, 2008 finding that she had not established an injury due to factors of her federal employment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof in establishing that her stroke was due to factors of her federal employment.

FACTUAL HISTORY

On February 11, 2008 appellant, then a 40-year-old human resources specialist, filed an occupational disease claim alleging that she experienced a stroke "trying to get all work completed before scheduled knee surgery on January 25, 2008." Dr. Luis Gonzalez Martinez, a physician, completed reports, which were written in a combination of both Spanish and English and diagnosed cerebrovascular accident with left hemiparesis.

In a letter dated February 19, 2008, the Office requested additional factual and medical evidence from appellant, she submitted a magnetic resonance imaging scan dated January 25, 2008, which demonstrated a lacunar infarct in the right basal ganglia region and left cerebellar hemisphere. Appellant also submitted additional medical reports some of which were written in Spanish and some of which were in English regarding her ongoing condition.

Appellant amended her claim on February 14, 2008 and alleged that her stroke was the result of a traumatic injury on January 24, 2008. The Office informed her by telephone on March 3, 2008 that she should submit all medical documentation in English. Appellant submitted a narrative statement and attributed her condition to an excessive amount of stress in the office. She stated that her position was eliminated, but that a reduction-in-force was not yet in place. Appellant noted that there were frequent changes in the chain of command and that she acted as a mediator due to difficult relationship between the Family Readiness Programs Director and contractors assigned to her office. She stated on January 24, 2008 that she had an argument with one of the contractors. Appellant noted that she was scheduled to attend an Equal Employment Opportunity (EEO) Commission hearing regarding a claim against a former supervisor on January 24, 2008 and that she received notification that her witnesses would not be able to attend. She stated that she was occasionally required to work overtime and travel twice a year. Appellant noted that she had to prepare weekly reports and that she frequently dealt with retirees who failed to understand the forms and that this resulted in delay in the process. She noted on January 24, 2008 her left side became numb including her face, eye, mouth, arm and leg was transported by ambulance to the hospital. Appellant noted that she had a history of cigarette smoking, but no heart conditions.

In a report received March 17, 2008, Dr Victor M. Gordo, a Board-certified family practitioner, noted appellant's history and diagnosed cerebrovascular accident with left hemiparesis. He stated, "In my professional opinion the extreme level of stress, tense environment and changes of temperament experienced by [appellant] on her federal employment that morning caused her blood pressure to suddenly rise directly causing the cerebrovascular accident."

Appellant noted that she was diagnosed with high blood pressure in 2006 and controlled this condition with medications, which were adjusted in 2006 and 2007. She noted on January 24, 2008 that she had an argument with a coworker and organized some documentation for her EEO hearing. Appellant stated that she was under a lot of stress. She stated in September 2007, that she worked overtime for one week.

The employing establishment responded on March 5, 2008 and stated that appellant's position had been eliminated, that there was "severe turmoil" in her office involving two other civilians, but that her workload had not been affected by any staffing shortages or extra demands.

By decision dated June 11, 2008, the Office denied appellant's claim finding that there was not sufficient factual evidence to support her occupational disease claim. Appellant requested a review of the written record on June 25, 2008. She submitted notice that a prehearing conference in her EEO complaint was scheduled for January 24, 2008. Appellant submitted copies of an e-mail dated January 24, 2008, which contained statements written in a combination of both Spanish and English. The e-mail does not contain a translation of the

Spanish portion. According to appellant this e-mail continued the alleged disagreement with a coworker, which initially began verbally. She asserted that a coworker, Limary Cepeda, accused appellant of closing the door and leaving her locked outside the building. Ms. Cepeda's initial statements are written in Spanish. Appellant's response is in English and states that she did not know who closed the door, and recommended that Ms. Cepeda coordinate all actions with Sonia Roca. Ms. Cepeda responded by stating, "Thank you for your concern." Appellant replied, "I usually try to help all my coworkers, but today is my last day prior to my surgery and I am busy, busy, busy. Coordinate with Sonia M. Roca and she approves this I can call DPW when I return. Good Luck…." Ms. Cepeda then wished appellant good luck with her surgery.

The employing establishment reviewed appellant's statements and asserted that the untranslated e-mails were cordial and professional with no animosity or strong words. The employing establishment also noted that appellant was offered relocation after her position was eliminated, but refused. It confirmed that appellant worked 27 hours of overtime in one week in September 2007.

By decision dated September 25, 2008, the hearing representative affirmed the Office's June 11, 2008 decision and found that appellant had established a compensable factor of employment in regarding to working 27 hours of overtime in September 2007. However, the hearing representative found that the medical evidence submitted did not establish a causal relationship between appellant's accepted employment factor and her diagnosed condition.

The hearing representative reviewed the January 24, 2008 e-mail and noted the hand written statement in English on the e-mail that the argument started verbally and then resulted in the contents of the e-mail. The hearing representative stated, "[T]he e-mail did not seen argumentative or confrontational. One sentence from appellant indicated that she had no idea who closed the door but it was [not] her and a second sentence mentioned that she was very busy. The coworker's last response was to wish her good luck on her surgery."

LEGAL PRECEDENT

An occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift.[1] To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of a disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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.[2]

[1] 20 C.F.R. § 10.5(q).

[2] *Solomon Polen*, 51 ECAB 341, 343-44 (2000).

Workers' compensation law does not apply to each and every injury or illness that is somehow related 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 emotional reaction to her regular of specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[3] 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 frustration from not being permitted to work in a particular environment or to hold a particular position.[4]

ANALYSIS

The Board finds that this case is not in posture for decision. Appellant submitted factual and medical evidence, which contains both English and Spanish within the same documents. The hearing representative allegedly reviewed both the factual and medical evidence in reaching the conclusion that appellant failed to meet her burden of proof in establishing that her stroke was due to factors of her federal employment. However, the record does not contain translations of the medical or factual evidence, specifically, the e-mail with Ms. Cepeda. This is especially pertinent as the hearing representative appears to rely on the employing establishment's view of the e-mail exchange between appellant and Ms. Cepeda. Appellant described the e-mail as an argument and the employing establishment characterized as "professional." There is no English translation of the Spanish portion of the e-mails in the record. For the Office and the Board to consider all evidence of record, an accurate translation of this e-mail, one of appellant's alleged employment factors, and of all medical reports are needed. As the Office did not obtain a translation of all the Spanish factual and medical evidence included in the record, the case will be remanded to the Office for this purpose.[5]

CONCLUSION

The Board finds that the case must be remanded for translation of all the factual and medical evidence into English and following any necessary further development, the issuance of an appropriate decision.

[3] 5 U.S.C. §§ 8101-8193.

[4] *See Thomas D. McEuen,* 41 ECAB 387, 390-91 (1990), *reaff'd on recon.,* 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[5] *Ana D. Pizarro*, 54 ECAB 430, 434 (2003) (the Board remanded the case in order to seek an accurate translation); *see Armando Colon*, 41 ECAB 563, 566 (1990) (the Board found that the Office abused its discretion in denying appellant's request for reconsideration on the grounds that the evidence submitted lacked probative value because it was written in a foreign language). *A.G.*, Docket No. 08-206 (issued May 12, 2008); *Cf. Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

ORDER

IT IS HEREBY ORDERED THAT the September 25, 2008 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision of the Board.

Issued: November 9, 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