

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

P.D., Appellant

and

**BUREAU OF PRISONS, TERMINAL ISLAND
CORRECTIONAL INSTITUTE, San Diego, CA,
Employer**

)
)
)
)
)
)
)
)
)
)

**Docket No. 11-1804
Issued: June 6, 2012**

Appearances:
Steven E. Brown, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 22, 2011 appellant, through her attorney, filed a timely appeal from decisions of the Office of Workers' Compensation Programs' (OWCP) dated January 27 and June 15, 2011. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 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 met her burden of proof to establish that she sustained a cerebral vascular stroke in the performance of duty.

FACTUAL HISTORY

Appellant, a 40-year-old correctional treatment specialist, filed a Form CA-1 traumatic injury claim on December 14, 2009, alleging that she sustained a cerebral vascular accident

¹ 5 U.S.C. § 8101 *et seq.*

(stroke) on November 22, 2009. She indicated that on the day of the incident she last recalled that she was in the process of completing her daily work at an office copying machine. A coworker witnessed the incident and indicated in a January 16, 2010 e-mail that, one day in November 2009, at approximately 3:00 p.m., he saw her sitting on the floor and attempted to keep her from hitting her head. Appellant's supervisor stated in a January 24, 2010 memorandum that, on November 22, 2009, at approximately 3:05 p.m., he observed her lying on the floor, at which time she appeared to be having a stroke.

By decision dated February 9, 2010, OWCP denied the claim, finding that she failed to establish fact of injury.

In a report dated January 29, 2010, received by OWCP on February 9, 2010, Dr. Izabella Soo Isaac, a specialist in neurology, stated that appellant had a stroke which caused her to have severe left-sided weakness. She opined that it was extremely unusual for a woman of appellant's age to have a stroke in the absence of risk factors. Dr. Isaac advised that the only risk factor identified was her hyperlipidemia condition, which had been under control. Appellant related that she was under extreme work-related stress and had been experiencing severe, stress-induced migraine headaches prior to her stroke. Dr. Isaac asserted that it was well documented that stress was a trigger for migraines. She believed that stress played a role in the etiology of appellant's stroke.

In an emergency report dated November 22, 2009, received by OWCP on February 12, 2010, an emergency medical technician stated that he and his team responded to a medical emergency at the employing establishment on November 22, 2009 and found appellant lying on the office floor. He indicated that, upon arrival, she had some salivation around her mouth, was incoherent and was unable to get up from the floor. Appellant was placed on a stretcher and transported to the urgent care room at the hospital where she was evaluated and treated.

On March 1, 2010 appellant requested an oral hearing, which was held on June 21, 2010.

In a report dated February 8, 2010, Dr. Donna L. Ehlers, a Board-certified psychiatrist, diagnosed major depression, recurrent moderate. She related that appellant was exposed to severe stressors at the workplace which began approximately two years after she started working at her usual job. Appellant experienced severe pressure at her job, which she stated was exacerbated by constant harassment from her supervisor. Dr. Ehlers stated that appellant's cerebral vascular accident in November 2009 could have been the culmination of eight years of accumulated workplace stress. She noted that there were no other known risk factors.

At the hearing, appellant's attorney advised that her position description indicated that she was expected to perform law enforcement functions and was therefore subject to physical hazards and dangerous conditions such as assaults and hostage situations. The job description stated that, due to the potential for uncontrollable situations, the number of risks for hazardous and stressful working conditions was very high; daily stress and exposure to potentially dangerous situations such as physical attacks were an inherent part of the position. Counsel stated that appellant's recent performance review indicated that she also served as unit manager on several occasions, which required her to assist with additional administrative tasks. He advised that appellant regularly dealt with disappointed, angry, and potentially violent inmates

while serving in this position. In her testimony, appellant corroborated that she had to deal with these stressors and responsibilities. Counsel stated that Dr. Ehlers issued a report dated May 24, 2010 in which she diagnosed major depression and opined that she was 100 percent positive that appellant's work-induced stress over the previous six years contributed significantly to the onset of her major depression in 2003 and subsequently to her cerebral vascular stroke in November 2009.

By decision dated September 16, 2010, an OWCP hearing representative found that appellant presented sufficient evidence to establish that she experienced the claimed work factors as alleged and identified the work exposure and work events she believed contributed to her November 22, 2009 cerebral vascular stroke.² He stated that the accepted work duties included her regular work, which involved dealing with inmates, performing additional work activities beyond or outside of her regular work assignments and a requirement that work be completed within certain time frames caused her stress. An Office hearing representative found, however, that the physicians of record did not provide an explanation of how the identified stressors triggered or contributed to appellant's stroke and that therefore there was insufficient medical evidence to establish that the stroke was causally related to the identified work factors.

In her May 24, 2010 report, received by OWCP on November 2, 2010, Dr. Ehlers stated that she had been treating appellant for complaints of severe anxiety and depression related to severe work health issues. She related that appellant was experiencing stress, criticism and pressure from her supervisors and diagnosed severe major depression due to her symptoms of depression, anxiety, insomnia, decreased psychomotor activity, decreased concentration and attention span, negative thoughts and feeling of being overwhelmed. Dr. Ehlers advised that she was familiar with appellant's job duties and responsibilities as a correction treatment specialist, which required her to interact with potentially dangerous criminals and opined that the stress during the six years she treated her contributed to the onset of her November 2009 cerebral vascular stroke. She opined that she was "100 percent positive" that appellant's work conditions over the previous six years she treated her contributed significantly to the onset of her major depression in 2003 and subsequently to her November 2009 cerebral vascular accident. Dr. Ehlers explained that there was a direct correlation between stress and depression and between stress and hypertension, which was one of the greatest risk factors to the onset of a cerebral vascular accident. She stated that appellant had no other risk factors such as smoking or obesity and was much younger than most people who experience a stroke.

In an October 25, 2010 report, received by OWCP on November 2, 2010, Dr. Ehlers stated that it was a well known and accepted medical fact that stress contributes to a stroke. She advised that the body's sympathetic nervous system reacts to mental or emotional stress by increasing blood pressure, heart rate and respiration, which in turn increases the risk of stroke. Dr. Ehlers opined that, based on her review of the medical records and her treatment of appellant, this was precisely what happened to her. She asserted that the emotional stress caused by her job duties, including dealing with inmates, the amount of work she had to complete within

² The hearing representative stated in a footnote that, although the claim was initially filed as a traumatic injury, it would be adjudicated as an occupational disease claim because the claimed condition developed over a period of time. See 20 C.F.R. § 10.5(ee), (q).

various time frames and doing work beyond her regular work assignments, caused her stress. This in turn increased her blood pressure and heart rate, which contributed to her stroke.

By decision dated January 27, 2011, OWCP denied modification of the January 7, 2011 decision.

By letter dated January 31, 2011, appellant, through counsel, requested reconsideration.

By decision dated June 15, 2011, OWCP denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require it to review its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his claim by the weight of the reliable, probative and substantial evidence³ including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.⁴ In an occupational disease claim, appellant's burden requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁶ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the specified employment factors or incident.⁷ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.⁸ The mere fact that work activities may produce symptoms revelatory of an

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁴ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989); *M.M.*, Docket No. 08-1510 (issued November 25, 2010).

⁵ *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000); *D.U.*, Docket No. 10-144, issued July 27, 2010).

⁶ *D.I.*, 59 ECAB 158 (2007); *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *W.D.*, Docket No. 09-658 (issued October 22, 2009).

⁷ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *B.B.*, 59 ECAB 234 (2007); *D.S.*, Docket No. 09-860 (issued November 2, 2009).

underlying condition does not raise an inference of an employment relation. Such a relationship must be shown by rationalized medical evidence of a causal relation based upon a specific and accurate history of employment conditions which are alleged to have caused or exacerbated a disabling condition.⁹

ANALYSIS

The Board finds that this case is not in posture for decision. Further development of the medical evidence is warranted.

In the instant case, it is not contested that appellant sustained a cerebral vascular stroke in the performance of duty on November 22, 2009. The issue is whether appellant submitted medical evidence sufficient to establish that the stroke was causally related to the identified work factors. In his appeal to the Board, appellant's counsel contends that the May 24 and October 25, 2010 reports from Dr. Ehlers were sufficiently probative, thorough and detailed to establish that her accepted work factors contributed to her stroke. In her May 24, 2010 report, Dr. Ehlers stated that she had been treating appellant for six years, during which she became thoroughly familiar with appellant's job duties as a correction treatment specialist; these duties required her to interact with potentially dangerous criminals and caused her severe stress. She opined, based on her six years of treating appellant, that she was "100 percent positive" that her work conditions during this period contributed significantly to the onset of her major depression in 2003 and subsequently to her November 2009 stroke. Dr. Ehlers stated in her October 25, 2010 report that it was a well known and accepted medical fact that stress contributes to a stroke. She explained that the body's sympathetic nervous system reacts to mental or emotional stress by increasing blood pressure, heart rate and respiration, which in turn increases the risk of stroke; this scenario accurately described what occurred with appellant. Dr. Ehlers opined that the emotional stress caused by her job duties, including dealing with inmates, the amount of work she had to complete within deadlines and doing work which exceeded her regular work assignments caused her stress, which increased her blood pressure and heart rate and contributed to her stroke.

The Board finds that Dr. Ehlers' May 24 and October 25, 2010 reports are generally supportive of appellant's claim. Although these reports are not sufficiently rationalized to establish that she sustained a cerebral vascular stroke while in the performance of her duties, the Board finds that they are sufficiently supportive of her claim that further development of the evidence is warranted.¹⁰

Proceedings under FECA are not adversarial in nature nor is OWCP a disinterested arbiter.¹¹ While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.¹² The Board

⁹ See *R.H.*, *supra* note 5.

¹⁰ *John J. Carlone*, 41 ECAB 354 (1989); see also *Cheryl A. Monnell*, 40 ECAB 545 (1989); *Bobby W. Hornbuckle*, 38 ECAB 626 (1987); *Horace Langhorne*, 29 ECAB 820 (1978).

¹¹ *Phillip L. Barnes*, 55 ECAB 426 (2004).

¹² *Donald R. Gervasi*, 57 ECAB 281 (2005); *William B. Webb*, 56 ECAB 156 (2004).

will set aside OWCP's January 27, 2011 decision and remand the case for further development of the medical evidence. OWCP shall prepare a statement of accepted facts, following such further development of the case record as it deems necessary, it should issue a *de novo* decision.¹³

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the January 27, 2011 decision of the Office of Workers' Compensation Programs be set aside and remanded for further action consistent with this opinion.

Issued: June 6, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

¹³ In light of the Board's decision herein to set aside and remand OWCP's January 27, 2011 merit decision for further development, the June 15, 2011 nonmerit decision is rendered moot and need not be considered.