



## **FACTUAL HISTORY**

OWCP accepted that on January 27, 1977 appellant, then a 34-year-old postal clerk, sustained a traumatic nervous reaction as a result of being held up by a gunman. He stopped work on January 28, 1977 and returned on March 14, 1977. The record indicates that his claim was closed and placed in the Federal Record Center.

In a letter received on February 19, 2008, appellant stated that in 1997 he had a massive stroke that left him blind and paralyzed on his right side. He was confined to a wheelchair. After rehabilitation for several years he recently regained his speech and brain functions. Appellant attributed his stroke and his present condition as caused by two previously filed employment injuries and requested that his files be reopened.<sup>3</sup>

In a November 20, 2000 note, Maija G. Paegle, a visual impairment services team coordinator, reported that appellant was legally blind and that his blindness was permanent and irreversible.

Appellant informed OWCP by various telephone communications that he was paralyzed and blind. He alleged that his current condition was consequential to the injuries he sustained in 1977. OWCP advised him to submit a recurrence of disability claim in writing and medical evidence to establish that his current condition was related to his 1977 accepted injury.

By letter dated August 22, 2011, appellant, through his representative, stated that he suffered a stroke and requested that OWCP find out if his present condition was related to his accepted January 1977 employment injury.

On September 13, 2011 OWCP advised appellant that the evidence of record was insufficient to establish that he suffered a stroke in 1997 as a result of his accepted injury. It requested additional updated medical evidence to establish causal relation.

In a January 28, 1977 handwritten hospital record, an unknown provider related that appellant was nervous, upset and unable to sleep after an upsetting experience at work.

In a January 29, 1977 request for examination and treatment (Form CA-16), Joseph Alfano, appellant's supervisor, noted that appellant worked as a clerk at the employing establishment and authorized medical treatment from Dr. Fred Silvers, a Board-certified internist. The description of injury related that on January 27, 1977 appellant was working at a desk when a Federal Bureau of Investigation (FBI) agent stated "FBI" and pointed a gun at appellant. Appellant became nervous and upset and was unable to sleep.

In February 3, 1977 attending physician's and duty status reports, Dr. Silvers, stated that appellant suffered a nervous reaction after being held at gun point. He related that on January 27, 1977 appellant was working at a desk when an FBI agent stated "FBI" and pointed a gun at him. Appellant became nervous, upset and unable to sleep. Dr. Silvers checked a box

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<sup>3</sup> Appellant listed the file numbers as File No. xxxxxx619 and File No. xxxxxx097. His case was combined under the master claim File No. xxxxxx619.

marked “yes” that appellant’s condition was caused or aggravated by the described employment activity. He reported that appellant was disabled from January 27 to February 14, 1977.

In a July 9, 1997 report, Dr. Rossella Cavaliere, a Board-certified neurologist, examined appellant for a post status left thalamic bleed extending to ventricles status post blood pressure (BP) shunt placement on April 6, 1997. She noted residual right sided weakness, left gaze preference and expressive aphasia. A chest x-ray revealed pneumonia. Upon examination, Dr. Cavaliere observed pupils sluggish reaction to light, right homonymous hemianopsia and probably a left inferior quadrantanopsia. She also found right hemiplegia and decreased sensory on the affected side. Dr. Cavaliere reported that appellant had an abnormal electrocardiogram (EKG) and that a May 23, 1997 computerized tomography (CT) scan showed a left thalamic infarct in the right parietal with decreased absorption around the shunt. She opined that he was permanently disabled and unable to perform his job any longer.

On November 17, 2011 OWCP referred the medical record to a district medical adviser along with a statement of accepted facts to determine whether his stroke was causally related to his accepted work injury. In a November 21, 2011 report, Dr. Andrew A. Morola reviewed the statement of accepted facts and medical records. He noted that on January 27, 1977 appellant suffered a traumatic injury when he was held by a gunman in the performance of duty. OWCP accepted the claim for traumatic nervous reaction. Appellant now requested expansion of his claim to include a consequential stroke injury suffered in 1997. Dr. Morola reported that on April 6, 1997 appellant had a left thalamic bleed extending into the ventricles after BP shunt placement. He experienced residual right sided weakness, left gaze preference and expressive aphasia. Dr. Morola opined that the stroke or specifically the thalamic bleed was a consequence of the surgical procedure and not related to a psychiatric disorder such as a traumatic nervous reaction. The medical adviser concluded that there was no causal relationship between appellant’s traumatic nervous reaction and thalamic bleed as a consequence of the shunt placement.

In a decision dated December 13, 2011, OWCP denied appellant’s claim finding the medical evidence insufficient to establish that he suffered a stroke in 1997 as a result of his accepted January 27, 1977 employment injury.

### **LEGAL PRECEDENT**

It is an accepted principle of workers’ compensation law that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent, intervening cause attributable to the employee’s own intentional conduct.<sup>4</sup> The Board has held that the subsequent progression of an employment-related condition “remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause.”<sup>5</sup> If a member weakened by an employment injury contributes to a later fall or other injury, the subsequent injury will be compensable as a consequential injury, if the

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<sup>4</sup> *Clement Jay After Buffalo*, 45 ECAB 707, 715 (1994); *John R. Knox*, 42 ECAB 193, 196 (1990).

<sup>5</sup> *Raymond A. Nester*, 50 ECAB 173, 175 (1998); *Robert W. Meeson*, 44 ECAB 834, 839 (1993).

further medical complication flows from the compensable injury, *i.e.*, “so long as it is clear that the real operative factor is the progression of the compensable injury, with an exertion that in itself would not be unreasonable in the circumstances.”<sup>6</sup>

A claimant bears the burden of proof to establish a claim for consequential injury. As part of this burden, he must present rationalized medical opinion evidence, based on a complete medical and factual background, establishing causal relationship.<sup>7</sup> Rationalized medical opinion evidence is medical evidence, with stated reasons of a physician, on whether there is a causal relationship between the employee’s diagnosed condition and the specified employment factors or incident.<sup>8</sup> 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.<sup>9</sup>

### ANALYSIS

The record reveals that on January 27, 1977 appellant sustained a traumatic nervous reaction in the performance of duty. Appellant alleges that he suffered a stroke in April 1997 as a consequence of his accepted January 27, 1977 employment injury. OWCP denied his claim finding insufficient evidence to establish that he suffered a stroke as a result of his accepted traumatic injury. The Board finds that appellant failed to submit sufficient medical evidence to establish that the stroke he suffered in April 1997 was causally related to his January 27, 1977 employment injury.

Appellant submitted a July 9, 1997 report by Dr. Cavaliere, who noted that on April 6, 1997 he experienced a left thalamic bleed after a BP shunt placement but provided no opinion on the cause of this stroke or whether the stroke was causally related to the January 27, 1977 employment injury. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship.<sup>10</sup> Likewise, the additional hospital records and Dr. Silvers’ reports are also insufficient to establish appellant’s claim as they do not mention his stroke or provide any opinion on whether the stroke resulted from his January 27, 1977 traumatic injury. The Board finds that he did not submit sufficient medical evidence to establish his claim.

OWCP referred appellant’s claim to the district medical adviser. In a November 21, 2011 report, Dr. Morola reviewed the statement of accepted facts and appellant’s medical records. On January 27, 1977 appellant sustained a traumatic nervous reaction in the performance of duty. On April 6, 1997 he suffered a left thalamic bleed extending into the ventricles after a BP shunt

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<sup>6</sup> *S.M.*, 58 ECAB 166 (2006); *Raymond A. Nester, id.*

<sup>7</sup> *R.C.*, Docket No. 10-1789 (issued April 22, 2011); *Jennifer Atkerson*, 55 ECAB 317 (2004).

<sup>8</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>9</sup> *D.S.*, Docket No. 09-860 (issued November 2, 2009); *B.B.*, 59 ECAB 234 (2007).

<sup>10</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *A.D.*, 58 ECAB 149 (2006).

placement. The medical adviser explained that appellant's stroke was a consequence of the surgical procedure and was not related to a psychiatric disorder such as his nervous reaction. Dr. Morola concluded that there was no relationship between appellant's accepted traumatic injury and the thalamic bleed or stroke.

The Board finds that Dr. Morola provided an accurate history of injury and reviewed appellant's medical history. The medical adviser explained that appellant's stroke resulted from a surgical procedure and was not a consequence of his January 27, 1977 employment injury. It is well established that when a primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury also arises out of the employment, unless it is the result of an independent intervening cause.<sup>11</sup> In this case, the weight of the medical opinion establishes that appellant's stroke resulted from the intervening event of a BP shunt surgical procedure. The Board finds that the medical evidence of record does not establish a causal relationship between his stroke and his January 27, 1977 employment injury.

On appeal, appellant alleged that he was not satisfied with how his case was handled and requested restitution because he wanted to continue to work, but his stroke happened without warning. These contentions are not sufficient to establish a causal relationship between the accepted January 27, 1977 injury and his current condition. Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>12</sup> Because appellant has failed to provide rationalized medical opinion evidence establishing that he sustained a consequential stroke as a result of his accepted January 27, 1977 employment injury, he has failed to meet his burden of proof in this case.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has failed to establish that he sustained a stroke as a consequence of his January 27, 1977 employment injury.

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<sup>11</sup> *G.W.*, Docket No. 11-1985 (issued May 18, 2012); *Mary Poller*, 55 ECAB 483, 487 (2004).

<sup>12</sup> *Supra* note 8.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 13, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 5, 2012  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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