

FACTUAL HISTORY

This is the eighth appeal in this case.² In the last merit review of this case, on January 2, 2009 the Board affirmed as modified OWCP's January 3, 2008 decision to reflect that, while appellant established a compensable work factor, the medical evidence of record was insufficient to establish that his stroke on January 13, 1997 was causally related to his federal employment.³ Briefly, the facts of the case as stated in the Board's January 2, 2009 decision are that he was performing his regularly assigned work duties when he suffered a stroke. The employing establishment did not dispute appellant's description of his work duties at the time of the stroke and there was no contrary evidence of record. At a telephonic hearing held on November 8, 1997 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 testified that he became angry, which caused stress and contributed to his stroke. Prior to his stroke, appellant worked 10- to 12-hour days, six to seven times a week. He contended that he was not paid for all of the time he worked which was an additional stressor contributing to his stroke.

Following the Board's January 2, 2009 decision appellant again requested that OWCP reconsider the claim. On May 14, 2009 OWCP denied his request for reconsideration as untimely filed. By decision dated December 7, 2009, the Board set aside OWCP's May 14, 2009 decision and remanded the case for an appropriate decision under the standard for timely requests for reconsideration at 20 C.F.R. § 10.606(b).⁴ The findings of fact and conclusions of law from the prior decisions are hereby incorporated by reference.

Since OWCP's January 3, 2008 decision, which was OWCP's last merit review of the case, the following new evidence has been submitted: several statements from appellant requesting reconsideration, several scripts, off work slips, an April 10, 2008 statement of disability, a June 18, 2008 magnetic resonance imaging scan of the brain, a May 16, 2000 vascular study and a March 2, 2000 description of mail handler equipment operator.

² On May 11, 2000 the Board found that OWCP properly denied appellant's request for a hearing under section 8124 of FECA in its September 22, 1998 decision. Docket No. 99-0602 (issued May 11, 2000). On June 18, 2003 the Board found that OWCP properly determined that appellant's June 11, 2000 request for reconsideration was untimely filed and did not establish clear evidence of error. Docket No. 02-695 (issued June 18, 2003). On September 11, 2006 the Board found that OWCP's November 25, 2005 decision properly denied appellant's February 18, 2005 request for reconsideration decision as untimely. Docket No. 06-767 (issued September 11, 2006). However, OWCP did not address his argument that he had timely filed a hearing request on August 21, 1997. The Board remanded the case to OWCP for further review. On June 18, 2007 the Board affirmed OWCP'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 OWCP did not address appellant's contention that he timely filed a request for a hearing on August 21, 1997. The case was remanded to OWCP to address his evidence and argument. Docket No. 07-405 (issued June 18, 2007).

³ Docket No. 08-1122 (issued January 2, 2009).

⁴ Docket No. 09-1829 (issued December 7, 2009), *petition for recon. denied* (issued May 18, 2010). On April 14, 2010 the Board issued an order dismissing appeal in Docket No. 09-1894. The Board noted that Docket No. 09-1894 was inadvertently assigned and the issue was previously adjudicated in Docket No. 09-1829.

Several reports were received from Dr. Thomas E. Staats, Ph.D., a clinical neuropsychologist. In a June 16, 2008 report, he provided a clinical impression of vascular dementia, depressive disorder, anxiety disorder and eating disorder. In an October 4, 2009 work capacity evaluation form, Dr. Staats opined that appellant was not competent to work eight hours a day or perform his usual job. In a September 27, 2009 report, he reported on appellant's psychological and neuropsychological condition and provided an integrated clinical summary. Dr. Staats noted that appellant was retired, but stated that he would be impaired from occupational functioning due to decreased executive functions, difficulty comprehending and following through with instructions and emotional interference. He indicated that appellant had significant physical weakness and compromised balance. Dr. Staats opined that appellant's claim that his stroke was caused by extreme anger, resentment and frustration over being left alone to handle a blocked and messy dock at work had scientific plausibility if time-contiguous. He noted stress research literature recognizes that individuals can have heart attacks and either thrombotic or hemorrhagic strokes during peak periods of anger, anxiety and/or agitation. Dr. Staats opined that it was likely that emotional changes due to neurosyphilis fueled appellant's emotional overreaction at the time. He noted that appellant's psychological testing indicated the capacity for agitation, together with paranoid resentment, anxiety and feelings of social alienation. Dr. Staats opined that appellant's obsessive-compulsive traits probably added to his level of resentment over feeling that the situation with the dock was not right and that difficulty rectifying the situation would have a negative reflection on him. He further stated that appellant harbors a sense of "entitlement" to justice, vindication and a financial reward.

Several reports were also received from Dr. David M. Abdehou, an internist. In a March 27, 2008 report, he noted that appellant has been under his care since 1997. Dr. Abdehou indicated that appellant recently became depressed with fatigue, malaise and weight loss. He opined that appellant was no longer able to perform his work responsibilities and recommended early retirement. In a July 29, 2008 report, Dr. Abdehou indicated that he has been managing appellant's care since 1997, when he was first diagnosed with a stroke. He opined that appellant was unable to work or be gainfully employed.

By decision dated September 9, 2010, OWCP denied modification of its January 3, 2008 decision.

On October 1, 2010 appellant requested a hearing before an OWCP hearing representative. By decision dated November 29, 2010, the Branch of Hearings and Review denied his request for an oral hearing on the grounds that he was not entitled to a hearing as a matter of right because he had previously requested reconsideration. It exercised its discretion and further determined that the issue in the case could equally well be addressed by requesting reconsideration from OWCP and submitting evidence not previously considered which establishes that he sustained an injury causally related to his federal employment.

On September 20, 2010 and August 15, 2011 appellant requested reconsideration. Evidence submitted included: an April 26, 2010 letter from the employing establishment regarding a federal tort claim; letters from the Department of Veterans Affairs dated November 10, 2010 and August 10, 2011 noting services available to appellant and that he was exposed to Agent Orange in Vietnam from January 1971 until February 1972; various chapters from the Supervisor's Safety Handbook; a copy of Exhibit 2.4: Wage[-]Loss Compensation

Process with hand notations; a paper entitled job safety & health protection; and an 11 page confidential summary dated March 31, 2011 for an initial evaluation for post-traumatic stress disorder. A June 24, 2009 certification of mobility impairment and progress notes dated March 25, June 24, August 18 and October 26, 2009 were submitted.

By decision dated October 26, 2011, OWCP denied modification of its September 9, 2010 decision.

On November 16, 2011 appellant requested a hearing before an OWCP hearing representative. In a December 19, 2011 decision, the Branch of Hearings and Review denied his request for an oral hearing on the grounds that he was not entitled to a hearing as a matter of right because he had previously requested reconsideration. It exercised its discretion and further determined that the issue in the case could equally well be addressed by requesting reconsideration from OWCP and submitting evidence not previously considered which establishes that appellant sustained an injury causally related to his federal employment.

On September 23, 2012 appellant requested reconsideration. In a September 24, 2012 letter, he argued that there was new medical evidence of record from Dr. M. Shahidul Islam, a Board-certified psychiatrist, and Dr. Staats which OWCP did not consider in its previous decision. Appellant further argued that such medical evidence supports a causal relationship between his stroke and the stress that his work condition placed upon him on the morning he suffered his stroke and resulting disability.

In support of his request for reconsideration, appellant provided duplicative reports from Dr. Staats previously of record, including the September 27, 2009 report, along with new medical evidence.

In a February 17, 2009 report, Dr. Islam, noted that appellant was seen for the first time since December 19, 2006. He reported the history of the January 13, 1997 stroke, noting that appellant was under serious stress and strain with the extra ordinary workload at the postal service and there was no help and he had to do all the work by himself and it overloaded his mind and body and caused him to suffer the stroke. Several diagnoses were provided. Dr. Islam opined that the contributing factor for the stroke was the stress overload due to appellant's work condition, which raised his blood pressure to a point which ruptured his blood vessels and caused him to have a stroke on January 13, 1997. He noted until this time period, appellant performed his work for the last 27 years without incident and was a good worker. Dr. Islam stated that it is a well proven fact that people can suffer a stroke or heart attack due to stress. He stated that, if appellant was not loaded with extreme stress, he could have avoided this stroke. Dr. Islam opined that this is a work-related injury and appellant should be compensated for the time period January 13, 1997 to January 2, 1998. In an undated narrative report, he opined, based on appellant's interview, review of his condition and his medical records, it was more probable than not that employment factors described by appellant caused him severe stress and strain and that severe stress and strain elevated his blood pressure to the point he suffered a ruptured blood vessel (CVA). Also when one considers that appellant was suffering a tremendous amount of stress over the fact that he had worked these job duties prior (4 hours on Saturday and 4 hours on Sunday) without help and these same job duties from 7:00 a.m. and to be complete within one hour before 8:00 a.m. to unload two 18 wheelers loaded with interstate commerce/retail mail.

Job duties that had taken appellant eight hours to do, had been “un-done” by Tour 1 and left on the East Dock in a hazardous mess. Management was aware and allowed other workers to get away with not coming to work and not doing their jobs, because of Nepotism. Taken in “combination,” these are the stress factors of appellant’s federal employment that elevated appellant’s blood pressure to the point that the blood vessels ruptured causing the CVA/stroke on January 13, 1997 and resulting disability appellant suffers from.

In an October 4, 2009 work capacity evaluation, Dr. Staats opined that appellant was totally disabled and unable to work eight hours a day due to dementia and organic brain syndrome.

By decision dated October 15, 2012, OWCP denied modification of its September 9, 2010 decision. It found that, while appellant had established that he was performing his regularly assigned duties at the time of the stroke, he had not established with probative medical evidence that his stroke was causally related to his work duties on January 13, 1997. OWCP also found that he had not established that compensable factors of employment regarding his allegations of working in a messy environment, not receiving a paycheck and overwork.

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 or her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.⁵ 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.⁶

When working conditions are alleged as factors in causing disability, OWCP, 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, OWCP should make a specific finding in that regard. If a claimant does implicate a factor of employment, OWCP 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

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *J.C.*, 58 ECAB 594 (2007); *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *M.D.*, 59 ECAB 211 (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).

Where the claimant alleges compensable factors of employment, he or she must substantiate 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 OWCP 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

Appellant has alleged that when he arrived at work on January 13, 1997 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. Appellant has also alleged that he was overworked and that he did not receive pay for his 10- to 12-hour days. On prior appeal the Board accepted that his regularly assigned duties on the day of his stroke constituted compensable factors of employment.

Regarding appellant's allegation of a messy work environment, the Board has consistently held that frustration from not being permitted to work in a particular work environment is not a compensable factor under FECA.¹⁵

It is noted that appellant's allegations that he was overworked and forced to work overtime would be a compensable factor of employment if substantiated as it relates directly to his attempts to perform his duties under *Lillian Cutler*.¹⁶ However, there is currently no evidence in the record to establish his allegations as factual. Similarly, if appellant established that his pay was erroneous, this could constitute a factor of employment.¹⁷ He has not however submitted evidence to establish that his pay was erroneous.

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

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

¹² *D.E.*, 58 ECAB 448 (2007).

¹³ *D.D.*, 57 ECAB 734 (2006).

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

¹⁵ *J.C.*, 58 ECAB 594 (2007).

¹⁶ 28 ECAB 125 (1976).

¹⁷ *See C.S.*, 58 ECAB 137 (2006).

Because appellant has established a compensable factor of employment, that he was performing his regular assigned duties on January 13, 1997 at the time of his stroke, the medical evidence of record must be analyzed to determine if the CVA or stroke of January 13, 1997 was caused or contributed to by his federal employment.¹⁸

In a report dated September 27, 2009, Dr. Staats noted that stress research literature and appellant's psychological makeup supported the occurrence of thrombolytic or hemorrhagic strokes during peak periods of anger, anxiety and/or agitation. He opined that appellant's claim that his stroke was caused by extreme anger, resentment and frustration over being left alone to handle a blocked and messy dock at work had scientific plausibility if time-contiguous. Dr. Staats' opined that it is "likely" that the emotional changes due to neurosyphilis fueled appellant's emotional overreaction. This is speculative in nature and unsupported by full history of injury as he qualified his opinion based on timing. The Board has held that medical opinions which are speculative or equivocal in character have little probative value.¹⁹ Furthermore, Dr. Staats' opinion is not well rationalized in explaining the relationship between the diagnosed condition and the established factors of employment. He did not provide a detailed history of the work in which appellant was engaged or describe with any specificity how the work appellant was doing caused or contributed to his stroke. Dr. Staats' opinion is not supported by a complete factual and medical history or rationale explaining the nature of the relationship between appellant's stroke and the accepted employment-related conditions. 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.²⁰ The other evidence from Dr. Staats, including work capacity evaluations, fails to offer any opinion regarding the cause of appellant's condition and, thus, are of limited probative value on the issue of causal relationship.²¹ The Board finds, therefore, that the evidence from Dr. Staats is insufficient to establish appellant's claim.

Appellant submitted two reports from Dr. Islam. In his February 17, 2009 report, Dr. Islam opined that the contributing factor for the stroke was the stress overload due to appellant's work condition, which raised his blood pressure to a point, which ruptured his blood vessels and caused him to have a stroke on January 13, 1997. He stated that there was an extra ordinary workload at the postal service and appellant had to do all the work by himself as there was no help available. The Board finds that Dr. Islam's opinion is not well rationalized in explaining how appellant's work duties contributed to his stroke. Dr. Islam's opinion lacks a detailed awareness of appellant's work factors and fails to describe with any specificity how the work he was doing caused or aggravated his stroke. As noted, 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 his burden of proof. The medical

¹⁸ *Dennis J. Balough*, 52 ECAB 232 (2001).

¹⁹ *L.R., (E.R.)*, 58 ECAB 369 (2007); *Kathy A. Kelley*, 55 ECAB 206 (2004).

²⁰ *Beverly A. Spencer*, 55 ECAB 501 (2004).

²¹ *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

evidence must include a complete factual history and medical rationale explaining how the physician reached his conclusion.²² Furthermore, it has not been accepted nor is there evidence to substantiate that appellant had an overload of work.

In the undated report, Dr. Islam opined that it was more probable than not that employment factors described by appellant caused him severe stress and strain and that severe stress and strain elevated his blood pressure to the point he suffered a ruptured blood vessel (CVA). His opinion is speculative regarding causal relation. While Dr. Islam noted the situation which appellant was in when he arrived to work on January 13, 1997 and indicated that he was under stress as a result of this situation, Dr. Islam again did not provide a detailed history of the work in which appellant was engaged or provide any medical rationale explaining why he believed that the accepted work factors resulted in a diagnosed condition. Thus, his reports are insufficient to establish causal relation.

The other medical evidence of record, including reports from Dr. Abdehou, a March 31, 2011 evaluation for post-traumatic stress disorder and diagnostic studies, provide no opinion on the issue of causal relationship and are insufficient to establish appellant's claim.

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

On appeal, appellant contends that the opinions of Drs. Islam and Staats raise an uncontroverted inference on causality and, thus, the denial of the claim is contrary to law, rule and regulation. As noted above however the medical opinions of Drs. Islam and Staats fail to provide an unequivocal and fully rationalized opinion on causal relationship regarding the compensable work factor. Thus, there is no rationalized medical evidence supporting appellant's claim.

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 an injury while in the performance of duty.

²² *Supra* note 20.

ORDER

IT IS HEREBY ORDERED THAT the October 15, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 5, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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