

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

M.T., Appellant

and

**DEPARTMENT OF THE ARMY,
1st MISSION SUPPORT COMMAND,
Fort Buchanan, PR, Employer**

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**Docket No. 14-1169
Issued: September 16, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 23, 2014 appellant filed a timely appeal from a March 20, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim. 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 stroke in the performance of her federal duties on January 9, 2014, as alleged.

On appeal, appellant contends that she was a victim of abuse and discrimination at her place of employment and that a mandatory meeting on January 9, 2014 caused her blood pressure to escalate such that she suffered a stroke.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 3, 2014 appellant, then a human resources military specialist, filed a traumatic injury claim alleging that on January 9, 2014, she received a notice of proposed suspension at a meeting. She noted that no one from her direct chain of command was present at the meeting. Appellant stated that her blood pressure rose and she was taken to an emergency room where she suffered a stroke. She submitted a witness statement from Elsa Cortes who indicated that around 1530 to 1545 hours, appellant came out of the chaplain's conference room after a meeting and began crying and vomiting. The chaplain called 911 as appellant had a history of heart attacks and stroke. She tried to comfort appellant. Ms. Cortes stated that appellant indicated that she could not feel her left side and became very cold. She noted that the medics arrived and she accompanied appellant in an ambulance to the hospital.

In a February 6, 2014 statement, Lt. Jackeyln Ruiz, current operations officer at the employing establishment, noted that she was present during the meeting on January 9, 2014. The purpose of the meeting was to present appellant with a notice of proposed suspension and took place in the chaplain's conference room and was attended by Col. Cosme Torre, herself and appellant. Col. Torres informed appellant at the meeting of the proposed five days' suspension in both English and Spanish. She stated that during the reading of the memorandum, appellant began crying.

In support of her claim, appellant submitted a brain magnetic resonance angiogram and a brain magnetic resonance imaging scan taken on January 24, 2014.

By letter dated February 14, 2014, OWCP requested that appellant submit further information.

Appellant submitted the January 21, 2014 report of Dr. Rafael Rodriguez Mercado, a Board-certified internist, who detailed his treatment of appellant on January 15, 2014. Dr. Mercado noted that appellant had been taken to the emergency room on January 9, 2014, was treated and discharged on January 10, 2014. He noted that she identified a stressful situation at work and that her blood pressure rose to 230/120. Appellant experienced severe headache, nausea, vomiting and complained of numbness in her extremities. Dr. Mercado opined that the sudden rise in her blood pressure directly caused her to suffer her first stroke. He noted that, according to her statement, appellant was exposed to an extreme level of stress and a tense environment in her workplace causing an increase in her blood pressure.

In a March 11, 2014 statement, Lt. Col. Michael Gonzalez stated that, based on the statements from Lt. Ruiz and Ms. Cortes and the medical documentation, it appeared that appellant suffered stroke-like symptoms after meeting with the deputy commander/chief of staff in which she received a notice of proposed suspension as a result of an investigation conducted by the command. At that time, Col. Torres was serving in dual responsibilities as the deputy commander and chief of staff and had oversight over staff.

By decision dated March 20, 2014, OWCP denied appellant's claim finding that she did not establish a compensable factor of employment.

LEGAL PRECEDENT

In providing for a compensation program for federal employees, Congress did not contemplate an insurance program against any and every injury, illness or mishap that might befall an employee contemporaneous or coincidental with his or her employment. Liability does not attach merely upon the existence of an employee-employer relationship. Instead, Congress provided for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.²

The Board has interpreted the phrase while in the performance of duty to be the equivalent of the commonly found in workers' compensation law of arising out of and in the course of employment. In the course of employment deals with the work setting, the locale and time of injury whereas, arising out of the employment encompasses not only the work setting but also a causal concept, the requirement being that an employment factor caused the injury. In addressing this issue, the Board has stated that in the compensation field, to occur in the course of employment, in general, an injury must occur: (1) at a time when an employee may reasonably be stated to be engaged in his or her master's business; (2) at a place where he or she may reasonably be expected to be in connection with the employment; and (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.³

To establish that appellant sustained an emotional condition causally related to factors of her federal employment, she must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition is causally related to the identified compensable employment factors.⁴

In cases involving stress conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁵

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.⁶ However, the Board

² See 5 U.S.C. § 8102(a).

³ *B.S.*, Docket No.13-405 (issued July 18, 2013); *Kathryn S. Graham Wilburn*, 49 ECAB 215, 218 (1997).

⁴ See *R.G.*, Docket No. 13-818 (August 1, 2014); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁵ See *Norma L. Blank*, 43 ECAB 384, 389-390 (1992).

⁶ *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

has held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.⁷

Causal relationship is a medical issue⁸ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁹ must be one of reasonable medical certainty,¹⁰ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.¹¹

ANALYSIS

The Board finds that appellant failed to establish that she suffered a stroke in the performance of her federal duties on January 9, 2014.

Appellant must establish each element of her claim. She must prove her employment, the time, place and manner of injury, a resulting personal injury and that her injury arose in the performance of duty.¹² The Board notes that appellant's allegations do not pertain to her regular or specially assigned duties under *Cutler*.¹³ Rather appellant alleged that she sustained a stroke as a result of the personnel meeting held on January 9, 2014. At that meeting, Col. Torres presented appellant with a notice of proposed suspension. The Board has held, disciplinary actions are an administrative function of the employer and not a duty of the employee. Such matters are not compensable unless the evidence discloses error or abuse on the part of the employing establishment.¹⁴ Appellant has not submitted sufficient evidence of abuse by her supervisors as to how the meeting was conducted. Accordingly, she did not establish a compensable factor of employment with regard to this meeting.

Because appellant failed to establish a compensable work factor, the Board finds that it is unnecessary to address the medical evidence of record.¹⁵ Appellant has not met her burden of proof.

⁷ *William H. Fortner*, 49 ECAB 324 (1998).

⁸ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁹ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979)

¹⁰ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹¹ *See William E. Enright*, 31 ECAB 426, 430 (1980).

¹² *B.S.*, *supra* note 3.

¹³ *Lillian Cutler*, 28 ECAB 125 (1976).

¹⁴ *Jeral R. Gray*, 57 ECAB 611 (2006).

¹⁵ *See John Polito*, 50 ECAB 347 (1999).

The Board notes that appellant submitted new evidence after the issuance of the March 20, 2014 decision. The Board lacks jurisdiction to review evidence for the first time on appeal.¹⁶ Appellant may submit this or any 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 did not meet her burden of proof to establish that she suffered a stroke in the performance of her federal duties on January 9, 2014, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 20, 2014 is affirmed.

Issued: September 16, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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

¹⁶ See 20 C.F.R. § 501.2(c)(1).