

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

C.Y., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS HEALTH ADMINISTRATION)
MEDICAL CENTER, Los Angeles, CA,)
Employer)

Docket No. 11-1529
Issued: February 2, 2012

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 14, 2011 appellant filed a timely appeal from a March 3, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.²

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on December 15, 2010.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence following the March 3, 2011 merit decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *Sandra D. Pruitt, 57 ECAB 126* (2005). Appellant may submit that evidence to OWCP along with a request for reconsideration.

FACTUAL HISTORY

On January 13, 2011 appellant, then a 78-year-old social service representative, filed a traumatic injury claim alleging that on December 15, 2010 at 9:30 a.m. she suffered a mini-stroke at work. She stopped work on December 16, 2010. The employing establishment controverted appellant's claim alleging that her medical condition was not caused by a traumatic injury and that no medical evidence supported a work-related injury.

On January 27, 2011 OWCP advised appellant that she had not submitted sufficient evidence to support her claim and requested additional evidence. It requested a more detailed description of the alleged December 15, 2010 incident and a medical report from her treating physician explaining how her medical condition was caused or aggravated by the claimed injury.

In a December 14, 2010 echocardiography report, Dr. Bruce Macrum, a Board-certified internist, noted appellant's complaints of chest pain. The examination revealed normal left and right ventricular cavity size, systolic function, tricuspid valve and inferior vena cava. Dr. Macrum concluded that appellant had normal ventricular size and contractility with no left ventricular wall motion abnormalities or hemodynamically significant valvular pathology.

In a December 20, 2010 magnetic resonance imaging (MRI) scan report, Dr. Eli J. Bendavid, a Board-certified diagnostic radiologist, noted a history of abnormal balancing and hypertension. No additional infarct, hemorrhage, mass, hydrocephalus, extra-axial fluid collections or midline shift were noted. Dr. Bendavid diagnosed acute to subacute right parietal lobe infarct and generalized atrophy and deep white ischemic change.

In a December 20, 2010 carotid ultrasound report, Dr. Mark R. Rockoff, a Board-certified diagnostic radiologist, observed minimal plaquing identified within the right internal carotid artery with normal peak systolic velocities, consistent with between 0 and 15 percent diameter stenosis. He noted mild to moderate calcified plaquing seen within the internal carotid artery with normal peak systolic velocities consistent with between 16 and 30 percent diameter stenosis. Dr. Rockoff did not find a hemodynamically significant lesion.

In a December 20, 2010 computerized tomography scan of the brain, Dr. Rockoff noted atherosclerotic calcification and generalized cerebral atrophy. He did not find any evidence of fracture or destructive process or abnormal collections of blood or calcifications. Dr. Rockoff diagnosed atrophy and microvascular disease.

In a January 20, 2011 request for leave under the Family and Medical Leave Act, Dr. Phillip S. Bland, an internist, indicated that he treated appellant weekly and referred her to other health care providers for treatment and evaluation. Appellant's request for leave was approved on February 1, 2011.

In a February 8, 2011 handwritten statement, appellant explained that on December 15, 2010 it took her a long time to accomplish her normal work tasks and she became more frustrated as the day progressed. Some staff workers noticed that she was not herself and was driving erratically. Appellant described her workday as consisting of answering telephone calls, making sure the staff was prepared to work with veterans, managing a fleet of cars and working

with a team of 15 outreach workers. She believed being “overstressed was a continuing factor to my stroke.”

In a decision dated March 3, 2011, OWCP denied appellant’s claim on the grounds of insufficient factual evidence that any December 15, 2010 work event occurred in a specific time, place and in the alleged manner and insufficient medical evidence establishing that she sustained a diagnosed condition causally related to the alleged incident. It advised her that her claim may be characterized as an occupational disease claim as she attributed her condition to overwork over a period of time.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of her claim by the weight of the reliable, probative and substantial evidence³ including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.⁴ To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether “fact of injury” has been established.⁵ There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged.⁶ Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.⁷

When an employee claims that she sustained a traumatic injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure at the time, place and in the manner alleged.⁸ Once an employee establishes that she sustained an injury in the performance of duty, she has the burden of proof to establish that any subsequent medical condition or disability for work, for which she claims compensation, is causally related to the accepted injury.⁹

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 *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁶ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁷ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ See 20 C.F.R. § 10.55(ee) (traumatic injury is defined as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected).

⁹ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

ANALYSIS

Appellant alleged that on December 15, 2010 she sustained a mini-stroke. As part of her burden of proof, she must establish all the elements of her claim, including that she experienced a December 15, 2010 incident at the time, place and in the manner alleged. OWCP denied appellant's claim finding that she did not provide sufficient details attributing a specific incident to her medical condition. The Board finds that she failed to establish that she sustained an injury in the performance of duty on December 15, 2010.

Appellant did not sufficiently describe that a specific incident or event on December 15, 2010 occurred and caused her alleged conditions. She alleged that she felt disoriented when she prepared to leave her job the day before and that it took her a long time to accomplish her usual work tasks. Appellant described her workday as consisting of answering telephone calls, making sure the staff was prepared to work with veterans, managing a fleet of cars and working with a team of 15 outreach workers. She failed to adequately describe the circumstances of her injury. While she did provide a description of her work activities on the day in question, appellant did not explain which activity actually caused her to sustain a stroke during her work shift.¹⁰ In a letter dated January 27, 2011, OWCP advised her of the deficiencies of her claim and requested additional factual evidence describing the specific incident or incidents that occurred on December 15, 2010. Appellant did not submit sufficient factual evidence to establish that any incident occurred on December 15, 2010 at the time, place and in the manner alleged.

The medical evidence of record also fails to establish that appellant sustained any injury on December 15, 2010. Appellant submitted various diagnostic reports dated December 14 to 20, 2010. None of the reports, however, provide a diagnosis of her medical conditions or explain, with medical rationale, how a December 15, 2010 incident may have caused any conditions.

The standard of proof remains unchanged. Appellant must still show by factual and medical evidence a connection between some factor of her employment and her claimed medical condition.

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 did not meet her burden of proof to establish that she sustained an injury in the performance of duty on December 15, 2010.

¹⁰ See *H.G.*, Docket No. 10-2125 (issued May 18, 2011); *A.D.*, Docket No. 08-1603 (issued December 5, 2008).

ORDER

IT IS HEREBY ORDERED THAT the March 3, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 2, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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