

CLAIM HISTORY AND APPEAL PROCEEDINGS:

The Worker* suffered a stroke in February, 1993. He filed a claim with the Board stating that the stroke was a result of work-related stress.

As the Employer is a federal Crown corporation, the Worker's entitlement to benefits is determined pursuant to the *Government Employees Compensation Act*, R.S.C. 1985, c. G-8 ["*GECA*"]. Eligibility for compensation under the provisions of *GECA* is provided at subs. 4(1) and, under subs. 4(2), the rate of compensation and conditions for payment of compensation are determined under the *Workers' Compensation Act*, S.N.S. 1994-95, c.10, as amended [the "*Act*"].

The Board received the Worker's report of accident in October, 2004, more than eleven years after the Worker's injury. A Board Case Manager, in a decision dated January 12, 2005, denied the Worker's claim for benefits. On appeal to the Hearing Officer, the Hearing Officer found that there was no evidence to support that the Worker's stroke was the result of his work-related duties [March 21, 2005]. The Worker appealed the decision to this Tribunal. The Tribunal referred the Worker's appeal back to the Board for the Board to determine the Worker's eligibility for benefits in light of Board Policy 1.3.6 [*Decision 2005-147-RTH* (NSWCAT, August 18, 2005)].

Policy 1.3.6 had been issued by the Board on July 27, 2005 and applied to all decisions made on or after July 25, 2005, pursuant to *GECA*. The purpose of the Policy was to establish criteria for the individualized adjudication of stress claims under *GECA*.

The Worker's claim was therefore re-adjudicated under the Policy.

A Board Case Manager, in a February 6, 2006 decision, found that the Policy did not apply as the Worker's claim was for a cerebrovascular condition which was previously found not to be work-related. The Case Manager confirmed her previous January 12, 2005 decision denying the Worker's claim. The decision was upheld on appeal to the Hearing Officer [Decision dated May 8, 2006]. The Hearing Officer found that the medical information did not support a work-related cause, including stress, for the stroke. The Hearing Officer also found that Policy 1.3.6 did not apply as the Worker did not meet the criteria for recognition of a stress claim.

On appeal to this Tribunal, the appeal was again referred back to the Board for reconsideration [*Decision 2006-351-RTH* (NSWCAT, September 25, 2006)] for the following reasons:

1) to consider the additional documentary evidence provided by the Worker consisting of both scientific papers and some news articles, some of which discussed a relationship

*This decision contains personal information and may be published. For this reason, I have not referred to the participants by name.

between stress and strokes;

2) to evaluate whether the work-related events met the criteria for gradual onset stress in the event that a causal link was established between stress and the Worker's stroke; and, 3) to consider whether the requirement, that the Worker be diagnosed with a condition under the DSM IV by a psychiatrist or a psychologist, should be applied.

Upon reconsideration, the Hearing Officer simply found that the requirements for gradual onset stress under policy 1.3.6 had not been met as the Worker had not been diagnosed with a condition described in the DSM IV by a clinically trained psychologist or psychiatrist registered with the Canadian Registrar of Service Providers in Psychology. Therefore as the Worker did not have an acceptable claim for stress, the Worker's stroke would not be accepted as being caused by work-related stress [Decision dated November 24, 2006].

Unfortunately, the Hearing Officer did not refer the additional scientific evidence provided by the Worker to a Board Medical Advisor, the principal reason for the referral made by the Tribunal.

The Worker now appeals to this Tribunal from the November 24, 2006 Hearing Officer decision seeking recognition under s. 4(1) of *GECA*.

The Worker's appeal proceeded by way of oral hearing. The Worker testified at the hearing. He was assisted in his presentation by his son. The Worker filed written submissions dated December 11, 2006. His son also provided written submissions dated January 10, 2007. At the hearing, the Worker also referred to additional documentary evidence substantiating his involvement as an expert in court matters.

I have considered all the evidence and the submissions in the Worker's claim file as well as the additional evidence and submissions, including testimony, received in this appeal.

ISSUES AND OUTCOMES:

Did the Worker suffer a personal injury by accident arising out of and in the course of his employment?

No. There is insufficient evidence to causally link the workplace, particularly stressors in the workplace, to the Worker's stroke.

ANALYSIS:

The Worker filed a claim for compensation for the consequences of an injury in the nature of a cerebrovascular accident, that is, a stroke. He attributes the stroke to stressors in the workplace over time.

Prior to addressing the application of Board Policy 1.3.6, I will refer to the general principles applicable to the recognition of claims under *GECA*.

The definition of “accident” in *GECA* includes “a wilful and intentional act, not being the act of the employee, and a fortuitous event occasioned by a physical or natural cause”. Section 4 of *GECA* relates to entitlement and states:

- s. 4(1) Subject to this Act, compensation shall be paid to
 - (a) an employee who
 - (i) is caused personal injury by accident arising out of and in the course of employment, or
 - (ii) is disabled by reason of an industrial disease due to the nature of the employment; and
 - (b) the dependents of an employee whose death results from such an accident or industrial disease.
- (2) The employees or the dependents referred to in subsection (1) are, notwithstanding the nature or class of the employment, entitled to receive compensation at the same rate and under the same conditions as are provided under the law of the province where the employee is usually employed respecting compensation for workmen and the dependents of deceased workmen, employed by persons other than her Majesty, who
 - (a) are caused personal injuries in that province by accidents arising out of and in the course of their employment; or
 - (b) are disabled in that province by reason of industrial diseases due to the nature of the employment.

As noted by Justice Cromwell at paragraph 11 of *Nurnber v. Nova Scotia Workers' Compensation Board et al.* (2004), 224 N.S.R. (2d) 276 (C.A.), the purpose of *GECA* is to provide compensation to federal employees on the same terms and conditions as their provincial counterparts. He acknowledged, however, that complex issues arise concerning the interaction of the two statutes, one such issue being the presence of a stress exclusion in the *Act*, and its absence in *GECA*. The adoption by the Board of Policy 1.3.6 points to the existence of this conflict.

In determining his entitlement under *GECA*, the Worker is entitled to the benefit of s.187 of the *Act*. Where there is doubt on an issue involving compensation and the disputed possibilities are evenly balanced, the issue must be resolved in the Worker's favour.

The Worker suffered a stroke at home. He does not benefit from any presumption or inference that his stroke is work-related. He has the burden of showing on the whole of the evidence that there is a reasonable inference of causation that is at least evenly balanced with any other possible inference. He must show a causal link between his stroke and work-related factors.

Causation need not be determined with scientific certainty. Common sense may be used to infer causation where appropriate [*Nova Scotia (Workers' Compensation Board) v. Nova Scotia (Workers' Compensation Appeals Tribunal) and Johnstone* (1999), 181 N.S.R. (2d) 247 (C.A.)].

It is also not necessary that the Worker's injury be solely due to work. The necessary causal link is established where it is shown that "but for" factors arising from work, a worker would not have suffered an injury. Alternatively, the test is met where work is a material contributing factor; i.e., more than an insignificant or trifling amount [*Ferneyhough v. Workers' Compensation Appeals Tribunal (N.S.) et al* (2000), 189 N.S.R.(2d) 76 (C.A.)].

Moreover, a pre-existing condition does not disqualify a claim or continuing benefits, if the Worker's employment aggravated, activated or accelerated a disease or infirmity to produce the condition for which compensation is sought [*Metropolitan Entertainment Group v. Durnford*, 2000 NSCA 122].

Board Policy 1.3.6 specifically refers to the compensability of stress as an injury arising out of and in the course of employment under *GECA*. The Worker is not claiming for an injury in the nature of stress but claiming for an injury resulting from stressors in the workplace. Policy 1.3.6 notes that "stress" is not an accepted medical diagnostic term, but is a commonly used term to describe an individual's non-specific physical and psychological response to events that occur in the individual's life. These events are known as stressors. When a person's ability to cope with the stressors is overwhelmed, distress, a negative form of mental stress, can develop and result in diagnosable psychological or psychiatric injuries as defined by the DSM IV.

The Worker was not and has not been diagnosed with a psychological or psychiatric injury. This is a fact. He is seeking recognition that his stroke and its sequelae are compensable. I acknowledge that the Worker's son, a psychologist, believed that his father may have had a diagnosable psychological condition in 1993. He noted, however, that the diagnosis would be difficult and perhaps even unethical to make at this time. The only documentary evidence on file of a psychological condition appears after the Worker had a stroke and returned to work. I reiterate that the Worker is seeking recognition for a stroke suffered in February, 1993.

An absence of a diagnosis of a psychological or psychiatric condition does not preclude the Worker from advancing a claim that his stroke is compensable as caused by stressors in the workplace, just as a claim resulting from a heart attack may be so advanced.

Policy 1.3.6 outlines criteria for recognition of stress as an injury and, therefore, the criteria is not applicable to the Worker's claim. The Policy is, however, instructive to the extent that it deals with stressors in the workplace that would constitute an accident under *GECA*. In regards to gradual onset stress, the Policy requires that the work-related events or stressors experienced by the Worker be unusual and excessive in comparison to the work-related events or stressors experienced by an average worker. Labour relation issues and interpersonal relationships and conflicts are not considered to be a workplace "accident". The Policy states that mental or physical conditions are not compensable when caused by such events. Policy 1.3.6 is largely a codification of the law as it existed before the policy. I agree in that respect with the findings made previously by the Tribunal in *Decision 2006-425-AD* (NSWCAT, February 19, 2007).

The Worker must show that his injury is compensable, that it was caused by an "accident" arising out of and in the course of employment. Regardless of the existence of the Policy, the likelihood that stressors would constitute an accident involves an analysis of the nature of the stressors. That analysis follows.

Work-related Stressors

The Worker has elaborated on the various stressors present in his workplace or related to his employment. Many of these pertain to his job requirements and clearly are not what Parliament intended to cover by compensation legislation. The Worker was a senior real estate appraiser employed by the federal government from 1976 until his retirement in 1995. In that capacity, he was called as an expert witness before the courts. Although this work may be regarded as "stressful", it was part of his duties as a senior appraiser.

The Worker also referred to events arising from his decision to become involved with his union, the Public Service Alliance of Canada. He was involved with the negotiation team dealing with management. He was also president of his Halifax local. Due to events surrounding his work on behalf of fellow workers in his capacity with the union, he was obliged to file a complaint against a director for interference with his rights as a union officer. This complaint had a successful outcome. No doubt, these circumstances and the Worker's duties as a union rep were stressful but one would expect conflicts with management when engaging in such activities.

I agree with my colleague's findings in *Decision 2006-351-RTH* that the stressors from taking on union responsibilities are labour relation issues that are not an "accident". Also, threats of discipline or denials of advancement from superiors, justified or not, are labour relation issues that are not "accidents" for the purpose of compensation. These events may be stressful but they are not workers' compensation matters.

However, events pertaining to a specific appraisal may be considered unusual, atypical or excessive. Documented in the Worker's file [Raymond Larkin Memorandum dated November 15, 2004] is the history of a complaint against the Worker to the Appraisal Institute of Canada, the body which governs ethics complaints against appraisers. The

complaint could have resulted in the loss of the Worker's professional designation. The complaint had to do with how the Worker conducted himself in the course of his employment, specifically in relation to the preparation of the appraisal report. It was brought by the taxpayer against whom the Worker had testified. The Worker's expert evidence was accepted by the court.

This complaint by itself was not necessarily an unusual or excessive work-related stressor but the lengthy process of adjudication by the Appraisal Institute was certainly unusual. Mr. Larkin detailed the process in his memorandum. The Employer allowed the Worker to hire a lawyer of his choosing to represent him in the proceedings before the Appraisal Institute. Mr. Larkin got involved in December, 1991. The complaint was dismissed by letter dated March 21, 1995.

Mr. Larkin explained how the Worker was caught in the middle between the demands of the Investigating Committee to provide background information and his duties to his Employer not to disclose confidential information. The Worker was in fact charged with infractions to the Institute's regulations for refusing to provide the required information. A hearing in that regard was set down for November 7, 1992. The hearing was adjourned and the Worker was advised by letter dated January 18, 1993 that his complaint was in limbo pending negotiations with the Employer on disclosure of the relevant documents. It was not until February 16, 1994 that the charge of non-cooperation was dismissed. Finally on March 21, 1995, the complaint was dismissed.

Mr. Larkin confirmed that these events were stressful for the Worker. The Worker also complained of pressure from a superior to change his appraisal.

Having found that the circumstances surrounding the Worker's investigation by the Appraisal Institute were unusual stressors, I must examine the evidence linking the stressors to the Worker's injury, that is, to his stroke in February, 1993.

The analysis of this question involves consideration of specific medical evidence concerning the Worker and generic evidence on the relationship between strokes and stress.

Causal link

There is no specific evidence supporting a link between the Worker's stressors and his stroke.

Chart notes from the Worker's family physician indicate that the Worker did not complain of the effects of stress until after he suffered his stroke. The Worker testified that he returned to work too soon after his stroke in view of an impending case in Victoria BC. He stated, in one of his submissions, that he lost 35 lbs worrying about the court case. He did not perform well as an expert in the case. The Worker feels that he was pressured into retiring following this. He retired in 1995 at the age of 67.

He holds a lot of resentment towards the Employer. He feels that he could have worked well past the age of 65, and that he was pressured to retire as his mind was not as alert.

Nothing in the medical documentation suggests the Worker was not able to cope with the stressors in the workplace prior to his stroke. Chart notes do not suggest effects of stress until 1993/1994 when the Worker had to deal with lingering effects from his stroke pointing to an end to his career.

Chart notes from August, 1993 mentioned loss of 20 lbs. Later in 1993, the Worker complained of stress at work and not sleeping well. It appeared the Worker may have taken some time off work to deal with the stress in late 1993, early 1994. He was prescribed Paxil in 1994. On May 17, 1995, notations in the doctor's chart notes included stress, insomnia, litigation and negotiating retirement. The Worker retired subsequently in July, 1995.

Medical documentation relating to the Worker's cerebrovascular event do not identify a cause for the illness.

Dr. Sadler, the Worker's attending neurologist, detailed his observations in a letter dated January 5, 1994. He noted that the Worker was admitted to hospital on February 17, 1993. A CT scan demonstrated a small area of ischemic infarction in the left temporal lobe. Despite intensive investigations, no specific cause for this ischemic stroke was determined. Dr. Sadler noted that the Worker made a very impressive improvement during his hospital stay. On follow-up on May 6, 1993, he noted almost complete recovery, although the Worker noted minor speech difficulty.

Dr. Sadler added that neuropsychology testing on May 17, 1993 demonstrated significant recovery with mild residual problems. The Worker was advised to accept routine assignments at work.

The Worker upon returning to work was assigned to a court case in Victoria, I assume this would not be classified as routine.

The discharge report from the VG Hospital noted under past history: no diabetes, no hypertension, no angina. He had no previous history of stroke, TIA, seizures, headache or hypertension. The reports and investigations showed normal results for all areas including cardiac. EKG and blood work were normal. Angiography showed completely clean vessels bilaterally.

Dr. Sadler provided a report dated May 6, 1993 after a follow-up visit. I find the following quote from the report indicative of the Worker's state of mind:

“(The worker) is going to resume work this coming Monday. He is looking forward to getting back to work and, as he says it, only a test of his work will really prove to him whether he has made as good a recovery as he thinks he

has. He is also planning to go to New Zealand for a trip after that and I told him I had no major concerns about that.”

The above statement is not from a man who has any qualms about dealing with stressors relating to work except for the concern of being able to perform his job in light of his stroke.

As events unfolded in the coming years, the Worker was forced by his residual difficulties and the Employer to consider retirement. He negotiated his retirement more than two years after he suffered his stroke. He obviously feels that he was treated unfairly by the Employer, however, he appears to have exercised the rights afforded to him as a federal civil servant in regards to his retirement. There is no doubt that these were stressful times but they arose as a consequence of the stroke and do not support the compensability of the stroke.

Dr. Sadler reassessed the Worker on December 28, 1995. He had retired and was 67 years old. At that time, the Worker expressed the feeling that he had continued to improve over the last couple of years. His examination was normal in all respects. Dr. Sadler concluded that the Worker had made a very satisfactory recovery. The Worker's family physician in October, 1995 also confirmed a complete recovery.

Generic evidence submitted by the Worker and addressed by the Worker's son, a registered psychologist, points to a link between stress and strokes. I accept this evidence as demonstrating that stress is a risk factor for conditions such as strokes. Particular reference is made to the Everson research as the strongest evidence of this association.

Dr. Susan Everson, in a research paper studying stress-induced blood pressure reactivity and stroke risk in men published in 2000, concluded that excessive reactivity to stress may be etiologically important in strokes, especially ischemic strokes, and low socioeconomic status conferred added risk. The study found that a demanding work environment in combination with a predisposition to exaggerated blood pressure reactivity to stress was significantly related to progression of carotid atherosclerosis over four years among employed middle aged men and was independent of known atherosclerotic risk factors. The study also stated that psychological stress plays an important part in the illness and premature death associated with cardiovascular disease, but individual susceptibility to disease varies according to biological predispositions, personality, behaviour, and environmental exposures.

It is very difficult to assess the impact of stress in relation to the Worker's stroke as very little is known concerning the Worker's predisposition or blood pressure reactivity.

An article entitled “Deprivation and stroke mortality in Quebec” mentioned that age is a major risk factor as three quarters of all strokes occur in persons aged 65 or more. Physiopathological factors are identified such as diabetes and hypertension. These contributing factors were eliminated by observations and tests done at the time of the Worker's admission to hospital. This article appears to concentrate more on the

socioeconomic factors influencing the incidence of stroke, which do not apply to this worker.

The Mayo Clinic article noted that stress can cause temporary spike in blood pressure, a risk factor for brain haemorrhage, or long lasting hypertension, and increase the blood's tendency to clot, which may elevate the risk of ischemic stroke. The Worker showed no signs of any of these conditions, particularly hypertension.

The Heart and Stroke Foundation suggested that too much stress can increase the risk of heart disease and stroke. The article detailed the symptoms of stress such as feeling anxious, headaches, depression and anxiety. These symptoms are reported by the Worker to his family physician in the years after he suffered his stroke.

A recently published volume entitled "The end of Stress As We Know It" by Dr. Bruce McEwen outlined the impact of human stress. The short excerpt in the file refers to the link between stress hormones, blood pressure, hardening of the arteries and heart attacks and stroke.

As mentioned, I accept that the generic evidence points to a link between stress and stress related symptoms and conditions including strokes.

Findings

On the whole of the evidence, I make the following factual findings:

- the Worker experienced stressors in the workplace;
- most of the stressors were associated with the regular duties of his job or duties he took on as a union representative;
- the Worker experienced an unusual stressor consisting of a protracted investigation by the Appraisal Institute;
- there is no documented evidence that the Worker could not cope effectively with the stressors at work whether they be routine or unusual;
- there is no documented evidence of the Worker developing stress-related symptoms or conditions prior to his stroke;
- the Worker had a mild stroke in February, 1993, no causes for the stroke were identified, all investigations were normal;
- there is documented evidence that the Worker experienced stress-related symptoms such as depression, stress, insomnia, loss of weight after his stroke and after he returned to work;
- generic research shows a link between stress and stress-related conditions including stroke, the research also identifies many other factors including socioeconomic factors and age.

In light of these findings, I am unable to make a reasonable inference of causation between work-related stressors (unusual or otherwise) and the Worker's stroke. The

strongest evidence pointing to such a relationship is the generic evidence indicating that stress is a risk factor in the development of stress-related conditions including strokes. In light of the fact that there is no evidence to suggest that the Worker experienced stress-related symptoms or conditions prior to his stroke and that no stress-related symptoms or conditions were identified by the investigations at the time of his hospitalization, stress was an unlikely contributing factor.

The cause of the Worker's stroke is unknown and the fact that work-related stress is a risk factor is insufficient to satisfy the reduced evidentiary burden under s. 187 of the *Act*. Specifically, I am unable to conclude that the unusual stressors experienced by the Worker consisting of the investigation by the Appraisal Institute was a material contributing factor to the Worker's stroke. Therefore, the Worker did not suffer a workplace injury.

I do not wish to minimize the problems the Worker had to face in his job, particularly after he suffered his stroke. The issue before me was whether he suffered a compensable accident. These proceedings were to assess the work-relatedness of his injury and are not to specifically address the conduct of the Employer. They can not serve to vindicate the Worker in regards to his long held view that he was treated unfairly by his Employer.

CONCLUSION:

The appeal is denied. There is insufficient evidence to causally link the workplace, particularly stressors in the workplace, to the Worker's stroke.