United States Department of Labor
Employees' Compensation Appeals Board

DONALD A. MARTIN, Appellant	)	
and	)	**Docket No. 05-580**
	)	**Issued: July 12, 2005**
DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Miami, FL, Employer	)	

Appearances:
Edward L. Daniel, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On January 11, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs decision dated October 20, 2004, which denied appellant's request for reconsideration on the merits under 5 U.S.C. § 8128(a) of a June 20, 2003 decision, which denied his emotional condition claim. Pursuant to 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 has met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On April 27, 2003 appellant, then a 48-year-old air traffic control specialist, filed a traumatic injury claim alleging that on that same date, he sustained stress related to his position

as an air traffic controller, including insomnia, muscle aches, headaches, anxiety, withdrawn anger and family problems in the performance of duty. Appellant did not stop work.[1]

The record contains several reports from Dr. Daniel R. Collins, a Board-certified psychiatrist and appellant's treating physician. In his May 5, 2003 report, Dr. Collins explained that appellant was working ground control on March 28, 2003 and that two and a half weeks later, learned that a letter of complaint was written by a pilot concerning his capabilities. Dr. Collins related that appellant alleged that he did not have an opportunity to read the pilot's letter or review the tape. He indicated that appellant was notified by the union that he was being decertified as a controller in charge, as a result of the pilot's letter. Dr. Collins indicated that his findings included emotional instability, high anxiety and irritability. He filled in "yes" in response to whether he believed that appellant's condition was caused or aggravated by the employment activity and filled in "insomnia." Dr. Collins indicated that the date of his first examination was April 20, 2003 and explained that appellant was totally disabled from April 20, 2003 to the present.

In a letter dated May 16, 2003, the Office advised appellant that the evidence submitted was insufficient to establish his claim and requested that he submit additional supportive factual and medical evidence.

In a May 5, 2003 statement, Bobby D. Price, the employing establishment's operations manager, controverted the claim. He explained that on March 23, 2003 appellant was the controller in charge (CIC) and allowed another controller to go on break. Mr. Price advised that while appellant was alone, an incident occurred, which resulted in appellant having to repeat to all aircraft several times to change to one frequency and that a pilot subsequently left a message questioning the safety practices of the employing establishment. Mr. Price indicated that a quality assurance specialist reviewed the tapes for that evening and determined that there were performance deficiencies. He specified that appellant was responsible for ensuring that the second controller position stayed open until traffic levels were reduced and appropriate for one controller to handle and that he had a responsibility to inform all pilots to contact one frequency prior to the second controller leaving the tower.

In a June 15, 2003 report, Dr. Collins indicated that on March 28, 2003 appellant related that he was the CIC in the tower and that an airline pilot subsequently wrote a letter complaining about only having one controller in the tower and that a decertification action was initiated without any attempt to obtain appellant's version of events. He also noted that appellant sustained an emotional reaction after reading the pilot's letter. Dr. Collins explained that appellant did not experience a particularly upsetting situation while controlling the airplanes, but rather, because of the rush to judgment against appellant and his decertification, appellant was rendered incapable of performing his duties. He diagnosed adjustment disorder with anxiety and anger.

By decision dated June 20, 2003, the Office found that the evidence was sufficient to establish the events occurred as alleged but that the incidents were not compensable.

[1] The form was left blank regarding work stoppage.

In a September 29, 2003 report, Dr. Collins opined that he believed appellant's symptoms were due to the way management handled his case without confirming the facts with appellant. Additionally, he explained that appellant related that he was also accused of making a mistake two weeks before the incident in question. Dr. Collins related that the second incident involved a pilot who was instructed to cross a runway and decided that another plane was too close to make it across safely. He explained that he was informed by appellant that the pilot later changed his mind and did not tell him. Dr. Collins explained that at this time, it was too late to give a verbal order, not to cross, as the pilot was waiting. He indicated that the pilot later asked appellant if he could cross. Dr. Collins explained that during the management meeting, appellant was demoted and told that he could have been responsible for the lives of hundreds of people based on his failure to say the prescribed words and that these accusations caused appellant to lose confidence. He also added that initially, appellant was angered over what he had been subjected to by management, and later, the thought of him having placed hundreds of lives in danger, as a result of mistake made while controlling aircraft, was responsible for his disability. Dr. Collins advised that this led to appellant's symptoms of depression and inability to work.

In a June 9, 2004 statement, Lori Rebhan, a union representative, indicated that on or about April 13, 2003, appellant requested that she allow him to see an email concerning his proposed decertification. She advised that they went to the computer screen and reviewed the emails. A copy of the emails was also provided to appellant. Ms. Rebhan explained that the emails revealed that an investigation was initiated as a result of a pilot inquiry and that a number of performance issues were identified, which included safety concerns regarding potential runway incursions and that appellant exhibited a lack of judgment regarding handling the level of activity with only one controller available. They also revealed that appellant had not yet been contacted.

In a June 13, 2004 report, Dr. Collins advised that appellant related that he was told by his coworkers that he had been decertified and that they had read this information off the computer screen in the controller's union office. He indicated that this area was open to all controllers and appellant was able to read the information. The physician explained that this experience of learning about his demotion in a public manner and which accused appellant of endangering people because of his mistakes affected him powerfully and deeply, as they suggested that appellant was incompetent.

By letter dated June 15, 2004, appellant, through his representative, requested reconsideration and submitted additional evidence, which included a diagram of the break room, a statement from appellant and other witnesses. In a June 11, 2004 statement, appellant indicated that on April 13, 2003 he heard from his coworker that he had been decertified from working the CIC position in the tower. Appellant indicated that he did not know the reason for the decertification and became stressed upon hearing of the action, which had become known through an email by Juan Fuentes, the air traffic controller manager. Appellant explained that the email was displayed on a computer screen in the break area, which was visible to all of his coworkers. Appellant noted that when he requested to see a copy of the email, that upon review, he became angry, upset and fearful because he may have caused an accident or harm to others. Appellant explained that he had not been advised of the proposed action by management and the action was the result of a complaint from a disgruntled airline pilot involved in a labor dispute on March 28, 2003. Appellant also indicated that the charges in the proposed disciplinary action

included numerous allegations of safety concerns dealing with potential runway incursions; however, appellant explained that allegations of this type were normally reserved for operational errors or accidents. He explained that he was singled out for following the normal accepted rules of procedure such as combining tower positions at 11:06 p.m. on the midnight shift, as evidence regarding the allegations of misconduct could not be substantiated by the audio tapes. Appellant indicated that even after meeting with management on April 21, 2003 and finding out that the decertification was in error, he felt even worse than he felt after reading the email, such that he requested sick leave. Appellant noted that he took sick leave for two days, returned to work on April 24, 2003 but had lost his confidence and his decision making was affected. Appellant alleged that his condition began to deteriorate such that he returned to work on April 27, 2003 and after barely an hour on radar, requested the forms to file a claim and made arrangements to see a doctor.

The Office subsequently received a copy of an April 14, 2003 quality assurance review regarding a March 27, 2003 action, a copy of the pilot's complaint dated April 23, 2003 and which corrected the date of the incident to March 28, 2003 and an April 22, 2003 letter from the employing establishment assigning appellant to skill enhancement, citing performance deficiencies on March 23 and 28, 2003.

In an August 13, 2003 statement, Andy Sikora, an operations supervisor, indicated that he observed appellant to be in an irritated and bothered state and offered him the claim forms on the day he claimed compensation.

In a memorandum dated April 23, 2003, William W. Kribble, the air traffic manager, explained that he advised appellant that he was not to sign on as the controller in charge for a period of 30 days, unless he was under the direct supervision of the operations supervisor. He also directed appellant to attain a minimum of 20 hours CIC duties with an operational supervisor, which would be documented as a skill check and additional skill enhancement training.

In a June 9, 2004 statement, Jose Diaz, a coworker, indicated that on April 24, 2003 he observed appellant in an "abnormally angry mood" while he was working. In a separate statement, also dated June 9, 2004, Susan Finn, a coworker, indicated that on April 24, 2003, she noticed appellant's personality had changed.

In a June 11, 2004 statement, Robert J. Howard, a coworker, indicated that on April 11, 2003, he was sitting in the air traffic controller's office, when appellant read a letter from Mr. Fuentes to Mr. Price. Mr. Howard noted that appellant became visibly upset and made the statement that he was being singled out for something that everyone did. He indicated that appellant left the room at that point and he went over to the computer to view the contents of the letter.

In a June 17, 2004 resolution of dispute agreement, Jose Suarez, president of the local union, indicated that on April 21, 2003 a meeting occurred in which appellant and management entered into an agreement in which it was determined that there was no basis for decertification when compared to the past practices of other individuals. The parties also agreed that 20 hours of direct supervised skill enhancement training regarding the CIC position was acceptable.

In a June 17, 2004 letter, appellant's representative referred to the resolution of dispute agreement and alleged that because there was no basis for the decertification, appellant had an emotional reaction to the email, which was an error by the employing establishment.

By letter dated July 26, 2004, the Office requested that the employing establishment provide additional information regarding the request for reconsideration.

In response, John Sullivan, a human resources professional, explained that management routinely advised the air traffic controller's union of pending actions regarding union members and that it was not unusual to receive an email regarding actions being considered. In a September 14, 2004 statement, Mr. Price explained decertification of appellant on the CIC position was discussed because appellant had several performance deficiencies in the preceding year. He indicated that in one instance, appellant had cleared two aircraft to land and one to depart on a closed runway. Regarding the March 28, 2003 incident, Mr. Price explained that appellant should have known that all of the aircraft should have been changed to one frequency before being left with only one controller. He denied that appellant was singled out.

By letter dated October 5, 2004, appellant's representative indicated that appellant did not have an emotional reaction to the incident occurring on March 28, 2003 but rather to the proposed action of decertification concerning an unproven incident on that date. He asserted that appellant had followed employing establishment policies. He explained that appellant was concerned about the conditions of his employment being affected.

In an October 20, 2004 decision, the Office denied modification of the June 20, 2003 decision.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[2] 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.[3]

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.[4] This burden includes the submission of a detailed

[2] 5 U.S.C. §§ 8101-8193.

[3] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 126 (1976).

[4] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions, for which compensation is claimed.[5]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office 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 the physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.[6] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of the matter establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[7]

ANALYSIS

Appellant alleged that he sustained an emotional condition on April 27, 2003 as a result of stress related to his position as an air traffic controller. In an October 20, 2004 decision, the Office found that appellant's reaction to the employing establishment's handling of an administrative matter was not compensable. The Office further explained that nothing in the record reflected that appellant sustained a work-related incident on April 27, 2003 and thus he had not met his burden to establish an injury in the performance of duty. However, appellant listed a series of events that preceded April 27, 2003 and expanded his claim to include a series of events. Whether or not a separate claim should have been submitted for an occupational disease relating to an emotional condition, the evidence submitted by appellant is sufficient to constitute a claim for an occupational disease.[8] Technical requirements of pleading are inconsistent with the remedial purposes of the statute.[9] The Board must thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant explained that his condition began after an incident on March 28, 2003 when a pilot filed a letter of complaint regarding the safety practices that evening while he was alone in the control tower. He subsequently provided statements that he was stressed regarding a proposed decertification action and management's handling of the matter. The Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's

[5] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[6] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[7] *Id.*

[8] *Marc J. Logie*, 12 ECAB 257 (1960).

[9] *See Grady L. Frazier*, 40 ECAB 1298 (1989) (the Act and the regulations promulgated there under, are remedial in nature). *See also Frederick A. Hill*, 7 ECAB 611 (1955).

regular or specially assigned work duties and do not fall within the coverage of the Act.[10] However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[11]

The employing establishment denied any error or abuse. Mr. Price, the operations manager, explained that an incident occurred in March 2003, when appellant was the CIC, which resulted in a complaint from a pilot and the safety practices of the employing establishment. He noted that an investigation revealed performance deficiencies. It is well established that an employer has the right to conduct investigations if wrongdoing is suspected. The Board has held that investigations that do not involve an employee's regularly or specially assigned duties are not considered to be employment factors. Such investigations are an administrative function of the employing establishment.[12]

Although appellant provided statements from Mr. Sikora, a supervisor and coworkers, Mr. Diaz, Mr. Howard and Ms. Rebhan, a union representative, they merely indicated that appellant appeared upset regarding his proposed decertification and the investigation initiated as a result of the pilot's complaint. Appellant also submitted a copy of the June 17, 2004 resolution of dispute agreement, which determined that there was no basis for the proposed decertification. Appellant's representative asserted that because an agreement was entered with management, which prevented the proposed decertification action, appellant's reaction to the email, was an error by the employing establishment. However, the mere fact that the employing establishment lessened a disciplinary action did not establish that the employing establishment erred or acted in an abusive manner.[13] In these circumstance, where the parties found no basis for decertification and where appellant agreed to 20 hours of remedial training, the resolution of dispute agreement is insufficient to establish error or abuse on the part of the employing establishment.

Regarding the manner in which the proposed action was disseminated, the employing establishment confirmed that management routinely advised the union regarding proposed decertification of union members and it was not unusual for an email to be received. Appellant did not submit any supporting evidence to the contrary other than his assertions. In these circumstances, the Board finds that the employing establishment's actions concerning a proposed decertification action, were not unreasonable. Appellant has not provided sufficient corroborative evidence to support his allegations that the actions of the employing establishment were unreasonable. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

[10] An employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. *Sandra Davis*, 50 ECAB 450 (1999).

[11] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[12] *Linda K. Mitchell*, 54 ECAB ___ (Docket No. 03-1281, issued August 12, 2003).

[13] *Id*.

Appellant has also alleged that he was concerned about the conditions of his employment being affected. He did not relate his stress to the actual performance of his duties but to his perceptions regarding the administrative actions of the employing establishment. The evidence suggests that appellant is an overly sensitive employee who was perhaps fearful of losing his job. Disabling conditions resulting from an employee's feeling of job insecurity do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act. Rather, the feelings are considered to be self-generated and are not compensable.[14]

As appellant has not established a compensable employment factor, it is not necessary to address the medical evidence.[15]

CONCLUSION

For the foregoing reasons, as appellant has not established any compensable employment factors under the Act, he has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 20, 2004 is affirmed.

Issued: July 12, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

[14] *See Gregorio E. Conde*, 52 ECAB 410 (2001); *see also Denise Y. McCollum*, 53 ECAB 647 (2002).

[15] *Garry M. Carlo*, 47 ECAB 299 (1996); *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).