

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

---

**M.B., Appellant**

**and**

**DEPARTMENT OF TRANSPORTATION,  
FEDERAL AVIATION ADMINISTRATION,  
Kansas City, KS, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 08-521  
Issued: August 12, 2008**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On November 30, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated June 13 and November 2, 2007. Under 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 established an emotional condition causally related to factors of his employment.

**FACTUAL HISTORY**

Appellant, a 45-year-old air traffic control specialist, filed a Form CA-1 claim for benefits based on an emotional condition on April 17, 2007. He stated that this condition developed when he was notified that an aircraft he had been directing on April 14, 2007 had crashed.

In a Form CA-20 report dated April 25, 2007, Dr. David Ramirez, Board-certified in family practice, diagnosed post-traumatic stress disorder (PTSD), and indicated that he had placed appellant on total disability from April 18 through 25, 2007. He checked a box indicating the diagnosed condition was caused or aggravated by an employment activity.

By letter dated May 9, 2007, the Office advised appellant that he needed to submit additional information in support of his claim. The Office asked him to describe in detail the employment-related conditions or incidents which he believed contributed to his emotional condition, and to provide specific descriptions of all practices, incidents, etc., which he believed affected his condition. The letter further explained that it was appellant's responsibility to provide the requested information to the Office within 30 days.

In a letter received by the Office on June 7, 2007, appellant stated:

"The PM 28 that crashed was an aircraft under my control in my airspace. I was responsible for his separation from other aircraft and his general safety.

"The cause of the crash won't officially be known for months. Investigations into these kinds of incidents usually take months and even years. The actions I perform at sections 52 and 53 is simple. I am responsible for the safe, orderly and expeditious flow of all aircraft in my sector, of which the PM 28 was one.

"How was this illness work related? Well, if I had not worked this aircraft and talked to the pilot shortly before his and his passengers deaths, I wouldn't have been upset at being one of the last human beings to have talked to him. In my line of work, I am responsible for thousands of lives every day. I, like my fellow controllers, take this responsibility very seriously. Unlike most lines of work, at the end of our day, we as controllers have very little to hang our hats on. About the only way for us to really measure success is that nobody dies on our watch. I've done this job for 24 years and until April 14, no one had ever died on my watch. That was upsetting."

Appellant stated that he first became aware of his emotional condition when he learned that all of the crew and passengers on board the plane had died. He related that he experienced sorrow, sleeplessness and a sour feeling in his stomach.

In a statement received by the Office on June 11, 2007, the employing establishment controverted the claim. It stated:

"[Appellant's] communications with the pilot were extremely limited, spanning the time frame of 7:29 a.m. to 8:14 a.m. on April 14, 2007. Communications consisted of two transmissions -- one to acknowledge the pilot and one to confirm the altimeter setting. [Appellant] transferred control of the aircraft to another controller at 8:15 a.m. The contact between [him] and the pilot was normal and uneventful."

In a letter to the Office dated June 1, 2004, Gerald B. Schwartz, acting air traffic manager for the employing establishment, stated:

“The [employing establishment] does not concur with [appellant’s] allegations, and submits the following information to controvert [appellant’s] claim.

“On April 14, 2007 [appellant] provided routine and customary services to the pilot at 8:09 a.m. when the pilot established contact with Kansas City Center. [He] acknowledged the pilot and then provided the pilot with altimeter reading. [Appellant] was relieved from his control position by another controller at 8:15 a.m. for a work break. His communication with the pilot consisted of extremely limited conversation; *i.e.*, acknowledging the initial contact and providing altimeter reading. [Appellant] had no further communication with the aircraft. He left work, went home, and did not learn of the accident until the next workday.

“[Appellant] is extremely well trained in handling aircraft, as are other fully certified controllers. In addition, he has over 20 years experience as a controller in one of our busiest and most complex areas. The pilot was not distressed when [appellant] interacted with this aircraft, and this was no different than his interaction with the thousands of other aircraft throughout his career.

“I have reviewed the attending physician’s report, Form CA-20, in which Dr. David Ramirez stated his diagnosis of [appellant’s] condition as ‘[PTSD].’ As previously stated, [appellant] provided routine and customary services as an air traffic controller on April 14, 2007, and did not have any knowledge of the accident until the next workday. The extent of his involvement in this incident is limited to providing routine and customary services.

“[Appellant] was able to perform the required duties of his position in accordance with expectations. There were no performance or conduct problems, and his actual duties do not vary from the official job description.”

By decision dated June 13, 2007, the Office denied appellant’s claim on the basis that he failed to establish any compensable factor of employment and thus fact of injury was not established.

In a report dated May 15, 2007, Dr. Ramirez stated:

“[Appellant] is a patient of mine who suffered a minor case of [PTSD], requiring approximately two weeks off work, due to a single plane accident in April. He was given one to two weeks off work, for mild post-traumatic stress without any specific medications. Counseling was suggested, and he has done well. He has since followed up with me and is doing well, with no further signs of post-traumatic stress, anxiety, depression, or abnormal thoughts.

“In my opinion, it is okay for him to return to work with resolved [PTSD].”

On June 20, 2007 appellant requested a review of the written record.

By decision dated November 2, 2007, an Office hearing representative affirmed the June 13, 2007 decision.

### **LEGAL PRECEDENT**

The first issue to be addressed is whether appellant has cited factors of employment that contributed to his alleged emotional condition or disability. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>1</sup>

To occur in the course of employment, in general, an injury must occur: (1) at a time when the employee may reasonably be said 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.<sup>2</sup>

### **ANALYSIS**

Appellant alleged that he sustained stress in the performance of his duties as an air traffic controller after being informed that the pilot of an aircraft to whom he had spoken the previous day had crashed his plane, killing himself, the crew, and all of the passengers on board. He stated that he experienced severe trauma because the aircraft had been under his control and direction and was within his designated airspace, and because he had never dealt with a situation involving a fatal plane crash prior to this incident. The Board has held that emotional reactions to regular or specially assigned duties are compensable.<sup>3</sup> The employing establishment controverted appellant's claim noting that appellant's contacts with the pilot were limited, from 8:09 a.m. until 8:15 a.m., at which time appellant turned over the control of the plane to another controller to go on break. The employing establishment also noted that nothing unusual or untoward had occurred while the plane was under appellant's watch. While the record is unclear as to actual time of the plane crash, there is no evidence of record that the crash occurred during appellant's watch, or as a result of any duties appellant performed with respect to the flight. Appellant stated that he became extremely upset upon learning that he was one of the last human beings to have spoken with the pilot. He asserted that he took his responsibilities as an air traffic control specialist very seriously; the fact that this was the first fatality he had ever experienced on his watch in 24 years of service. Appellant has not established that his emotional condition was caused by his regular duties as an air traffic controller because contrary to his general allegation there is no evidence of record that the fatalities occurred "under his watch."

---

<sup>1</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>2</sup> *Carmen B. Gutierrez*, 7 ECAB 58 (1954).

<sup>3</sup> *See Lillian Cutler*, *supra* note 1.

When appellant did learn of the event, the fact that an employee learns of the occurrence of a tragedy in the workplace is not in and of itself compensable. In the case *Lois F. Watson*<sup>4</sup> the claimant learned that her coworkers had been murdered at work on a day that she was not at the employing establishment. The Board found that the claimant had not identified any specific duty or duties, or any factors reasonably incidental to her employment, which caused her disability. For the same reason appellant has not established a compensable factor of employment in this case.<sup>5</sup>

### **CONCLUSION**

The Board finds that appellant did not established that he sustained an emotional condition in the performance of his federal employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' November 2, 2007 decision is affirmed.

Issued: August 12, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

---

<sup>4</sup> 42 ECAB 400 (1991).

<sup>5</sup> As the Board has found no compensable factors, it will not review the medical evidence. *Marlon Vera*, 54 ECAB 834, 839 (2003).