

On April 17, 2008 appellant, then a 48-year-old air traffic control specialist, filed a traumatic injury claim alleging that he sustained an emotional condition on that date due to verbal abuse and a hostile work environment.

By letter dated May 21, 2008, the Office requested that appellant provide further information regarding his claim, including a detailed description of the employment-related conditions or incidents which he believed contributed to his condition.

In response, on June 18, 2008 the Office received a detailed supplemental statement from appellant. Appellant alleged that, during the week prior to April 17, 2008, workshifts were changed to accommodate an employee on sick leave. On Monday, April 14, 2008, he worked a 2:00 p.m. to 10:00 p.m. shift, on Tuesday a 12:00 p.m. to 8:00 p.m. shift, on Wednesday a 5:30 a.m. to 1:30 p.m. shift and on Wednesday a shift from 10:00 p.m. to 6:00 a.m. Thursday morning, April 17, 2008, approximately one hour into his shift he argued on the telephone with another controller. In July 16, 2007 a controller at another airport placed two aircraft in proximity for a potential mid-air collision. Appellant was directing one of the two planes. On a different occasion, he was working alone on a midnight shift when an aircraft departed another airport and the pilot climbed above his assigned altitude into the flight path and altitude of another plane. Appellant was able to direct evasive action to prevent a collision in both of these incidents. However, the events caused heart palpitations, chest pains, involuntary muscle tension, an inability to breathe properly or focus on his work tasks and difficulty sleeping. On August 12, 2007 appellant received an award from the employing establishment for his performance regarding these two incidents. At this time he began to worry that he might issue an instruction that would create a dangerous situation or that he might not react quickly enough to prevent a collision. A couple of hours after receiving his award, appellant failed to issue an altitude restriction and the aircraft descended into a dangerous situation. On September 8, 2007 he failed to notice that a pilot read back and followed instructions meant for a different pilot. This pilot descended into airspace not under appellant's control. Appellant became continuously concerned about the safety of the aircraft he directed. He adhered to the air traffic control regulations and procedures but a controller at another airport repeatedly tried to badger him into circumnavigating the regulations, thus putting aircraft in jeopardy. This controller was abusive and argumentative when appellant refused to engage in actions that would violate employing establishment procedures and regulations. Appellant's symptoms worsened and he sometimes thought he was having a heart attack. His medical clearance for work was revoked on May 13, 2008 when he reported his symptoms to the employing establishment.

In reports dated June 8 and 13 and August 19, 2008, Michael Esson, a licensed clinical psychologist, stated that appellant had a history of conflict with an air traffic controller from another airport that caused escalating anxiety. On April 17, 2008 he experienced a conflict with the other controller and had a major anxiety and depression reaction. Appellant could not stop thinking about the ongoing conflict and April 17, 2008 incident. Mr. Esson diagnosed an adjustment disorder.

On June 4, 2008 Lauren Reed, an employing establishment compensation specialist, stated that there were no witnesses to the alleged April 17, 2008 incident. Appellant signed a traumatic injury claim form but told his supervisor that he was going to withdraw the claim. On May 13, 2008 he became upset about an investigation concerning a different incident.¹

¹ Appellant disputed Ms. Reed's statement that he was counseled on May 13, 2008 regarding an investigation. He advised that he last saw his supervisor on April 28, 2008 and was not counseled regarding any air traffic control incidents on May 13, 2008. What occurred on May 13, 2008 was the revocation of appellant's clearance for work based on his medical reports regarding his emotional condition.

Appellant inquired about his CA-1 claim form for the April 17, 2008 incident, stated that he had not withdrawn the claim and left the building to seek medical attention. Ms. Reed challenged the claim, stating that appellant worked without difficulty until May 13, 2008 and there was no evidence the argument with the other controller occurred.

By decision dated June 25, 2008, the Office denied appellant's claim on the grounds that he failed to establish that his emotional condition was causally related to a compensable employment factor. It made findings of fact regarding the April 17, 2008 incident, and all of the other incidents which appellant alleged in his supplemental statement, beginning with the events of August 12, 2007.

On July 16, 2008 appellant requested a review of the written record.

On September 30, 2008 Ms. Reed advised that a review of the April 17, 2008 incident was conducted and it was determined that appellant needed to maintain composure and stay calm while communicating with coworkers and maintain professionalism and not argue on the landline telephone. She contended that his claim was filed because on May 13, 2008 he was counseled about his professional behavior.

By decision dated November 17, 2008, an Office hearing representative affirmed the May 20, 2008 decision.²

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with employment but nevertheless does not come within the coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.³ 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.⁴ Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act. However, where the

² Subsequent to the February 2, 2009 Office decision, additional evidence was associated with the file. Including a Form CA-2 dated October 26, 2009 wherein appellant alleged that he developed symptoms of post-traumatic stress disorder due to his duties as an air traffic controller after July 16, 2007. As the Office has already developed appellant's April 17, 2008 traumatic injury claim as an occupational disease claim, upon return of the case record, it shall consolidate further development of appellant's April 17, 2008 and October 26, 2009 claims. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c).

³ 5 U.S.C. §§ 8101-8193.

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.⁵

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment, which may be considered by a physician when providing an opinion on causal relationship, and which are not deemed compensable factors of employment and may not be considered.⁶ When an employee fails to establish a compensable factor of employment, the Office should make a specific finding in that regard. If an employee does establish a compensable factor of employment, the Office should then determine whether the evidence of record substantiates that factor.⁷ As a rule, allegations alone by an employee are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by other evidence.⁸ Where the employee alleges compensable factors of employment, he must substantiate such allegations with probative and reliable evidence.⁹ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.¹⁰

ANALYSIS

While appellant initially filed a traumatic injury claim on April 17, 2008 for an incident occurring on that day, the Office by letter dated May 21, 2008 and decision dated June 25, 2008, expanded development of appellant's claim to incidents commencing on April 17, 2007.

In his supplemental statement dated June 18, 2008, appellant alleged that his emotional condition was caused by his attempt to perform his regular or specially assigned work duties. The employing establishment asserted that appellant's allegations involved an administrative or personnel matter, a May 13, 2008 investigation regarding an air traffic control incident unrelated to the April 17, 2008 incident. The Board has held that an administrative or personnel matter will be considered to be an employment factor only where the evidence discloses error or abuse on the part of the employing establishment.¹¹ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹² In this case, appellant did not allege that his supervisors erred

⁵ *Michael Thomas Plante*, 44 ECAB 510 (1993).

⁶ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁷ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁸ *See Charles E. McAndrews*, 55 ECAB 711 (2004).

⁹ *Joel Parker, Sr.*, 43 ECAB 220 (1991).

¹⁰ *See Charles D. Edwards*, 55 ECAB 258 (2004).

¹¹ *Id.*

¹² *Janice I. Moore*, 53 ECAB 777 (2002).

or acted abusively regarding administrative or personnel matters. He alleged that he developed his emotional condition because he was attempting to perform his regular duties or specially assigned duties as an air traffic controller.

Following four incidents in 2007 through April 17, 2008, appellant became increasingly concerned about performing his job and ensuring the safety of the aircraft he directed. He adhered to the air traffic control regulations and procedures but a controller at another airport repeatedly tried to badger him into circumnavigating the regulations and putting aircraft in jeopardy. This controller was abusive and argumentative when appellant refused to engage in actions that would violate employing establishment procedures and regulations. Appellant developed heart palpitations, difficulty breathing, sleep and concentration problems and other symptoms. The symptoms worsened and he sometimes thought he was having a heart attack. Appellant's medical clearance for work was revoked on May 13, 2008 when he reported his symptoms to the employing establishment. As noted, where the disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act.¹³

The Board finds that appellant has alleged a compensable factor of employment that he was in the performance of his regular or specially assigned job duties when he developed his emotional condition. On remand, the Office should review the medical evidence and determine whether it establishes that appellant's emotional condition was caused or aggravated by the compensable employment factor.

On appeal, appellant contends that the June 25 and November 17, 2008 decisions are contrary to fact and law. However, he does not provide any specific argument or evidence regarding his contention.

CONCLUSION

The Board finds that appellant has established a compensable factor of employment. On remand, the Office should review the medical evidence to determine whether it establishes causal relationship between the compensable employment factor and appellant's diagnosed emotional condition. After such further development as the Office deems necessary, it should issue an appropriate decision.

¹³ *Lillian Cutler, supra* note 4.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 17 and June 25, 2008 are set aside and the case is remanded for further action consistent with this decision by the Board.

Issued: December 29, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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