

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

---

**J.H., Appellant**

**and**

**DEPARTMENT OF TRANSPORTATION,  
FEDERAL AVIATION ADMINISTRATION,  
Torrance, CA, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 11-1368  
Issued: December 20, 2011**

*Appearances:*  
*Thomas Martin, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On May 11, 2011 appellant, through her attorney, filed a timely appeal from a January 14, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her emotional condition claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 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 met her burden of proof to establish that she sustained an emotional condition in the performance of duty on March 3, 2007.

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On April 16, 2009 appellant, then a 60-year-old air traffic control specialist, filed an emotional condition claim alleging that she developed severe hypertension and post-traumatic stress disorder (PTSD) with neurosis over the years as she witnessed plane crashes and near misses.<sup>2</sup> She noted the date of injury as July 7, 2007 and the date she realized her condition was related to her employment as March 18, 2008. The employing establishment reported that appellant had not worked since June 18, 2007 and was on Office of Personnel Management (OPM) disability retirement since July 5, 2008.

In a statement, appellant explained that she had worked as an air traffic controller since April 1974 and that she experienced two dramatic incidents that resulted in severe emotional injuries. The first incident occurred in November 2004 when a plane crashed at the airport and the second incident occurred on March 3, 2007 when a helicopter nearly missed another aircraft. Appellant explained that she developed stress and fear of more aircraft crashes. She stopped work on July 7, 2007.

In a November 19, 2004 report, Dr. Donald Wallens, a psychiatrist, stated that he examined appellant that day and reviewed her medical history. Appellant was an air traffic controller who complained of symptoms of depression, crying and difficulty sleeping after a traumatizing November 4, 2004 plane crash that occurred while she was on duty. Upon examination, Dr. Wallens noted that she presented with considerable anxiety, depression, low self-esteem, a diminution in her sense of confidence and concern of what others thought about her. He concluded that appellant suffered from acute stress reaction with attendant anxiety and depression and opined that it appeared to result from the employment events.

In a January 12, 2005 work capacity evaluation form, Dr. Wallens stated “yes” that appellant was competent to work eight hours a day and perform her usual job. He also noted that she had fully recovered and could assume her previous duties.

In a February 14, 2005 second opinion psychiatric evaluation, Dr. David Bedrin, a psychiatrist, provided a review of appellant’s medical records and an accurate history of injury regarding the November 2004 incident. Upon examination, appellant was well developed, alert, and cooperative and appeared to be in no acute distress. Dr. Bedrin noted that her acute stress disorder had resolved and advised that no further mental health treatment was needed. He provided a work capacity evaluation form authorizing appellant to return to her regular duties.

In a March 18, 2008 report, Dr. Tyron C. Reece, a family practitioner, stated that he initially examined appellant on November 12, 2007 and subsequently examined her on a monthly basis for uncontrolled blood pressure and traumatic-related stress. He reviewed her social and medical history, conducted a physical examination, and diagnosed post-traumatic stress disorder, malignant hypertension, depressive neurosis and menopausal syndrome. Appellant stated that she was an air traffic controller for many years and that a pilot died from a catastrophic accident as she commanded the operation. She also related that in March 2007 two helicopters nearly

---

<sup>2</sup> The record reflects that OWCP previously accepted an emotional condition claim resulting from a November 4, 2004 incident. Appellant stopped work on November 5, 2004 and returned to her regular duties in 2005.

collided over the runway when she was on duty. Dr. Reece explained that with the two major events as stressor agents, appellant had increasing hypertension and headaches. He noted that, prior to the major catastrophic events, she did not have problems with her blood pressure and explained that she had been exposed to two major traumatic and catastrophic events of stressful origin which left a “lasting subconscious implant in her psychological nature.”

In a June 10, 2008 report, Dr. Reece recommended that appellant undergo treatment modality with psychotherapy and support with psychotropic and anxiolytic intervention.

On June 24, 2009 OWCP advised appellant that the evidence received was insufficient to support her claim and requested additional factual and medical evidence. It also noted that she had a separate claim resulting from a November 4, 2004 incident and informed her that this particular incident could not be the factual basis for her current claim.

In a July 7, 2009 statement, appellant described the November 4, 2004 and March 3, 2007 incidents. She explained that as a result of these incidents she became extremely anxious during periods of heavy aircraft and helicopter traffic, experienced increased blood pressure, and severe migraine headaches and nausea. Appellant noted that there were no outside stressors in her life and that she had no previous conditions of depression, anxiety or sleeplessness.

In a decision dated November 4, 2009, OWCP denied appellant’s claim finding that the record did not contain rationalized medical evidence demonstrating that the March 3, 2007 incident caused her emotional condition.<sup>3</sup>

On March 15, 2010 appellant, through her representative, submitted a request for reconsideration. She explained that as an air traffic controller she witnessed three aircraft incidents that resulted in her multiple medical conditions. Appellant described the accepted November 4, 2004 injury, the March 3, 2007 incident and a May 11, 2004 crash. She reviewed her medical records and contended that the evidence, especially Dr. Reese’s March 18, 2008 report, supported causal relationship.

In a March 11, 2010 statement, appellant described the alleged May 11, 2004 incident when two helicopters collided over the south runway and exploded in a ball of fire. She explained that she was on her way home when the crash occurred, but when she returned to work the runway had a huge black burn mark and the grass on the infield was burned. An airport support staff worker told appellant that he ran into the infield to help the pilots out of the burning wreckage by grabbing their upper bodies and pulling them, but he fell down because their upper torsos had melted and become dislodged. He screamed in horror when he realized that one of the pilots was a veteran helicopter instructor and friend.

In a January 7, 2010 psychiatric evaluation report, Dr. E. Richard Dorsey, a psychiatrist, reviewed appellant’s medical, social, and work history and conducted an examination. He diagnosed post-traumatic stress disorder, depressive disorder, panic disorder with agoraphobia and hypertension. Dr. Dorsey related the March 3, 2007 near-miss incident and described that in

---

<sup>3</sup> OWCP pointed out that appellant’s November 4, 2004 injury had resolved and was not being considered as part of this claim.

November 2004 appellant witnessed a small plane crash. He noted that she exhibited no mental symptoms or impairment prior to the first occupational aircraft incident and opined that the latter incident exacerbated her symptoms, particularly because, unlike the first incident, she was at fault for the second one. Dr. Dorsey concluded that the two incidents cumulatively led to the symptoms listed above and disability from employment. He explained that, in the absence of any preexisting mental illness or significant identified nonoccupational stressors, the two occupational aircraft incidents described above clearly constituted the predominant cause of her mental disorders.

By decision dated June 9, 2010, OWCP denied modification of its November 4, 2009 decision finding that the new medical evidence was insufficient to establish a causal relationship between appellant's conditions and the March 3, 2007 incident. It noted that the medical reports relied more on the absence of preexisting conditions as evidence of causal relationship, and not based on a direct relationship to the incidents. OWCP found that Dr. Dorsey's report relied on an inaccurate history regarding the November 4, 2004 incident and did not adequately explain how the March 3, 2007 incident was related to her condition.

On October 13, 2010 appellant, through her representative, submitted a request for reconsideration. She related the November 4, 2004 and March 3, 2007 incidents and stated that these two traumatic incidents resulted in her multiple psychiatric and stress conditions. Appellant refuted the June 9, 2010 decision and stated that the claims examiner either misunderstood or misread the information.

Appellant resubmitted Dr. Reece's March 18 and June 10, 2008 reports.

In a June 27, 2007 report, Paul R. Fox, M.D., noted appellant's complaints of stress, anxiety and memory problems. He related the March 2007 incident when two helicopters nearly collided under her control and also mentioned an aircraft crash two years ago. Dr. Fox reviewed appellant's medical and social history and conducted a mental status examination. He was unable to determine whether her disability was permanent or whether she could return to work.

Appellant resubmitted Dr. Dorsey's January 7, 2010 report. In an October 6, 2010 supplemental statement, Dr. Dorsey stated that he reviewed his January 7, 2010 examination notes and realized that he misinterpreted her statements regarding the November 4, 2004 incident. He clarified that appellant did not witness the crash itself.

In a decision dated January 14, 2011, OWCP denied modification of its June 9, 2010 decision on the grounds of insufficient medical evidence. It determined that the new medical report submitted still failed to explain how the March 3, 2007 incident was related to appellant's diagnosed conditions.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>4</sup> has the burden of proof to establish the essential elements of her claim by the weight of the reliable, probative and substantial evidence<sup>5</sup> 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.<sup>6</sup>

To establish that an emotional condition arose in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; and (3) rationalized medical opinion evidence establishing that the emotional condition is causally related to the identified compensable employment factors.

Once the claimant has established the factual component of her claim, she must also establish that the employment incident caused a personal injury and that generally requires the submission of rationalized medical opinion evidence providing a diagnosis or opinion as to causal relationship.<sup>7</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the specified employment factors or incident.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>9</sup> The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>10</sup>

---

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>6</sup> *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989); *M.M.*, Docket No. 08-1510 (issued November 25, 2010).

<sup>7</sup> *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

<sup>8</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>9</sup> *B.B.*, 59 ECAB 234 (2007); *Victor J. Woodhams*, *supra* note 8; *D.S.*, Docket No. 09-860 (issued November 2, 2009).

<sup>10</sup> *James Mack*, 43 ECAB 321 (1991).

## ANALYSIS

The record reflects that OWCP previously accepted an emotional condition claim for acute stress reaction, anxiety and depression causally related to a November 4, 2004 helicopter crash and that her condition had resolved.<sup>11</sup> Appellant returned to work in 2005.

On April 16, 2009 appellant filed another emotional condition claim alleging that she developed severe hypertension and post-traumatic stress disorder with neurosis over the years as she witnessed plane crashes and near misses, specifically November 4, 2004 and March 3, 2007 incidents. OWCP has accepted the November 4, 2004 crash and the March 3, 2007 near-miss incident as compensable work factors.

In her March 2010 reconsideration request and statement, appellant also described a May 11, 2004 helicopter crash. As part of her burden of proof, she must provide a detailed description of the employment factors or conditions that she believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>12</sup> Appellant did not provide any witness statements, did not further mention the May 11, 2004 helicopter crash in her subsequent statements and did not describe how this incident caused her condition. Her unsupported allegation alone is insufficient to establish a factual basis for this incident.<sup>13</sup> Therefore, the Board finds that appellant failed to establish the May 11, 2004 incident as a compensable factor of employment with respect to her current emotional condition claim.

As appellant has established the November 4, 2004 and March 3, 2007 incidents as compensable factors of employment, the Board must review the medical evidence.<sup>14</sup>

In a June 27, 2007 report, Dr. Fox noted appellant's complaints of stress, anxiety and memory problems. He reviewed her medical and social history and related the March 2007 incident. Dr. Fox, however, did not provide any opinion on the cause of appellant's medical conditions. The Board has found that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>15</sup> Although Dr. Fox mentioned the March 2007 incident he did not explain whether the March 2007 incident caused such conditions. Thus, his report is insufficient to establish appellant's claim.

---

<sup>11</sup> In a January 12, 2005 work capacity form, Dr. Wallens noted that appellant had fully recovered and was able to perform her usual job duties. In a February 14, 2005 second opinion report, Dr. Bedrin concluded that her acute stress disorder had resolved and authorized her to return to regular duties.

<sup>12</sup> *Janet L. Terry*, 53 ECAB 570, 577 (2001).

<sup>13</sup> *See D.A.*, Docket No. 07-2398 (issued April 15, 2008).

<sup>14</sup> *Tina B. Francis*, 56 ECAB 180 (2004); *C.E.*, Docket No. 10-461 (issued November 23, 2010).

<sup>15</sup> *K.W.*, 59 ECAB 271 (2007); *R.E.*, Docket No. 10-679 (issued November 16, 2010).

In a March 18, 2008 report, Dr. Reece noted that he treated appellant for uncontrolled blood pressure and traumatic-related stress. He related that in March 2004<sup>16</sup> a pilot died from an accident as she commanded the operation and that in March 2007 two helicopters nearly collided when she was on duty. Dr. Reece stated that these two major events were stressor agents to appellant's increasing hypertension and headaches and left a "lasting subconscious implant in her psychological nature." He also pointed out that she did not have any problems with her blood pressure before these major catastrophic events. While Dr. Reece opined that the November 2004 and March 2007 were "stressor agents" to appellant's emotional conditions, he did not provide any explanation or rationale establishing a causal relationship between these incidents and her condition. Instead, his opinion is based on the fact that she did not have problems before these events occurred. The Board has held, however, that the fact that a condition arises after an injury and was not present before an injury is not sufficient to support causal relationship.<sup>17</sup> Without supporting medical rationale, Dr. Reece's opinion on causal relationship is insufficient to meet appellant's burden of proof.

In January 7 and October 6, 2010 psychiatric and supplemental reports, Dr. Dorsey provided an accurate history of injury regarding the November 4, 2004 and March 3, 2007 incidents, conducted an examination and diagnosed post-traumatic stress disorder, depressive disorder, panic disorder with agoraphobia and hypertension. He noted that appellant exhibited no mental symptoms prior to the first occupational aircraft incident and opined that the latter incident exacerbated her symptoms. Dr. Dorsey concluded that the two incidents cumulatively led to her current emotional conditions and disability and clearly constituted the predominant cause of her mental disorders as listed. While he concluded that both incidents were the predominant cause of appellant's condition and his opinion supports causal relationship, he did not support his conclusion with medical rationale.<sup>18</sup> The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.<sup>19</sup> Accordingly, Dr. Dorsey's report is insufficient to establish appellant's claim.

Furthermore, both Dr. Reece and Dr. Dorsey attribute appellant's conditions to both the November 4, 2004 and March 3, 2007 incidents even though both Dr. Wallens and Dr. Bedrin stated that appellant's November 4, 2004 emotional injury had resolved. On appeal, appellant alleges that the medical evidence supports causal relationship. None of the physicians, however, provided a medical opinion to explain how her emotional conditions were causally related to the March 3, 2007 incident. As appellant has failed to submit the necessary evidence to establish her claim, she did not meet her burden of proof in this case.<sup>20</sup>

---

<sup>16</sup> It appears that Dr. Reece erroneously referred to a March 2004 incident, instead of the November 2004 aircraft crash.

<sup>17</sup> *Michael S. Mina*, 57 ECAB 379 (2006).

<sup>18</sup> *See David Apgar*, 57 ECAB 137 (2005).

<sup>19</sup> *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *T.M.*, Docket No. 08-975 (issued February 6, 2009).

<sup>20</sup> *See Vitaliy Y. Matviv*, 57 ECAB 193 (2005).

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 failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty on March 3, 2007.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 14, 2011 is affirmed.

Issued: December 20, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board