United States Department of Labor
Employees' Compensation Appeals Board

A.C., Appellant	)	
and	)	**Docket No. 12-1050**
	)	**Issued: December 28, 2012**
DEPARTMENT OF TRANSPORATION, FEDERAL AVIATION ADMINISTRATION, Miami, FL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 19, 2012 appellant, through his representative, filed a timely appeal from a February 22, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 has established an emotional condition causally related to compensable work factors.

FACTUAL HISTORY

On April 30, 2010 appellant, then a 41-year-old air traffic control specialist, filed a traumatic injury claim (Form CA-1) alleging an emotional condition as a result of an April 30,

[1] 5 U.S.C. § 8101 *et seq.*

2010 employment incident. In a May 16, 2010 statement, he reported that on April 30, 2010 he was working as an air traffic controller when two aircraft were "placed on a collision course" by another controller and put on his frequency.

In a witness statement dated May 3, 2010, Nathan Henkels, a coworker, stated that on April 30, 2010 he was sitting next to appellant assisting him with live air traffic at the radar. He stated the Havana Center was attempting to "hand off two northbound aircraft that were in possible conflict. The trailing aircraft had significant speed overtake and was on a converging course with the slower aircraft as traffic." Appellant requested that he attempt to have the Havana controller separate the airplanes vertically, but they referenced the traffic in their airspace and continued to climb an aircraft through the altitude of the other traffic. Appellant "saw the tracks and the traffic coming together and he insisted that I get Havana Center to fix it. When the airplanes checked on frequency, [he] took appropriate action to separate them."

In a May 4, 2010 statement, Paul McLeod, a coworker, stated that he was working training next to appellant on April 30, 2010. Appellant asked him "to look at what was going on with Havana hand offs on his scope." He stated that it appeared that Havana Center was attempting to hand off two aircraft that were in possible conflict, and he issued instructions to separate them. Mr. McLeod noted that appellant seemed very upset by the incident.

In a statement dated June 3, 2010, the human resources manager stated the aircraft had remained separated by 10 miles, and the required separation was five miles or 1,000 feet vertically. The human resources manager asserted that appellant was "not responsible" for the separation of the aircraft as the aircraft were not yet in Miami airspace. Further lives were not in imminent danger and appellant "was not yet directly working the aircraft or directly responsible for their separation at the time of the incident." It was noted that appellant was not disciplined for the incident.

By decision dated June 18, 2010, OWCP denied the claim for compensation. It found that he was not in the performance of duty at the time of the alleged incident.

Appellant requested a hearing before an OWCP hearing representative, which was held on November 8, 2010. At the hearing, George Rivera, a coworker, testified that he was in the control room on April 30, 2010. He noted that the Miami air space was a congested area with increased traffic coming from the Havana airspace.

In a decision dated June 1, 2011, OWCP's hearing representative affirmed the June 18, 2010 decision. The hearing representative found that the evidence did not establish that appellant had operational responsibility for the aircraft and did not establish a compensable work factor.

By letter dated August 11, 2011, appellant requested reconsideration. He submitted a June 9, 2011 reprimand for negligent work performance. The employing establishment stated that on November 21, 2009 appellant had become aware of a potential conflict with two aircraft, but did not take positive action to resolve the developing conflict as he had advised one aircraft to return to Havana Center's frequency. The reprimand acknowledged that "Havana should have

provided positive separation between these two aircraft, however, when that separation was not assured you had an obligation to resolve that conflict."

By decision dated September 30, 2011, OWCP found the application for reconsideration was insufficient to warrant merit review of the claim. Appellant again requested reconsideration by letter dated January 24, 2012. He submitted a document describing coordination procedures between Miami Air Traffic Control Center and Havana Air Control Center.

In a decision dated February 22, 2012, OWCP reviewed the merits of the claim and denied modification. It found the evidence did not establish that the aircraft were in appellant's assigned airspace. OWCP also stated that there was no loss of separation between aircraft that required emergent action.

LEGAL PRECEDENT

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 factors of his federal employment.[2] This burden includes the submission of detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[3] A claimant must also submit rationalized medical opinion evidence establishing a causal relationship between the claimed condition and the established, compensable work factors.[4]

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 illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position or secure a promotion. On the other hand, where 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 FECA.[5]

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

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

[3] *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

[4] *See Bonnie Goodman*, 50 ECAB 139, 141 (1998).

[5] *Lillian Cutler*, 28 ECAB 125 (1976).

(3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.[6]

ANALYSIS

OWCP found that appellant did not establish a compensable work factor with respect to the April 30, 2010 air traffic incident. Appellant alleged that while working the radar for the Miami Air Traffic Control Center he became aware of a possible conflict with two aircraft approaching from the Havana Center. A coworker assisting appellant, Mr. Henkels, stated that there was a potential conflict as the trailing aircraft had significant speed overtake and was converging on course with the slower aircraft. Appellant requested that Mr. Henkels contact the Havana Center. When the aircraft "checked on frequency," he took action to separate them.

In finding no compensable work factor, OWCP referred to: (1) the employing establishment's statement that there was no dangerous loss of separation between the two aircraft; and (2) its statement that appellant was not "operationally responsible" for the aircraft because they were still within Havana Center airspace. With respect to the first finding, the Board notes that he did not allege that the planes nearly collided. The allegation, supported by coworkers present, was the potential for a collision based on the planes speeds and direction. The finding that the planes did not ultimately violate the guidelines for separation does not support a determination that no compensable work factor was established.

With respect to operational responsibility, this was not a situation where appellant was simply standing near the radar and witnessed a stressful incident.[7] Appellant was working his assigned duty monitoring live aircraft traffic on radar. As part of those duties, he observed a potential conflict between two aircraft and attempted to resolve the conflict. The record contains a disciplinary letter regarding a November 2009 incident that specifically noted that it was appellant's responsibility to take action to resolve a potential conflict, even if Havana Center should have taken action. The disciplinary letter clearly indicated that he had an obligation to take action even if the ultimate responsibility for action was with another radar center. Appellant was advised that it was his responsibility to ensure separation between the aircraft. He was on duty and monitoring radar. Appellant was performing his regular duties as an air traffic controller under *Cutler* when the potential collision arose, a situation he took effort to remedy.

A reaction to regularly or specially assigned duties is a compensable factor under FECA. Appellant alleged a reaction to an April 30, 2010 incident that arose directly from the performance of his duties and responsibilities as an air traffic controller. The Board finds that he has substantiated a compensable work factor under *Cutler*. The case will be remanded to OWCP for proper consideration of the medical evidence. After such further development as is deemed necessary, OWCP should issue an appropriate decision.

[6] *Carmen B. Gutierrez*, 7 ECAB 58 (1954).

[7] *See L.G.* Docket No. 09-276 (issued August 11, 2009) (the claimant was not operating the radar or responsible for operation of the radar at the time of an incident involving two aircraft).

CONCLUSION

The Board finds that the evidence substantiates a compensable work factor and the case is remanded to OWCP for consideration of the medical evidence.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 22, 2012 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: December 28, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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