

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBIN PYKE and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, San Diego, CA

*Docket No. 98-489; Submitted on the Record;
Issued September 14, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained an emotional condition causally related to compensable factors of her federal employment.

In the present case, appellant, an air traffic controller, filed a traumatic injury claim (Form CA-1) on August 5, 1996, alleging that she sustained emotional stress in the performance of duty. In a narrative statement dated September 12, 1996, appellant described an August 5, 1996 incident, as well as several matters occurring in the months prior to August 5, 1996 that contributed to emotional stress. According to appellant, in January 1996 the employing establishment instituted a plan to reduce operational errors, which resulted in a close monitoring of the air traffic controllers. Appellant asserted that controllers were expected to maintain a higher degree of competence than supervisors or pilots. She stated that policy changes were implemented to correct operational errors without regard for feasibility or the impact on controllers. With respect to the August 5, 1996 incident, appellant explained that she had tried to ascertain the status of a Cessna aircraft that appeared to be flying toward the flight path of other aircraft and that she had to make frantic radio calls to the pilot to get him turned around. Appellant then indicated that she became upset when her supervisor talked with the pilot a few hours later and rather than find fault with the pilot, told him it was a misunderstanding and hoped that the pilot was not inconvenienced. According to appellant, when she questioned her supervisor as to why the pilot's errors were not discussed, appellant was told that it was her fault.

By decision dated September 30, 1996, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that fact of injury had not been established. By decision

dated September 8, 1997, the Office reviewed the case on its merits and affirmed the denial of the claim.¹

The Board has reviewed the record and finds that appellant has not established an emotional condition causally related to her federal employment.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.² To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.³

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 the Federal Employees' Compensation Act.⁴

In the present case, the primary allegation of emotional stress derives from the August 5, 1996 employment incidents. There does not appear to be a factual dispute as to the events of that date; an employment establishment memorandum confirms that the Cessna pilot was heading in a direction that he did not have clearance for and appellant attempted to contact the pilot several times before successfully turning the aircraft around. The incidents alleged to have contributed to an emotional condition include: (1) the performance of appellant's duties as an air traffic controller in realizing that the plane was on a course that could bring it into proximity of

¹ The memorandum accompanying the September 8, 1997 Office decision concludes that the September 30, 1996 decision must be modified in part as "fact of injury is now met," but the claim as a whole was denied because performance of duty was not met. This is clearly in error, since "fact of injury" includes both factual and medical evidence sufficient to establish an injury causally related to federal employment and there is nothing in the September 8, 1997 memorandum to suggest that the Office accepted an injury in this case. Perhaps the claims examiner was intending to accept that compensable work factors had been alleged; the memorandum does not, however, specifically make a finding in this regard.

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

³ *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

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

other aircraft and attempting by radio contact to correct the situation and (2) the actions of appellant's supervisor in failing to blame the pilot and instead placing blame on appellant.

As noted above, a reaction to regular or specially assigned duties would be covered under the Act. Therefore the incidents on August 5, 1996 with respect to the actual performance of her air traffic controller duties, such as attempting to contact and warn the Cessna pilot, are considered compensable work factors. On the other hand, the actions of appellant's supervisor with respect to the pilots conduct, although generally related to employment, are considered administrative actions of the employer rather than duties of the employee.⁵ Similarly, appellant's general allegations regarding administrative policy toward air traffic controllers would relate to administrative or personnel matters of the employer. An administrative or personnel matter will not be considered a compensable factor of employment unless the evidence discloses that the employing establishment erred or acted abusively.⁶ In this case, appellant has not submitted any probative evidence establishing error or abuse by the employing establishment. She clearly expresses her disagreement with her supervisors actions and policies and she submitted a statement from a coworker who also reported unhappiness with recent policy changes involving controllers, but there must be probative evidence of error or abuse to establish a compensable factor. The record does not contain any findings of error by an administrative agency or other evidence establishing error or abuse. Accordingly, the Board finds that appellant has not established a compensable factor with respect to the actions of her supervisor on August 5, 1996 or administrative policies toward air traffic controllers.

As noted above, appellant's reaction to the actual performance of her duties on August 5, 1996 would be compensable. In order to meet her burden of proof, however, there must be probative medical evidence establishing causal relationship between a compensable factor and a diagnosed emotional condition.⁷ Appellant submitted a form report dated August 5, 1996 from Dr. Jerome Brodtkin, an internist, diagnosing acute stress reaction and checking a box "yes" that the condition was causally related to employment. It is well established that the checking of a box "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.⁸ The record contains a report dated August 6, 1996, from Dr. Sabah Chammas, a psychiatrist, which provides a history of the August 5, 1996 incident, a report dated August 15, 1996 from Dr. Helen Davis, a psychologist, and a report dated August 26, 1996 with a diagnosis of adjustment disorder. None of these reports contains a reasoned opinion on causal relationship with a compensable work factor.

It is appellant's burden of proof to establish the essential elements of her claim. In this case appellant has not submitted sufficient evidence to establish an emotional condition causally related to compensable factors of her federal employment.

⁵ *Anne L. Livermore*, 46 ECAB 425 (1995).

⁶ *See Sharon R. Bowman*, 45 ECAB 187 (1993).

⁷ *See Ruth S. Johnson*, 46 ECAB 237 (1994).

⁸ *See Barbara J. Williams*, 40 ECAB 649, 656 (1989).

The decision of the Office of Workers' Compensation Programs dated September 8, 1997 is modified to reflect that appellant has established a compensable work factor with respect to the performance of her duties as an air traffic controller on August 5 1996 and is affirmed as modified.

Dated, Washington, D.C.
September 14, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member