

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TIMOTHY K. JOYCE and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, Ronkonkoma, NY

*Docket No. 02-928; Submitted on the Record;
Issued August 15, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

On June 18, 2000 appellant, then a 47-year-old air traffic controller, filed a traumatic injury claim alleging that on that date he sustained trauma due to committing an operational error. In a statement dated July 22, 2000, appellant described the events of June 18, 2000 as follows:

“[Aircraft] 1 was handed off to my sector at FL [flight level] 330. This [aircraft] had crossing traffic. It is a sector requirement to descend this [aircraft] to [the] lowest usable FL, FL 180 in this case. One of the [aircraft] was [aircraft] 2 at FL 310, opposite direction. Traffic complexity was building because of weather and the sector to the south was having some problems with Cleveland Center. I had preplanned to wait until these two [aircrafts] crossed prior to descending [aircraft 1]. There was no traffic for the [aircraft] after they crossed. I then got a late handoff from sector 73 at FL 330 on [aircraft] 3. This [aircraft] had a very high rate of speed and was a conflict with [aircraft] 1. I descended [aircraft] 1 to FL 180. I did this without recognizing that [aircraft] 2 was still traffic for [aircraft] 1. As soon as I recognized the situation between [aircrafts] 1 and 2, I took steps to ensure the [aircrafts] stayed at a minimal distance apart. I stopped [aircraft] 1's descent and maintain[ed] [its] altitude and descended [aircraft] 2 to FL 290. Closest [aircraft] was 2 miles and 900 feet and converging. Standard separation is 5 miles or 2,000 feet.

“This error was very similar to the operational error that occurred on June 1, 2000. Due to that error, I had been trying to be extra careful. This error was very disturbing to me. I was very upset that I was put into a position where I was working alone under moderate conditions. At the time of the error, I was unable to concentrate on anything. I had a very strong negative reaction. I felt

that I was in serious trouble and in jeopardy of losing my position. I could not believe that this was happening to me again. I became upset, throwing my headset across the room. I broke out in a cold sweat. I was unable to sleep that night at all.

“This event occurred on a Sunday night. The quality assurance office was not able to look at the error until Tuesday, due to workload. On Monday I was still very upset [and] stressed out over the potential loss of my position.”

By decision dated November 4, 2000, the Office of Workers’ Compensation Programs denied appellant’s claim on the grounds that he did not establish fact of injury. The Office found that appellant did not respond to its request for additional factual and medical information.¹

Appellant requested a hearing before an Office hearing representative. At the hearing, he described the events of June 18, 2000. Appellant related that when he knew he had committed an operational error he was “upset immediately, because first of all, it happened.” He also stated that he was upset because he had committed two operational errors within one month. Appellant noted that he was relieved of duty two days after the operational error. He indicated that he filed his claim for a traumatic injury the night of the operational error.

In a decision dated November 14, 2001, the hearing representative affirmed the Office’s November 4, 2000 after finding that appellant had not established any compensable factors of employment.

The Board finds that the case is not in posture for decision.

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 the employment but nevertheless does not come within the concept or coverage of workers’ compensation. Where the disability results from an employee’s emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees’ Compensation Act.² 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.³

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 employment factors.⁴ This burden includes the submission of a detailed

¹ It appears that the Office overlooked appellant’s July 22, 2000 statement describing the factors to which he attributed his emotional condition.

² 5 U.S.C. §§ 8101-8193.

³ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff’d on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁵

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁶ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁷

In this case, appellant attributed his emotional condition, in part, to the performance of his day-to-day duties as an air-traffic controller. He related that while he was working a radar position on June 18, 2000 he committed an operational error, which caused two aircraft to come closer than the standard separation of 5 miles or 2,000 vertical feet. Appellant described the actions that he took to prevent the loss of separation between aircraft. He related that he was upset about the operational error “because first of all, it happened.” As discussed above, appellant’s reaction to the performance of his regular or specially assigned duties is covered under the Act. Therefore, as appellant’s commission of an operational error on June 18, 2000 relates to the performance of his day-to-day duties as an air traffic controller and arises out of the nature of his work, he has established a compensable factor of employment under *Cutler*.

Regarding appellant’s contention that he developed stress due to insecurity about maintaining his position, the Board has previously held that a claimant’s job insecurity is not a compensable factor of employment under the Act.⁸

Appellant has established a compensable factor of employment. However, his burden of proof is not discharged by the fact that he has established an employment factor, which may give rise to a compensable disability under the Act. To establish his occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.⁹

⁵ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁶ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁷ *Id.*

⁸ *See Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

⁹ *See William P. George*, 43 ECAB 1159, 1168 (1992).

Appellant submitted a report dated June 22, 2000 from Dr. Bruce S. Herman, a clinical psychologist, who discussed the history of injury, reviewed the results of objective testing and listed findings on examination. Dr. Herman diagnosed acute stress disorder. He stated:

“[Appellant] was involved in a traumatic incident while working at the [employing establishment] as an air traffic controller. At that time, two aircraft, under his control, came within close proximity. [He] shows symptoms of depression, anxiety and is having difficulty concentrating and sleeping. [Appellant] is ruminative about the event above and feels uncertain about his future as an air traffic controller.”

In a form report dated July 20, 2000, Dr. Herman diagnosed acute stress disorder and checked “yes” that the condition was caused by the described employment activity.” He found that appellant was totally disabled from June 18 to July 5, 2000 and could resume regular work on July 6, 2000.

The Board finds that, although Dr. Herman did not provide sufficient medical rationale explaining how the accepted employment factor caused or contributed to appellant’s emotional condition, his reports are generally supportive of appellant’s claim and sufficient to require further development by the Office. The case, therefore, must be remanded to the Office for preparation of a statement of accepted facts and further development of the medical evidence on the issue of whether appellant has sustained an emotional condition in the performance of duty. After such further development as the Office deems necessary, it shall issue an appropriate decision on appellant’s entitlement to benefits.

The decision of the Office of Workers’ Compensation Programs dated November 14, 2001 is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Dated, Washington, DC
August 15, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member