

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID TORRES and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, Miami, FL

*Docket No. 03-1000; Submitted on the Record;
Issued August 6, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether appellant sustained a work-related emotional condition on January 5, 2002.

On January 13, 2002 appellant, then a 48-year-old air traffic controller, filed a claim for a recurrence of disability, alleging that on January 5, 2002 he sustained a panic attack that was a recurrence of a July 19, 1997 work-related injury. He stated that the attack occurred after a training session. The employing establishment stated that appellant was off work from January 8 to 14, 2002.

In a report dated January 25, 2002, the employing establishment stated that on January 5, 2002 appellant's performance in a training session was deemed unsatisfactory and on January 8, 2002 informed him that he would receive a letter of unsatisfactory performance. Appellant then stated that he had had a "relapse of the post-traumatic stress syndrome he was diagnosed with in Seattle," advising that the original date of injury was July 19, 1997. The employing establishment noted that appellant was restricted from performing air traffic control activities until February 7, 2002, but was performing administrative functions.

On November 14, 2002 appellant filed a traumatic injury claim, alleging that on January 5, 2002 he had a recurrence of a panic attack after a heavy training session.¹

By letter dated November 22, 2002, the Office requested that appellant submit additional information in support of his claim.

In a report dated March 2, 1999, Dr. Terence F. McGuire, Board-certified in psychiatry and neurology, stated that on February 25, 1999 appellant had a panic attack at work. He noted that appellant had several interrelated diagnoses including a single episode of major depression,

¹ The Office of Workers' Compensation Programs developed the case as a traumatic injury claim, not as a recurrence of disability claim.

mild seasonally affective disorder, general anxiety disorder, panic disorder and obsessive-compulsive traits. Dr. McGuire noted that appellant also had sleep apnea and a past diagnosis of post-traumatic stress syndrome.

By report dated January 11, 2002, Dr. Joseph L. Romance provided restrictions to appellant's work activities. In reports dated January 8, March 15 and September 10, 2002, the employing establishment's flight surgeon, restricted appellant from air traffic controller duties. In a report dated May 17, 2002, a therapist noted that appellant had been treated for post-traumatic stress disorder. On September 25, 2002 the employing establishment noted that it terminated appellant's clearance on September 19, 2002. In a report dated October 21, 2002, an employing establishment's physician diagnosed allergic rhinitis, sleep apnea by history and left toe cellulites.

By decision dated January 6, 2003, the Office denied appellant's claim.

The Board finds that appellant has failed to establish that he sustained an employment-related emotional condition on January 5, 2002.

In an emotional condition claim, appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the mental condition for which he claims compensation was caused or adversely affected by factors of his federal employment. To establish that he 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 his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.²

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.³ There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the coverage of the Federal Employees' Compensation Act.⁴ These injuries occur in the course of the employment, but nevertheless are not covered because they are found not to have arisen out of the employment.⁵

Disability that results from an employee's frustration over not working in a particular environment, holding a particular position or securing a promotion is not covered. On the other hand, disability due to an employee's emotional reaction to his regular or specially assigned

² *Wanda G. Bailey*, 45 ECAB 835 (1994); *Kathleen D. Walker*, 42 ECAB 603, 608-09 (1991).

³ *Samuel Senkow*, 50 ECAB 370, 373 (1999).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Frank B. Gwozdz*, 50 ECAB 434, 436 (1999).

work duties or to a requirement imposed by management or the work itself is covered by the Act.⁶

In emotional condition cases, the Office 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.⁷ Therefore, the initial question is whether appellant has alleged compensable factors of employment that are substantiated by the record.⁸

A claimant must substantiate such allegations by submitting a detailed description of specific employment factors or incidents that he believes caused or adversely affected his condition.⁹ Personal perceptions and feelings alone are not compensable under the Act.¹⁰

While appellant has submitted evidence identifying an employment factor alleged to have caused his panic attack on January 5, 2002, he has not submitted rationalized medical evidence establishing that his condition on or after January 5, 2002 was employment related. The only medical evidence of record that refers to a panic attack is the March 2, 1999 report from Dr. McGuire, who noted that appellant had an attack in February 1999, not on January 5, 2002. This report is, therefore, of no probative value in the instant case. In his January 11, 2002 report, Dr. Romance merely listed restrictions to appellant's work activities without providing a diagnosis or any opinion regarding a causal relationship. The record also includes a May 17, 2002 therapist's report. However, it was not rendered by a physician as defined by the Act.¹¹ The remaining reports are from the employing establishment's flight surgeon and do not refer to the alleged January 2002 panic attack or any medical condition that may have established a causal relationship between his claim and his federal employment.

Since appellant presented no evidence establishing that he sustained an employment-related emotional condition, the Office properly denied his claim.

⁶ *Marie Boylan*, 45 ECAB 338 (1994); *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

⁸ *Donald E. Ewals*, 45 ECAB 111 (1993).

⁹ *Peggy Ann Lightfoot*, 48 ECAB 490, 493 (1997); *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991).

¹⁰ *Earl D. Smith*, 48 ECAB 615, 650 (1997).

¹¹ *Jane A. White*, 34 ECAB 515, 518-19 (1983). Moreover, the report does not contain an opinion on the cause of appellant's condition. A therapist's report is not medical evidence, as it is not the report of a "physician" as defined in section 8101(2) of the Act.

The decision of the Office of Worker's Compensation Programs dated January 6, 2003 is affirmed.¹²

Dated, Washington, DC
August 6, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

¹² The Board notes that appellant submitted additional evidence in his appeal. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c), *Pamela K. Guesford*, 53 ECAB __ (Docket No. 02-915, issued August 12, 2002).