

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

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KEVIN M. DUFFY, Appellant )  
and ) Docket No. 04-2170  
DEPARTMENT OF TRANSPORTATION, ) Issued: March 3, 2005  
FEDERAL AVIATION ADMINISTRATION, )  
Renton, WA, Employer )  
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*Appearances:*  
*Kevin M. Duffy, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chairman  
WILLIE T.C. THOMAS, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On September 2, 2004 appellant filed a timely appeal of a merit decision of the Office of Workers' Compensation Programs dated July 27, 2004, which denied his claim for an emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this emotional condition claim.

**ISSUE**

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

**FACTUAL HISTORY**

On February 4, 2004 appellant, then a 46-year-old air traffic control specialist, filed a claim alleging that he suffered from a stress/depression condition causally related to factors of his federal employment. He advised that he was first aware of his condition on November 17, 1999. On October 15, 2003 he realized that his condition was caused or related to

his employment and that he could no longer work under his present job description. Appellant stopped work on October 15, 2003 and returned to administrative duties on October 20, 2003.

In a letter dated March 23, 2004, the Office requested additional factual and medical information from appellant. This included providing detailed information regarding the development of his condition and a comprehensive medical report.

In an undated statement, which the Office received on March 26, 2004, appellant advised that he was not sure why his life was beginning to be overwhelmed. He noted that a good friend and fellow controller had suffered a heart attack and died at work in 1999. Appellant stated that there was no specific occurrence which he could attribute to in working with the airplanes, but he knew that he was beginning not to look forward to "plugging in" anymore. He advised that he continued to work in the utmost professional manner but began to avoid work by either taking annual leave, sick leave and, when his leave ran out, leave without pay. Appellant additionally attributed his condition to his 45-minute one way commute to work and working at a level 10 facility. Appellant stated that he voluntarily transferred to another facility, which was only a 15-minute commute and that, during his training, his stress seemed to get worse.

Appellant submitted progress notes from Dr. H. Stein, an osteopath, dated September 26, 2003 through February 10, 2004. In the September 26, 2003 report, Dr. Stein noted that appellant did not pass the flight physical for his air traffic controller job due to evaluated blood pressure. He noted that appellant had a history of hypertension and that appellant had complained of some sleep disturbance but felt more rested since he moved to a facility closer to his home. Dr. Stein diagnosed hypertension and, in subsequent reports, continued to regulate appellant's hypertension. In an October 16, 2003 report, Dr. Stein noted that appellant started having some significant anxiety symptoms when he felt like he had "to put the headphones on and plug in at work." Dr. Stein diagnosed anxiety. In an October 30, 2003 report, Dr. Stein diagnosed appellant with depression with anxious features. He continued to monitor appellant's hypertension, depression and general health in subsequent progress reports.

By decision dated July 27, 2004, the Office denied appellant's claim on the grounds that he did not establish any compensable employment factors.

#### **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.<sup>1</sup> To establish his claim 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 condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.<sup>2</sup>

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<sup>1</sup> *Edward C. Heinz*, 51 ECAB 652 (2000); *Martha L. Street*, 48 ECAB 641, 644 (1997).

<sup>2</sup> *Ray E. Shotwell, Jr.*, 51 ECAB 656 (2000); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup>

### ANALYSIS

The Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must, thus, review whether there are any incidents and conditions of employment which are covered employment factors under the terms of the Act.

Appellant stated that he was not sure why he felt overwhelmed. He mentioned that a good friend and fellow controller had a heart attack and died at work in 1999. He also stated that his 45-minute one-way commute to work and working at a level 10 facility were contributing factors to his condition. The disability is not covered where it results from an employee's frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>7</sup> Thus, those events are not compensable factors of employment.

Appellant's physician noted that he did not pass the flight physical for his job as an air traffic controller due to evaluated blood pressure and that he had a history of hypertension.

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>5</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>6</sup> *Id.*

<sup>7</sup> See *Cutler*, *supra* note 4.

However, as it has not been established that appellant's hypertension is work related, this cannot be considered to be a compensable factor of employment.

The Board has held that emotional reactions to situations in which an employee is trying to meet his position requirements are compensable.<sup>8</sup> Appellant stated that there were no specific occurrences which he could attribute to in working with the airplanes; only that he knew that he did not look forward to "plugging in" anymore and took leave whenever possible. Appellant, however, has not alleged or submitted any evidence indicating that any specific duties of his air traffic controller job caused or aggravated his condition. For this reason, the Board finds that appellant has not established that his emotional condition arose from the performance of his regular or specially assigned duties.<sup>9</sup>

The Board notes that, since appellant has not established a compensable work factor, the medical evidence will not be considered.<sup>10</sup>

### **CONCLUSION**

The Board finds that appellant failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 27, 2004 is affirmed.

Issued: March 3, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>8</sup> See *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

<sup>9</sup> See *Cutler*, *supra* note 4.

<sup>10</sup> See *Margaret S. Krzycki*, 43 ECAB 496 (1992).