

stated that appellant “was highly agitated and appeared to be having a difficult time briefing the relieving controller. [Appellant] was under great distress and extreme emotional stress after the above incident occurred.” The employing establishment controverted the claim. The employing establishment indicated, “Immediately after the operational error, [appellant] boarded an airplane for Florida (scheduled leave). [He] did not file a CA-1 until eight days later. Medical note provides only a ‘provisional diagnosis’ with no mention of the cause of the diagnosed condition.”

By letter dated October 13, 2004, the Office requested that appellant submit further information, including medical evidence.

In response, appellant submitted a report by John J. Plunkett, a social worker, indicating that he was seen at Mass Bay Counseling on September 28 and October 6, 2004. After administering tests, Mr. Plunkett determined that appellant was suffering from major depressive disorder, severe with psychotic features and panic disorder without agoraphobia. He indicated that there was no history of prior disorders but that appellant appeared to be depressed for some time. Mr. Plunkett advised that appellant was not capable of functioning in an employment capacity at this time. He advised that appellant contact a psychiatrist and noted that he would continue to work with appellant on a weekly basis until he had successfully obtained appropriate professional resources.

The employing establishment submitted a statement dated November 8, 2004. In this statement, Carole M. Doyle, the Office Program Manager, indicated that she had spoken to the supervisor on duty at the time of the incident and appellant’s supervisor of record. She indicated that on September 20, 2004 appellant was working in the local east position in the tower cab, and was preparing to complete his shift and leave for a previously scheduled trip to Florida. At approximately 6:00 p.m., appellant had cleared an Air France (AFR) aircraft to land. At that time, and American Airlines (AAL) aircraft was waiting on the airway to depart. She noted that this procedure, “anticipating separation,” is a common air traffic procedure. As the AAL pilot began taxing down the airway, he powered down and notified appellant that he was not going to depart because he believed that the AFR aircraft had not yet cleared the runway. Because the AAL pilot aborted take-off, Ms. Doyle explained that it appeared that an operational error may have occurred and that specific procedures must occur. One such procedure was that a supervisor was required to conduct a preliminary investigation within two hours. Ms. Doyle noted that the on-duty supervisor and appellant reviewed the tapes of the transaction and the supervisor indicated that appellant had done everything correctly and believed that the incident would potentially be downgraded to a “no-occurrence.” The supervisor indicated this to appellant, who seemed upset and stated that he was quitting and that he was concerned about missing his 8:00 p.m. flight. She noted that the subsequent investigation confirmed that that AFR aircraft was clear of the runway at the time of the AAL pilot aborted take-off and the incident was downgraded to a “no-occurrence.” She noted that on September 24, 2004 appellant informed the supervisor that he would be on sick leave for his next scheduled workdays and that on September 28, 2004 the employing establishment received a facsimile transmission from Mr. Plunkett indicating appellant’s provisional diagnosis, but not linking it with his employment.

In a medical report dated November 17, 2004, Dr. Zelko Leon, a Board-certified psychiatrist, indicated that he evaluated appellant, that he reported symptoms of clinical

depression and anxiety. He noted, “In the last two months he has [not] been working as an air traffic controller after he experienced what seems to have been a severe anxiety attack that disabled his functioning. [Appellant] seems to be traumatized by this and believes he will not be able to return to his job at this time.”

By decision dated December 2, 2004, the Office denied appellant’s claim. The Office found that the incident of September 20, 2004 occurred as alleged, but that the evidence did not establish that a medical condition resulted from the incident.

On December 21, 2004 appellant requested a hearing. By letter dated October 3, 2005, he changed his request for a hearing to a request for review of the written record.

In an attending physician’s report dated February 18, 2005, Dr. Leon indicated that the panic attack on September 20, 2004 was caused or aggravated by his work. He did note preexisting symptoms of clinical depression and stress. Dr. Leon indicated that appellant should receive counseling and medication and was advised that he could not return to work.

In a statement dated August 30, 2005, appellant indicated that he has been working as a controller for over 28 years. He gave a more detailed description of the incident of September 20, 2004. Appellant noted, in part:

“On that day an American Airlines B-737 requested the long runway 22L and there appeared to be room to get the departure out after the arrival of an Air France Heavy A-333. However, the final for runway 27 would be tight. The Air France A-333 while landing roll appeared it would exit at Taxiway E which would have been plenty of time since I had the first runway 27 arrival turn off early on the east side of taxiway E and holding short of runway 22L. However, Air France continued down the runway threw runway 27. I instructed to A-333 to exist at Taxiway S. The next available exit. They did so however it is a sharp right turn of about 140 degrees. A difficult and timely turn for an aircraft of that size. The arrival for runway 27 was getting close and the threat of having to send them around was mounting. The other controller working the departures off runway 22R had aircraft out to the west that complicated the situation even more if the runway 27 arrival were to execute a missed approach. I cleared the American B-737 for take off on runway 22 L. American rolled and then aborted takeoff after rolling a couple thousand feet claiming I was in error. Claiming that Air France was still on the runway. It was later determined that I was correct and not in error however that was several months later.”

In a medical report dated October 7, 2005, Dr. Leon stated:

“[Appellant] has been under my continuous medical (psychiatric) care since November 17, 2004. He was never treated by a psychiatrist before. The main motivation for his coming to treatment is an overwhelming emotional state triggered by the work[-]related incident, described in detail by [appellant] in his statement dated [August 30, 2005].

“Apparently, as a result of the incident, he has lost the emotional capacity to deal with work stress associated with his job duties as an air traffic controller. As a result of not working and taking medication (Cymbalta 90 milligrams per day), [appellant] was able to restore emotional balance, but with any situation that indicates possibility of him returning to work, he reexperiences original symptoms of overwhelming anxiety that would prevent him to function as an air traffic controller.

“Based on my treatment of [appellant] it is my opinion that he will not be able to return to work. He is emotionally and psychologically traumatized and returning to work would place him at an extremely high risk of his severe symptoms of depression and anxiety returning: the very symptoms that are incapacitating for the performance of his job.”

The employing establishment submitted a statement dated November 11, 2005 wherein it offered further reasons for controverting appellant’s claim. The employing establishment argued, *inter alia*, that the pilot of the AAL flight did not claim that appellant was in error; that the recording revealed simply that the pilot stated that he was aborting his take off due to the AFR plane. The employing establishment contended that this was a common occurrence. The employing establishment also noted that appellant gave a proper and professional briefing to his replacement.

By decision dated January 23, 2006, the Office affirmed the Office’s December 2, 2004 denial of appellant’s emotional claim. The Office found that the medical evidence did not establish that appellant’s mental condition was causally related to the employment incident.

LEGAL PRECEDENT

To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.¹ Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.²

¹ *Pamela D. Casey*, 57 ECAB ____ (Docket No. 05-1768, issued December 13, 2005; *George C. Clark*, 56 ECAB ____ (Docket No. 04-1573, issued November 30, 2004).

² *Gary L. Fowler*, 45 ECAB 365 (1994).

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 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 Act.³ 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.⁴

ANALYSIS

In the instant case, the evidence is clear that a work-related incident occurred on September 20, 2004 when appellant, while performing his duties as air traffic controller, was involved in a situation where an AFR plane he directed to take off aborted and notified him that he was not going to take off because he believed that an AAL flight had not departed the runway. Subsequent investigation of the claim indicated that he handled the situation properly, however appellant alleged that the incident caused him stress which led to his emotional condition. The Board has held that conditions related to stress resulting from situations in which an employee is trying to meet his or her position requirements are compensable.⁵ It is clear that an incident occurred when an AFR flight aborted take off for the reason that the pilot believed that an AAL flight was still on the runway and that this resulted in an investigation. The Board finds that this is considered a compensable employment factor. Furthermore, there is medical evidence that appellant suffers from an emotional condition, *i.e.*, anxiety.

The remaining question is whether the accepted employment factor caused appellant's emotional condition and this must be proven with rationalized medical opinion evidence. In support thereof, appellant submitted the report of Dr. Leon, who concluded that his main motivation for seeking treatment was the work-related incident and he referred to appellant's detailed description of the incident in his letter of August 30, 2005. He explained that appellant had a severe anxiety attack that disabled his functioning as a result of this incident and that he was unable to return to work in his capacity as an air traffic control specialist because he was emotionally and psychologically traumatized.

The Board finds that the reports of Dr. Leon contain a history of injury as well as an opinion that appellant's condition was causally related to the accepted employment factors. The reports are uncontradicted by any opposing medial evidence and sufficient to require further development of the claim. Although Dr. Leon's reports are insufficient to meet appellant's burden of proof as he fails to provide adequate medical rationale describing how and why

³ *Pamela D. Casey*, 57 ECAB ____ (Docket No. 05-1768, issued December 13, 2005; *George C. Clark*, 56 ECAB ____ (Docket No. 04-1573, issued November 30, 2004); *see also Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *See Norma L. Bank*, 43 ECAB 384, 389-90 (1992).

⁵ *Trudy A. Scott*, 52 ECAB 309, 314 (2001).

appellant's employment caused or aggravated his emotional condition, they do provide an uncontroverted medical opinion indicating that his emotional condition was caused or aggravated by the accepted work incident of September 20, 2004.⁶ On remand, the Office should prepare a statement of accepted facts and refer appellant to an appropriate physician for an opinion as to whether the accepted factor caused or aggravated his emotional condition. After this and such further development as the Office deems necessary, the Office should issue an appropriate decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 23, 2006 is vacated and this case is remanded for further action consistent with this opinion.

Issued: September 22, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

⁶ *John J. Carlone*, 41 ECAB 354, 358 (1989).