United States Department of Labor
Employees' Compensation Appeals Board

P.F., Appellant	)	
and	)	**Docket No. 07-110**
	)	**Issued: April 20, 2007**
DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Oberlin, OH, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 18, 2006 appellant filed a timely appeal from a decision of an Office of Workers' Compensation Programs' hearing representative dated August 21, 2006. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established an emotional condition causally related to factors of his employment.

FACTUAL HISTORY

Appellant, a 45-year-old air traffic control specialist, filed a Form CA-1 claim for benefits based on an emotional condition on June 21, 2004. He alleged that this condition was caused by two factors of his employment: (a) his being notified that an aircraft he had been directing had crashed; and (b) during a June 15, 2004 investigative interview conducted by the

National Transportation Safety Board [NTSB], one of the investigators made comments of an accusatory nature which caused him to develop extreme stress and anxiety.

In a report dated June 21, 2004, Dr. Daniel Allan, Board-certified in family practice, related that appellant stated that he had been accused of multiple improprieties during the June 15, 2004 investigative interview. He stated that the May 31, 2004 crash and subsequent interview caused appellant to have significant stress, insomnia, panic-type reactions and sweating while trying to sleep. Dr. Allan diagnosed acute stress reaction and anxiety with insomnia, in addition to hypertension probably related to acute stress. He asked appellant to return in two weeks for a follow-up on his stress-related conditions.

In a letter to the Office dated July 21, 2004, Gary M. Klingler, air traffic manager, Cleveland, stated:

> "This letter is to confirm that appellant was required to participate in the investigation conducted by the [NTSB] on June 15, 2004. Standards of [c]onduct regulations clearly state, 'No employee may refuse to testify or provide information pertinent to matters under investigation or inquiry.' This investigation would be considered 'in the performance of his duty.'"

In an email dated June 21, 2004, Dan Sutton, appellant's union vice-president, indicated that he had been present during the June 15, 2004 investigative interview. He stated:

> "As with any fatal accident [appellant] was upset that it had occurred and was not sleeping well. He had called in sick due to lack of sleep the day after the accident. The investigation went very well up until the very end. At the end of the interview a statement by Scott Dunham, the NTSB investigator, in my opinion was extremely inappropriate. His statement was something along the lines of 'the aircraft crashed 10 miles outside of your airspace in weather that was visible on your scope and you did nothing, how did you know that you did [not] turn him into weather?' This was stated more as an accusation than as a question. I was flabbergasted by the statement as was [appellant]. I advised Steve Dunn, Federal Aviation Administration Legal and [another management official], that I felt a statement like that was inappropriate and should not have occurred.
>
> As a result of this [appellant] has been on sick leave since the interview occurred. I spoke with [him] today and it appears he [is] now going to have his medical pulled. [Appellant] had returned to work and although he was upset by the accident as anyone would be, he was coping with it fine. After the interview he returned to Area 1 visibly shaken and was advised not to work by his supervisor, even though the area was short staffed. This was uncalled for and totally avoidable. As a controller I believe that [appellant] did everything appropriately and worked hard coordinating the entire time the aircraft was on his frequency to insure that the aircraft could deviate as needed."

In a statement dated July 29, 2004, appellant indicated that he understood the NTSB investigative interview conducted on June 15, 2004 was standard procedure following airplane

crashes. He asserted that he was prepared for the questioning because he believed he had done nothing to contribute to the crash. Appellant stated:

> "While most of the interview was professional and investigative it became quite different toward the end. The questioning became speculative and accusatory. I was asked several times things like, 'what do you think the pilot is thinking when he is flying into weather' and 'how do you know you didn't turn the aircraft into the weather that caused the crash.' These comments struck at the heart of what I have been doing for almost twenty years and that is to provide safe and professional service to the aircraft that fly in my airspace. These comments were quite unnerving and very hurtful. Dan has since written a letter to the facility manager saying he was 'flabbergasted' by the statement. I left the meeting quite upset and disturbed. When I went back to my work area my supervisor, Randy Phillips could see that I was visibly shaken and allowed me to take as much time as I needed to try and gather myself. I did return and finish my shift feeling quite unsure of myself. The next two days I took sick leave."

Appellant related that he could not stop thinking about the May 31, 2004 plane crash and June 15, 2004 investigative interview while doing yard work at home. He stated that he began gasping for energy, sweating profusely and feeling constricted in his upper torso. Appellant also experienced tightness in his shoulder, difficulty sleeping for several nights and difficulty concentrating. He related that Dr. Allan diagnosed a stress-related condition. Lastly, appellant requested 12 days of continuation of pay for the period June 16 to July 1, 2004, when he missed work.

By letter dated August 12, 2004, the Office advised appellant that it had accepted two factors of employment, the May 31, 2004 plane crash and June 15, 2004 investigative interview. The Office stated, however, that the medical evidence appellant had submitted was not sufficient to establish that he had sustained his emotional condition in the performance of duty, as Dr. Allan was not a psychologist or psychiatrist. The Office, therefore, informed appellant that it was referring him for a second opinion examination with a licensed psychologist or psychiatrist.

The Office scheduled appellant for an examination with Dr. Michael A. Murphy, Ph.D, in psychology. In a report dated September 24, 2004, Dr. Murphy found no evidence of cognitive dysfunction due to psychoses, head injury or organicity. He stated that appellant showed no obsessions, phobias or ideas of reference, delusions, hallucinations or paranoid ideations. Dr. Murphy found that appellant's decision making, flexibility and social perceptions were intact and estimated to be within normal limits. He stated:

> "Affectively, [appellant] denies a depressed mood. Depressive cognition is not present. [Appellant] denies crying spells. [He] has not attempted suicide and denies any suicidal ideation, plan or intent. [Appellant] reports symptoms of anxiety.... [He] denies anxiety attacks when returning to work. Motoric signs of anxiety are absent. Symptoms of post-traumatic stress and acute stress are absent. [Appellant] denies symptoms of impulse control disorder and denies antisocial behavior."

Dr. Murphy noted that appellant was able to care for his basic needs and drive independently and was reporting no manic symptoms and few, if any, symptoms of anxiety or clinical symptoms associated with depression.

By decision dated December 17, 2004, the Office denied appellant's claim on the basis that the medical evidence of record did not establish that his claimed emotional condition was causally related to the accepted employment factors.

On December 19, 2004 appellant requested an oral hearing.

By decision dated July 14, 2005, an Office hearing representative set aside the December 17, 2004 decision finding that the record was incomplete because page six of Dr. Murphy's report was not included in the case file. The hearing representative found that Dr. Murphy's answers to two of the three questions posed by the Office claims examiner which pertained to the issues of whether appellant did in fact have the diagnosed conditions, whether these conditions were causally related to the accepted employment factors and whether these conditions would have resulted in total disability were contained in the missing page. The hearing representative, therefore, remanded for the district Office to obtain the missing page and include it with Dr. Murphy's report.

On remand, the district Office obtained and reviewed page six of Dr. Murphy's report which indicated that the condition of "stress" was not a DSM-IV diagnosable condition and, therefore, not related to the two compensable events. Dr. Murphy found no evidence that appellant had acute stress reaction or generalized anxiety disorder, as found by Dr. Allen. He opined that generalized anxiety disorder required a period of at least six months duration when anxiety or persistent worry are present, since appellant's symptoms abated in approximately two weeks. Dr. Murphy also found no evidence that the alleged conditions resulted in any periods of total disability.

By decision dated October 26, 2005, the Office denied appellant's claim on the basis that the medical evidence of record did not establish that he did not have any diagnosed emotional condition causally related to the accepted employment factors.

On November 23, 2005 appellant requested an oral hearing which was held on April 25, 2006.

Subsequent to the hearing, appellant submitted a January 8, 2006 report from Dr. Dennis Savinsky, a specialist in psychiatry, who treated appellant after he was admitted to the emergency room following a suicide attempt. Dr. Savinsky stated that appellant described a three-year period of depression; he noted that his job as an air traffic controller was stressful and that his involvement in an investigation of a crash two years earlier had been very traumatic for him. He advised that appellant felt stressed, less active and more irritable. Dr. Savinsky diagnosed major depressive disorder, single episode, with suicide precaution.

By decision dated August 21, 2006, an Office hearing representative affirmed the October 26, 2005 decision.

LEGAL PRECEDENT

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition, and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.[1]

The first issue to be addressed is whether appellant has cited factors of employment that contributed to his alleged emotional condition or disability. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act.[2] Appellant's burden of proof is not discharged by the fact that he has established employment factors 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.[3]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed, or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is usually rationalized medical evidence. 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 medical 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 the claimant.[4]

ANALYSIS

In the present case, the Office has accepted two compensable factors of employment. There is a conflict in the medical evidence between Dr. Allan, appellant's treating physician, and Dr. Murphy, the Office referral physician, regarding whether appellant sustained any disability

[1] *See Debbie J. Hobbs,* 43 ECAB 135 (1991).

[2] *Lillian Cutler,* 28 ECAB 125 (1976).

[3] *See William P. George,* 43 ECAB 1159, 1168 (1992).

[4] *Id.*

causally related to the two compensable factors of employment accepted by the Office; *i.e.*, the May 31, 2004 plane crash and the June 15, 2004 investigative interview. Dr. Allan stated that the May 31, 2004 crash and subsequent interview caused appellant to have significant stress, insomnia, panic-type reactions and sweating while trying to sleep. He diagnosed acute stress reaction and anxiety with insomnia, in addition to hypertension probably related to acute stress. Dr. Allan asked appellant to return in two weeks for a follow-up examination for his stress-related conditions. In contrast, Dr. Murphy found in his September 24, 2004 report that appellant did not have a condition of "stress" because it was not a DSM-IV diagnosable condition and, therefore, was unrelated to the two compensable events. He also found that there was no evidence that appellant had acute stress reaction or generalized anxiety disorder. Dr. Murphy opined that generalized anxiety disorder required a period of at least six months duration when anxiety or persistent worry are present, since appellant's symptoms abated in approximately two weeks. He also found no evidence of total disability due to the alleged conditions.

When such conflicts in medical opinion arise, 5 U.S.C. § 8123(a) requires the Office to appoint a third or "referee" physician, also known as an "impartial medical examiner."[5]

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.

On remand, the Office should instruct the referee medical examiner to provide a well-rationalized opinion and determine whether appellant's May 31 and June 15, 2004 incidents were causative factors to his diagnosed emotional conditions.[6] After such development as it deems necessary, the Office shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision with regard to whether appellant sustained an emotional condition causally related to factors of his employment. After such development as it deems necessary, the Office shall issue a *de novo* decision.

[5] Section 8123(a) of the Federal Employees' Compensation Act provides in pertinent part, "[i]f there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." *See Dallas E. Mopps*, 44 ECAB 454 (1993).

[6] *See William P. George*, 43 ECAB 1159, 1168 (1992).

ORDER

IT IS HEREBY ORDERED THAT the October 21, 2006 decision is set aside and the case is remanded to the Office for further action consistent with this decision of the Board.

Issued: April 20, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board