

people's lives." She had to constantly watch people around her, even when she was not at work and started to experience headaches, palpitations, trembling, dizziness, fatigue, anxiety, sleeping problems and irritability. Appellant became aware of her illness on June 26, 2008. The employing establishment noted that it was engaged in numerous conversations with her in which she related that she could not work due to personal issues. The employing establishment stated that appellant was a single mother who was involved with a married man. The employing establishment acknowledged that a contentious relationship existed with her and the father of her child and included threats such as "kidnapping and murder." The employing establishment advised that appellant was involved in a court case and a violation of a restraining order against a minor. The employing establishment also noted that appellant stated that she could not function as an air marshal due to the situation.

By letters dated July 22, 2008, the Office requested additional factual and medical evidence from appellant and the employing establishment.

In an August 1, 2008 letter, appellant alleged that her position involved "mostly flying on board of the aircraft, and requires [her] to be awake and alert at all times." She described the nature of her job was to stay in a hypervigilance state of mind in order to make split second decisions if faced with circumstances which would require involvement on her part. Appellant alleged that flying at 30,000 feet with only one other air marshal was extremely difficult and dangerous. Appellant could not do anything that would take her attention from watching people around the cockpit. She could not leisurely talk to other passengers or walk around. The only thing she could do was stay awake and "think, think, think." Appellant alleged that the duties were stressful. The constant flying, changes in time zones, compressed air on board, constant boredom and constant need to watch the behaviors of others were factors that made her mind wonder about the past and future. Appellant alleged that her training to detect aberrant behavior affected her and made her hypervigilant all the time. She would become weak and have outbursts of crying while flying. Appellant alleged that being around airplanes and on long flights made her lose her concentration. She would become irritable and anxious on flights lasting over three hours. Appellant worried about what would happen to her one-year-old daughter because she had an extremely dangerous job. While she had other stressors in her life, her job gave her the most stress.

The Office received a position description for a federal air marshal. The duties included being deployed on flights, working long periods without a break, being on call for 24 hours a day and carrying a firearm.

In a June 25, 2008 e-mail to Damon R. Pfalmer, a supervisor and assistant to the special agent in charge, appellant advised that "personal matters" were affecting her "ability to control [her] mental health to be 100 percent ... to be up in the air 30,000 feet above the earth, and take a risk." She was comfortable on the ground but did not feel confident in her mental ability to stay present in the moment when she thought about her daughter's safety. Appellant could not trust her daughter's father, who had promised to provide for her. She did not wish to take legal action against him.

In an August 7, 2008 memorandum, Mr. Pfalmer explained that he met with appellant on June 18, 2008, and she apprised him of her personal situation. Appellant was a single mother of

a one-year-old child, whose father was a married man. Appellant informed Mr. Pfalmer that she could not work on long flights or remain on overnights (RON's) because she was worried about the father kidnapping her child and death threats had been made between the two parties. Mr. Pfalmer also noted that the father's wife had filed a restraining order against her. On June 25, 2008 appellant informed him that she could not function as an air marshal because she often broke down crying and was concerned about her ability to function. Mr. Pfalmer referred to an e-mail that she sent which advised him that her personal life was interfering with her ability to perform her job. He noted that a decision was made to secure appellant's weapon. Mr. Pfalmer met with her on June 26, 2008 and obtained her weapon. He stated that appellant's personal issues were discussed and she revealed that she had "blanked out" on one occasion and was "so worried about her personal situation that she was unaware of her surroundings." Mr. Pfalmer characterized appellant's behavior as the opposite of hyper-hypervigilance. Appellant was referred for family medical leave and she completed an occupational disease claim after he explained the difference from a traumatic claim. Mr. Pfalmer noted that appellant never referenced any source of stress, "other than that of her personal situation," in which she was involved in legal proceedings.

The Office received several reports from appellant's treating physician. On July 29, 2008 Dr. Dainius Mulokas, a psychiatrist, diagnosed mood disorder and generalized anxiety disorder. He checked a box "yes" in response to whether he believed appellant's condition was caused or aggravated by her employment. In an August 2, 2008 work capacity evaluation, Dr. Mulokas noted that appellant had anxiety due to chronic worrying. He advised that she could not tolerate prolonged plane trips due to persistent anxiety, hypervigilance and chronic worrying. Dr. Mulokas recommended placing appellant in an office or clerical environment. The Office also received disability slips dated July 1 to August 2, 2008.

By decision dated September 4, 2008, the Office denied appellant's claim. It found that the evidence failed to establish an emotional condition arising in the performance of duty as she had not established any compensable factors of employment.

On December 1, 2008 appellant's representative requested reconsideration. No new evidence was submitted.

In a December 17, 2008 decision, the Office denied appellant's request for reconsideration without a review of the merits.

On September 3, 2009 counsel requested reconsideration. He submitted a February 14, 2009 statement from appellant, who explained that, in 2003, she began feeling stress and anxiety with poor concentration and headaches. Appellant attributed her condition to frequent flying while having to maintain concentration on flights to perform her duties. On overnight flights, especially when flying east, she would have extreme difficulty getting rest due to time differentials and having to get started the next day to catch the next flight assignment. Appellant did not have the opportunity to eat correctly while out of town due to the timing of the flights. Additionally, she drank coffee to stay alert, which caused her to be nervous, jittery and added to her anxiety. Appellant explained that she would caffeinate herself to a high level of alertness but would lose the ability to focus. She noted that the situation began to level off in 2005 to 2008,

when the symptoms worsened. Appellant reiterated that her mind wandered and that the relationship with the father of her child was hostile.

In an August 3, 2009 report, Dr. Silva Karchikian, a family practitioner, noted that appellant's history included the rigors of her air marshal job as well as personal stressors. She diagnosed anxiety. In an August 4, 2009 report, Dr. Mulokas diagnosed mood disorder and generalized anxiety disorder. He noted being aware of the personal stressors in appellant's life, including the hostilities with her daughter's father and family. The stressors first began during overnight flights and stays, which caused her to be more anxious about job performance and eventually they included her personal life.

In a December 7, 2009 decision, the Office denied modification of its prior decisions.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every illness that is somehow related to an employee's employment. There are situations where an injury or 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 her regular or specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.²

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition, for which she claims compensation was caused or adversely affected by employment factors.³ This burden includes the submission of a detailed description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions, for which compensation is claimed.⁴

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 the physician when providing an opinion on causal relationship and, which working conditions are not deemed factors of employment and may not be considered.⁵ 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 the

² See *Lillian Cutler*, 28 ECAB 126 (1976).

³ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

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

matter establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁶

ANALYSIS

The Office denied appellant's emotional condition claim because she did not established any compensable employment factors. The Board must, therefore, review whether the alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant generally attributed her emotional condition to the regular or specially assigned duties of her position as an air marshal. The Board has held that emotional reactions to situations in which an employee is trying to meet her position requirements are compensable.⁷ In *Antal*, a tax examiner filed a claim alleging that his emotional condition was caused by the pressures of trying to meet the production standards of his job and the Board, citing the principles of *Cutler*, found that the claimant was entitled to compensation.⁸ In *Kennedy*, the Board, also citing the principles of *Cutler*, listed employment factors which would be covered under the Act, including an unusually heavy workload and imposition of unreasonable deadlines.⁹ The Board notes that appellant is not alleging an unusually heavy workload or unreasonable deadline. Rather appellant alleged that being in a "hyper vigilant state of mind constantly while onboard aircraft, in order to protect people's lives," caused her anxiety. She further alleged that she became increasingly anxious on flights lasting more than three hours and that her mind would begin to wander and start "imagination for the future." Appellant also noted that she began to worry about what would happen to her one-year-old daughter because she had an extremely dangerous job. Although she noted other stressors in her life, she indicated her work was the main source of stress.

The Board finds that appellant has not established that her emotional condition arose in the performance of duty. The employing establishment related that the reasons for her anxiety stemmed from personal matters which included her relationship with a married man and the child that she had as a result of the relationship, which became contentious and volatile. The employing establishment noted that the relationship involved a restraining order, court proceedings and threats of "kidnapping and murder." Mr. Pfallmer, a supervisor, submitted a copy of a June 25, 2008 e-mail from appellant, in which she explained that "personal matters" were affecting her "ability to control [her] mental health to be 100 percent ... to be up in the air 30,000 feet above the earth and take a risk." Appellant essentially requested that he place her in a position on the ground instead of air. She also pointed to the source of her anxiety as being due to a personal matter noting that she was "only thinking about [her] daughter's safety." Appellant stated that she could not trust her daughter's father. Mr. Pfallmer provided an August 7, 2008 statement and explained that he met with her on June 18, 2008, wherein she apprised him of her

⁶ *Id.*

⁷ See *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

⁸ See *supra* note 2.

⁹ See *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

personal situation. He indicated that appellant advised him that she could not work on long flights or RON's because she was worried about the father kidnapping her child as death threats had been made between the two parties. Additionally, Mr. Pfalmer noted that she informed him that the father's wife had filed a restraining order against her. He stated that on June 25, 2008 appellant advised him that she could not function as an air marshal as she often broke down crying and was concerned about her ability to function. Mr. Pfalmer noted that she provided him with an explanation that she "was terrified" that the father would abduct her child. He explained that he met with appellant on June 26, 2008 and obtained her weapon. Mr. Pfalmer also advised that her personal issues were discussed and she revealed that she had "blanked out" on an occasion and was "so worried about her personal situation that she was unaware of her surroundings." He stated that appellant had never made complaints of stress. The Board finds that the evidence of record is not sufficient to establish a compensable employment factor under *Cutler* as appellant's allegations are insufficient to establish that her work duties gave rise to her emotional condition; rather the evidence establishes that her personal family matters are the source of her anxiety. Therefore, appellant has not established a compensable factor under *Cutler*.

Appellant did not otherwise attribute her emotional condition to other factors of her employment. As she has not established a compensable employment factor, it is not necessary to address the medical evidence.¹⁰

On appeal, counsel contended that appellant's condition was work related. He referred to the reports of Drs. Mulokas and Karchikian, which were included with the September 3, 2009 reconsideration request. For the reasons noted, the Board finds that appellant did not establish a compensable work factor.

CONCLUSION

The Board finds that appellant did not meet her burden of proof in establishing that she sustained an emotional condition in the performance of duty.

¹⁰ *Garry M. Carlo*, 47 ECAB 299 (1996). See *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 7, 2009 is affirmed.

Issued: April 21, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board