

In an October 7, 2010 letter, OWCP advised appellant that additional information was needed to support his claim. Appellant was asked to describe in detail where he was and what he was doing when the incident occurred as well as any statements from witnesses or persons who had immediate knowledge of his injury. He was also asked to have his attending physician provide a well-rationalized opinion which included a history and date of the injury as to how the reported work incident caused or aggravated a medical condition.

Appellant submitted an October 1, 2010 Form CA-16, Authorization for Examination and/or Treatment, along with other evidence. In an October 5, 2010 attending physician's report, Dr. David W. Aycock, a licensed clinical psychologist, noted the history of injury as, "While on his job as an air traffic controller on September 24, 2010, an airplane [appellant] had been controlling crashed suddenly with fatalities. His anxiety symptoms began soon after." He diagnosed anxiety disorder, which he opined was a direct result of the airplane crash trauma of September 24, 2010.

In an October 13, 2010 continuation of pay (COP) nurse report, the history of the injury was noted as "[c]laimant was able to verbalize his stress and sleep issues following a plane crashing after the plane left his airspace."

In an October 27, 2010 letter, the employing establishment controverted the claim and submitted a statement from Kendal C. Callwood, of the Quality Control team, which indicated that appellant did not have a plane under his control nor did he talk to the aircraft at the time of the crash. An investigation surrounding the September 24, 2010 incident revealed appellant had transferred/handed off communication to Chattanooga Approach Control and had only worked the aircraft prior to the crash. There was no emergency when he was performing his duties and the plane ran out of fuel when Chattanooga had taken over control.

By decision dated November 15, 2010, OWCP denied the claim as the evidence failed to establish that appellant's medical condition arose during the course of employment and within the scope of compensable work factors.

On December 21, 2010 appellant requested reconsideration. In a December 21, 2010 statement, he provided a timeline of the September 24, 2010 event which included the radar service given to the plane which crashed. Appellant stated that he initially assisted the plane and then handed off control to Chattanooga. Approximately two to three minutes after he handed off the control of the airplane to Chattanooga, he saw an airplane squawking and emergency code in the same area on the radar screen. Appellant then called Chattanooga and questioned what he had seen. It was then that he was informed that the plane had declared an emergency. Following the incident, appellant was required to complete paperwork.

In a December 21, 2010 statement, William Thompson, an air traffic control specialist and coworker, stated that appellant was working the radar position and relieved him for a break. He indicated that, after he returned from his break, he was informed of the crash of an aircraft that both appellant and he had worked. Mr. Thompson noted telling appellant that he did everything he could to help after he saw the emergency code on his radar screen within Chattanooga's airspace.

Appellant resubmitted copies of Dr. Aycock's October 5, 2010 medical report and the October 1, 2010 Form CA-16. In an October 5, 2010 psychotherapy note, Dr. Aycock reported,

“last Friday while on his job as an air traffic controller an airplane he was controlling with three passengers crashed.”

In a February 15, 2011 letter, the employing establishment contended that appellant’s responsibility for the aircraft ended when he handed off control to Chattanooga. It provided a statement from Mr. Callwood, the front line manager, who noted that appellant was involved in an after incident investigation.

By decision dated April 22, 2011, OWCP modified the November 15, 2010 decision to reflect that appellant established a compensable factor of employment with regard to his participation in the after-accident investigation. It specifically found that as he was not the air traffic controller in charge of the plane at the time of the emergency, the actual crash of the aircraft was not considered to be in the performance of duty. However, it denied appellant’s claim as he failed to establish a causal relationship between the diagnosed condition and the compensable factor of employment.

On June 15, 2011 appellant requested reconsideration. In a June 7, 2011 report, Dr. Aycock noted his disagreement with OWCP’s finding that appellant’s injury was not in the performance of duty. Concerning the event of September 24, 2010, he stated that appellant was the first air traffic controller to visually recognize that the airplane was crashing. Dr. Aycock stated:

“Indeed [appellant] was involved directly in this incident because an emergency had been declared and radar contact with the distressed airplane had been lost. His involvement was therefore timely and rendered before the crash occurred. [Appellant] was actively involved in trying to locate the distressed airplane and offering assistance to the air traffic control team before, during and after the actual crash. In fact, he was intimately involved in all phases of this tragedy and not merely part of the postcrash investigative team.”

He further stated that, when he originally filled out the CA-16 form, he erroneously stated that appellant had been controlling the airplane that crashed. Dr. Aycock indicated that was his error in reporting, not appellant’s error in relating the incident to him. He further stated, “As stated clearly on [appellant’s] CA-16, the anxiety symptoms arose very soon after when the full recognition of loss of life became apparent. Therefore, there is no doubt that [the] airplane crash was directly causal of the anxiety disorder and was clearly experienced in his performance of duty.”

By decision dated July 21, 2011, OWCP affirmed the April 22, 2010 decision. It found the medical evidence of record did not support that appellant’s medical condition was caused by the compensable factor of employment, *i.e.*, his participation in the accident investigation.

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.² This burden includes the submission

² Pamela R. Rice, 38 ECAB 838 (1987).

of detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.³ A claimant must also submit rationalized medical opinion evidence establishing a causal relationship between the claimed condition and the established, compensable work factors.⁴

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 illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.⁵

To occur in the course of employment, in general, an injury must occur: (1) at a time when the employee may reasonably be said to be engaged in his or her master's business; (2) at a place where he or she may reasonably be expected to be in connection with the employment; and (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.⁶

In cases involving emotional conditions, if a claimant implicates a factor of employment, OWCP 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, OWCP must base its decision on an analysis of the medical evidence.⁷

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that an emotional condition was caused or adversely affected by his employment.⁸

Causal relationship is a medical issue⁹ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete

³ *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

⁴ *See Bonnie Goodman*, 50 ECAB 139, 141 (1998).

⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Carmen B. Gutierrez*, 7 ECAB 58 (1954).

⁷ *A.K.*, 58 ECAB 119 (2006); *C.S.*, 58 ECAB 137 (2006).

⁸ *See Charles D. Edwards*, 55 ECAB 258 (2004).

⁹ *Mary J. Briggs*, 37 ECAB 578 (1986).

factual and medical background of the claimant,¹⁰ must be one of reasonable medical certainty,¹¹ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.¹²

ANALYSIS

Appellant alleged that he sustained an emotional condition in the performance of his duties as an air traffic controller after an aircraft he had just handed over control to Chattanooga Approach on September 24, 2010 experienced an emergency and crashed. He was also involved in an after-incident investigation. OWCP found that the after-incident investigation was a compensable work factor; however, the actual crash of the aircraft was not a compensable work factor as appellant was not the air traffic controller in charge of the plane at the time of the emergency. It denied his claim on the grounds that the medical evidence did not establish a causal relationship between his emotional condition and the compensable work factor.

In finding the actual crash of the aircraft was not a compensable work factor, OWCP found that, as appellant was not the air traffic controller in charge of the plane at the time of the emergency, the actual crash was not considered to be in the performance of duty.

With respect to operational responsibility, this was not a situation where appellant was simply standing near the radar and witnessed a stressful incident.¹³ Mr. Thompson's December 21, 2010 statement supports that appellant was covering for him while he took a break and the crash occurred during Mr. Thompson's break. Further the emergency code seen on appellant's radar screen within Chattanooga's airspace occurred a short time after appellant handed off control of the airplane to Chattanooga Approach. Although he was no longer in control of the aircraft, he was on duty and monitoring the radar screens. As part of his duties, appellant observed activity on the radar screen regarding a plane he just handed off control of and called Chattanooga Approach to question what he just saw. Appellant was reasonably fulfilling his duty to warn and inform Chattanooga Approach over what he had seen.

A reaction to regularly or specially assigned duties is a compensable factor under FECA. Appellant alleged a reaction to the September 24, 2010 incident that arose directly from the performance of his duties and responsibilities as an air traffic controller. The Board finds that he has substantiated a compensable work factor under *Cutler*.¹⁴

As appellant has established a compensable work factor, the issue is now whether the medical evidence supports that he sustained an emotional condition resulting from the

¹⁰ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹¹ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹² *See William E. Enright*, 31 ECAB 426, 430 (1980).

¹³ *See L.G.*, Docket No. 09-276 (issued August 11, 2009) (the claimant was not operating the radar or responsible for operation of the radar at the time of an incident involving two aircraft).

¹⁴ *Supra* note 5. *See A.C.*, Docket No. 12-1050 (December 28, 2012) (the claimant was monitoring live aircraft traffic on radar when a potential collision arose, a situation he took effort to remedy).

compensable work factor. The case will be remanded to OWCP for consideration of the medical evidence.

CONCLUSION

The Board finds that appellant established a compensable factor under *Cutler*.

ORDER

IT IS HEREBY ORDERED THAT the July 21, 2011 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for development of the medical evidence.

Issued: February 26, 2013
Washington, DC

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

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

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