

crashed shortly after she transferred control to another airport tower. She was notified of the loss of life of all persons onboard. Appellant stated that she experienced restlessness, insomnia, stress, night sweats and loss of appetite as well as disturbing images of probable events in the cockpit prior to and during the crash.

In a letter dated December 17, 2013, OWCP requested additional factual and medical evidence from appellant regarding her traumatic injury claim. It noted that she had not submitted any medical evidence of a diagnosed condition. OWCP also requested that she complete a factual questionnaire. It allowed 30 days for a response.

Dr. William M. Beecham, Ph.D. a clinical psychologist, completed a report on December 20, 2013 noting that appellant was an air traffic controller. On Sunday, December 8, 2013 appellant cleared a departing aircraft out of Fort Pierce Airport, climbed the aircraft to the requested altitude and turned the plane on course. She handed the aircraft off to Orlando Approach Control. The airplane then crashed killing all three persons on board. Appellant's supervisor informed appellant of the crash during her shift on December 8, 2013 and she continued working until the end of her shift. Appellant reported to work on Monday and again on Tuesday, when she had an emergency, but that plane landed safely. On Wednesday, she was instructed to go to the tape room to complete an official statement regarding the aircraft that crashed. At that point, appellant learned that the pilot was transporting his daughter back to college and his other daughter was along for the ride. The pilot was unable to see the runway for a landing and the tower controller instructed him to go around and try again. The aircraft came too low to the ground and crashed into a lake near the runway. All three persons aboard died. Appellant reported her obsessive thoughts about the crash, her loss of appetite and insomnia. Dr. Beecham diagnosed acute stress disorder as the result of the traumatic event involving the death of the pilot and his daughters.

The employing establishment provided appellant with a Form CA-16 authorization for examination to receive treatment as medically necessary. Dr. Beecham completed the form on December 20, 2013 indicating with a checkmark "yes" that he believed that her condition of acute anxiety reaction was caused or aggravated by the employment incident. He found that appellant was temporarily totally disabled.

By decision dated January 24, 2014, OWCP denied appellant's claim. It found that she failed to establish that the employment incident occurred in the performance of duty. It found that the injury did not arise during the course of employment or within the scope of compensable work factors. OWCP found that appellant was not in control of the aircraft at the time it crashed. Appellant's reaction to the news of it later crashing did not occur while she was in the performance of duty. While the aircraft was under her control, she handled its navigation through her control space and safely transferred it to another control center.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence,

² *Id.*

including the fact that the individual is an “employee of the United States” within the meaning of FECA and that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

Workers’ compensation law does not apply to each and every injury or illness that is somehow related to an employee’s employment. In the case of *Lillian Cutler*,⁵ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.⁶ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under FECA.⁷ When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee’s disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.⁸ In contrast, a disabling condition resulting from an employee’s feelings of job insecurity is not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of FECA. Thus, disability is not covered when it results from an employee’s fear of a reduction-in-force. Nor is disability covered when it results from such factors as an employee’s frustration in not being permitted to work in a particular environment or to hold a particular position.⁹

Congress, in providing for a compensation program for federal employees, did not contemplate an insurance program against any and every injury, illness or mishap that might befall an employee contemporaneous or coincidental with her employment; liability does not attach merely upon the existence of any employee/employer relation.¹⁰ FECA provides for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.¹¹ The term “in the performance of duty” has been interpreted to be the equivalent of the commonly found prerequisite in workers’ compensation law, “arising out

³ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ 28 ECAB 125 (1976).

⁶ *See supra* note 1.

⁷ *See Robert W. Johns*, 51 ECAB 136 (1999).

⁸ *Supra* note 5.

⁹ *Id.*

¹⁰ *Christine Lawrence*, 36 ECAB 422, 423-24 (1985); *Minnie N. Heubner (Robert A. Heubner)*, 2 ECAB 20, 24 (1948).

¹¹ *See supra* note 1.

of and in the course of employment.”¹² “In the course of employment” deals with the work setting, the locale and time of injury.¹³ In addressing this issue, the Board has stated:

“In the compensation field, 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 her master’s business;
- (2) at a place where she may reasonably be expected to be in connection with the employment;
- (3) while she was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto.”¹⁴

This alone is not sufficient to establish entitlement to benefits for compensability. The concomitant requirement of an injury “arising out of the employment” must be shown and this encompasses not only the work setting but also a causal concept, the requirement being that the employment caused the injury. In order for an injury to be considered as arising out of the employment, the facts of the case must show some substantial employer benefit is derived or an employment requirement gave rise to the injury.¹⁵

ANALYSIS

Appellant alleged that she developed an emotional condition following the crash of an aircraft she had directed and handed off to another control tower. The record does not establish that she was in control of the aircraft at the time of the crash, that she observed the crash on radar or that she had any further contact with the aircraft or other control tower after relinquishing control.

The Board found a compensable factor in the performance of duty in *M.L.*,¹⁶ in which an air traffic controller alleged that he sustained an emotional condition when an aircraft over which he handed control to another airport crashed. He was also involved in the after-accident investigation. In *M.L.*, however, the employee was on duty and monitoring the radar screens and observed activity on the radar screen regarding the plane over which he relinquished control and called the other airport to question what he just saw. The Board found that he was reasonably fulfilling his duty to warn the other airport. Therefore, the employee’s emotional condition was found a reaction to regularly or specially assigned duties. The Board noted that it was not a situation where the employee was simply standing near the radar and witnessed a stressful

¹² *James E. Chadden, Sr.*, 40 ECAB 312, 314 (1988).

¹³ *Denis F. Rafferty*, 16 ECAB 413, 414 (1965).

¹⁴ *Carmen B. Gutierrez*, 7 ECAB 58, 59 (1954).

¹⁵ *See Eugene G. Chin*, 39 ECAB 598, 602 (1988).

¹⁶ Docket No. 12-354 (issued February 26, 2013).

incident. In the present case, unlike in *M.L.*, appellant had no further contact with the plane and did not witness any activity on the radar screen regarding the aircraft prior to its crash. She continued to perform her work functions when her supervisor informed her of the news of the crash. The Board finds that this case is distinguishable from *M.L.*, as appellant was not personally involved in the immediate circumstances surrounding the crash. She did not retain any professional responsibility for the aircraft.

The facts in this current case are also distinguished from *A.C.*,¹⁷ in which the claimant was working on radar and became aware of a potential conflict with two aircraft converging on radar. The employee took action to separate them. The Board noted the potential for a collision based on the speed and direction of two planes and the employee's responsibility for monitoring live aircraft traffic on radar. The employing establishment later informed the claimant in a disciplinary letter that it was his obligation to take action even if the ultimate responsibility for such action was with another radar center. The Board found that the claimant was performing his regular duties under *Cutler* when the potential collision arose. The incident arose in the performance of duty and was a compensable employment factor. In the present case, there is no evidence of record that appellant had responsibility to take any action regarding the plane that subsequently crashed while attempting to land. There is no evidence that she was in contact with the other tower or the pilot or that her duties required to assist.

In *L.G.*,¹⁸ an employee had no operational responsibilities for the aircraft involved in a potential crash situation. He was present in the control room but was not operating the radar or responsible for the operation of the radar at the time of the incident involving two aircraft. The Board held that the incident was not in the performance of duty or a compensable factor of employment. As noted, appellant had no operational responsibilities for the aircraft and was not the responsible air traffic controller at the time of the crash. As noted, while she learned of the crash during her shift on December 8, 2013, this knowledge was reported to her by her supervisor after the fact and the nexus to establish performance of duty was not present. The Board finds that the incident did not arise out of the course of her assigned duties. Her emotional reaction is not in the performance of duty.

The Board notes that the employing establishment properly issued a Form CA-16 which authorized medical treatment as a result of the employee's claim for an employment-related injury. The CA-16 form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim.¹⁹ The period for which treatment is authorized by a CA-16 form is limited to 60 days from the date of issuance, unless terminated earlier by OWCP.²⁰ On return of the record, OWCP should adjudicate whether appellant's examination or treatment is reimbursable under the form.

¹⁷ Docket No. 12-1050 (issued December 28, 2012).

¹⁸ Docket No. 09-276 (issued August 11, 2009).

¹⁹ *L.E.*, Docket No. 14-684 (issued July 29, 2014); see *Tracy P. Spillane*, 54 ECAB 608 (2003).

²⁰ See 20 C.F.R. § 10.300(c).

CONCLUSION

The Board finds that the December 8, 2013 employment incident did not arise out of the course of appellant's assigned duties. Appellant has not established a compensable work factor.

ORDER

IT IS HEREBY ORDERED THAT the January 24, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 14, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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