United States Department of Labor
Employees' Compensation Appeals Board

M.F., Appellant	)	
and	)	**Docket No. 15-64**
	)	**Issued: February 10, 2015**
DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Atlantic City, NJ, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 14, 2014 appellant filed a timely appeal from June 25 and August 22, 2014 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 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 sustained an injury in the performance of duty on May 9, 2014.

FACTUAL HISTORY

On May 10, 2014 appellant, a 52-year-old air traffic control specialist, filed a claim for benefits, alleging that he sustained a psychological injury on May 9, 2014 while providing air traffic service to a plane that crashed, with fatalities.

[1] 5 U.S.C. § 8101 *et seq.*

By letter to appellant dated May 22, 2014, OWCP advised him that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. It asked appellant to submit evidence establishing that he experienced the alleged incident or employment factor which caused his injury and a comprehensive medical report from his treating physician describing his symptoms and a medical opinion explaining the cause of any diagnosed condition.

In a memorandum to appellant's supervisor dated May 13, 2014, received by OWCP on June 9, 2014, Dr. Bonnie J.K. DeLong, a licensed psychologist, stated: "As per my meeting with [appellant] in an employee assistance program session today, I have recommended that he remain off from his usual job duties until May 25, 2014."

In response to OWCP's May 22, 2014 questionnaire, appellant submitted a June 9, 2014 statement in which he asserted: "At the time the aircraft crashed I was working local control at Atlantic City, providing direct air traffic service to the aforementioned aircraft. I was working local control at Atlantic City and was the last controller to transmit to the aircraft before the crash occurred."

By decision dated June 25, 2014, OWCP denied appellant's claim. It accepted that he experienced the alleged May 9, 2014 employment incident at the time, place, and in the manner alleged, but found that he failed to submit medical evidence establishing that he had a diagnosed medical condition which was causally related to the May 9, 2014 incident. OWCP therefore found that appellant failed to establish that he sustained a stress-related traumatic injury in the performance of duty.

By letter dated August 6, 2014, appellant requested reconsideration.

Appellant submitted a July 31, 2014 form report from Dr. DeLong in which she checked a box indicating that appellant attended an employee assistance program session. Dr. DeLong noted that appellant's diagnosis was code 309.9. Appellant did not submit any additional medical reports.

By decision dated August 22, 2014, OWCP denied modification of the June 25, 2014 decision. It found that the diagnosis code 309.9 provided by Dr. DeLong corresponded to a diagnosis of unspecified adjustment disorder, however, the evidence of record did not establish that Dr. DeLong was a clinical psychologist, and therefore a "physician" under the terms of FECA. Appellant did not meet his burden of proof to establish that he sustained an injury as a result of the accepted incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of FECA, 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 and/or specific condition for which compensation is claimed are

[2] 5 U.S.C. §§ 8101-8193.

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]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.[5] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[6]

Section 8101(2) of FECA provides that the term physician includes clinical psychologists within the scope of their practice as defined by state law.[7] OWCP's procedures state that it has accepted the American Psychological Association's (APA) definition of a clinical psychologist.[8] This definition provides that a clinical psychologist is an individual who:

> (1) Is licensed or certified as a psychologist at the independent practice level of psychology by the state in which he or she practices, and
>
> (2) Either possesses a doctoral degree in psychology from an educational institution accredited by an organization recognized by the Council on Post-Secondary Accreditation or is listed in a national register of health service providers in psychology which the Secretary of the Department of Labor deems appropriate, and
>
> (3) Possesses two years of supervised experience in health service, at least one year of which is post degree.[9]

Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.[10]

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[3] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

[5] *John J. Carlone*, 41 ECAB 354 (1989).

[6] *Id.* For a definition of the term "injury," *see* 20 C.F.R. § 10.5(e)(e).

[7] 5 U.S.C. § 8101(2).

[8] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Overview*, Chapter 3.100.3a (October 1990).

[9] *Id*.

[10] *Id.*

ANALYSIS

OWCP accepted that appellant established a compensable factor of employment. A reaction to regularly or specially assigned duties is a compensable factor under FECA.[11] Appellant alleged a reaction to the incident on May 9, 2014 where, while providing air traffic control service to a plane, it crashed resulting in fatalities. OWCP found this occurred while in the performance of his duties and responsibilities as an air traffic controller. In similar cases wherein an air traffic controller had operational and functional responsibility over a plane that crashed, and was not a mere bystander, a compensable factor of employment has been found.[12] The Board affirms that appellant has substantiated a compensable work factor under *Cutler*.

The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.[13] Appellant has not submitted rationalized, probative medical evidence to establish that the May 9, 2014 employment incident caused a personal injury.

Appellant submitted Ms. DeLong's June 9, 2014 memorandum to appellant's supervisor which advised that appellant should remain off work until May 25, 2014, and a July 31, 2014 form report which provided the diagnosis code for unspecified adjustment disorder.

The Board finds there is insufficient evidence to establish that Dr. DeLong qualifies as a physician under 5 U.S.C. § 8101(2).

Dr. DeLong has provided her psychologist's license number, therefore she meets the first of the three criteria for qualifying as a licensed clinical psychologist. Regarding the second criterion, the evidence of record indicates that she has a Master's Degree, not a Doctorate in psychology. There is also no evidence of record that Dr. DeLong is listed on the national register of health service providers in psychology. Therefore she has not met the second criterion to qualify as a licensed clinical psychologist. The Board additionally notes that there is no evidence of record that Dr. DeLong meets the third criterion, of two years of supervised service in health service. The Board must therefore find that there is insufficient evidence of record that she meets the second and third criteria of the definition of clinical psychologist accepted by OWCP, and cannot be considered a "physician" under FECA.[14]

As Dr. DeLong is not a physician under FECA, she is not competent to render a medical opinion in this case.[15] There is therefore no medical evidence of a diagnosed condition and no medical opinion causally related the diagnosed condition to the accepted event.

OWCP advised appellant of the evidence required to establish his claim; however, he failed to submit such evidence. Appellant did not provide a medical opinion which describes or

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

[12] *See M.L.*, Docket No. 12-354 (issued February 26, 2013).

[13] *Supra* note 5.

[14] *See Ruthie M. Johnson*, Docket No. 05-822 (issued September 7, 2005).

[15] *Id*.

explains the medical process through which the May 9, 2014 work accident would have caused the claimed injury. Accordingly, he did not establish that he sustained an injury in the performance of duty. OWCP properly denied appellant's claim for compensation.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty on May 9, 2014.

ORDER

IT IS HEREBY ORDERED THAT the August 22 and June 25, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 10, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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