



emotional trauma” at work on Tuesday, March 19, 2013.<sup>2</sup> Regarding the cause of the injury, he noted, “My brother ... suffered a fatal heart attack. I watched as all attempts to revive him were unsuccessful.” Appellant indicated that the injury occurred in Transition Building 530 at 10:00 a.m. He stopped work on March 19, 2013.<sup>3</sup> On the same form, appellant’s immediate supervisor stated, “[Appellant’s] brother suffered a heart attack on March 19, 2013 in the transition area. [He] witnessed resuscitation attempts. Appellant’s brother was transported to hospital but was unable to be resuscitated.”

In an April 4, 2013 letter, OWCP requested that appellant submit additional factual and medical evidence in support of his claim and provided him with a questionnaire form to be completed.<sup>4</sup> It indicated that the evidence was not sufficient to support that he was injured while performing any duty of his employment.

In an April 1, 2013 statement, appellant related that on March 19, 2013 at approximately 10:00 a.m. he was conducting a training session when he was notified by his supervisor of an emergency involving his brother. He indicated that he ran to his brother’s office, but did not find him there and that he was notified that he was in an adjacent building. When he went outside, appellant saw a fire truck and ambulance outside the transition building with a dozen people standing around. He stated that he ran into the building and into the office where he saw his brother lying on the floor, unconscious, with his shirt ripped open. Emergency medical technicians were performing chest compressions, giving him oxygen, and pumping him full of stimulants to try to restart his heart. Appellant noted, “I watched helplessly as their efforts to revive him failed, and as they frantically loaded him into the ambulance and sped away. I became physically sick.” He indicated that he returned to work on March 31, 2013, but was unable to finish conducting a training session due to experiencing anxiety, fear, concentration difficulties, and physical symptoms.

Appellant sought treatment on April 4, 2013 from Dr. David W. Aycock, an attending clinical psychologist, and reported that he developed symptoms, including anxiety, sleep disturbance, and cognitive deficits, after witnessing his brother’s heart failure at work on March 19, 2013. Dr. Aycock diagnosed anxiety disorder and indicated that it was a “direct result of the workplace trauma.”

In the questionnaire he completed on May 4, 2013, appellant asserted that he was in the performance of duty at the time of his claimed injury because he was performing a training session at the time he was informed of his brother’s medical emergency. He posited that he was in the performance of duty for the additional reason that, when advised of his brother’s medical emergency, he “immediately went to assist.” Appellant indicated that, due to the March 19,

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<sup>2</sup> On the same form appellant’s immediate supervisor indicated that appellant’s duty station was the Atlanta Air Route Traffic Control Center on 299 Woolsey Road, Hampton, GA, and that his regular schedule was 6:00 a.m. to 4:00 p.m., Sunday through Wednesday.

<sup>3</sup> Appellant received continuation of pay from March 19 to May 3, 2013. He filed a claim for compensation (Form CA-7) for work stoppage starting May 4, 2013 and continuing.

<sup>4</sup> The questionnaire included the question, “What duties of your employment as an [air traffic control specialist] were you performing which you believe caused the claimed condition?”

2013 incident, he repeatedly relived the event and suffered from such conditions and symptoms as anxiety, depression, sleep disturbance, and concentration and memory deficits.

In a May 16, 2013 decision, OWCP found that appellant had not shown that he sustained an emotional condition in the performance of duty on March 19, 2013. Appellant's case was denied because the evidence did not show that the claimed injury and/or medical condition arose during the course of employment and within the scope of compensable work factors. OWCP noted that, although appellant was at work on March 19, 2013, his witnessing of his brother's heart attack did not occur while he was performing duties of his employment or acts incidental to those duties.

Appellant requested reconsideration of OWCP's May 16, 2013 decision. In a May 28, 2013 statement, he asserted that he sustained an injury in the performance of duty on March 19, 2013 because he was conducting a training session when he was directed by his immediate supervisor to respond to a medical emergency concerning his brother. Appellant argued that, since the emergency occurred on the employing establishment premises, he never left the sphere of employment. He posited that when a manager assigns a task to an employee that takes him away from his normal duties, the performance of the task is still considered a requirement of employment. Appellant argued that he was not merely an observer of his brother's medical emergency in that he assisted the emergency medical technicians by gathering information from family members and providing medical history and other critical information needed for proper treatment of his brother. He stated that he "actively coordinated between the [emergency medical technicians] and the hospital" while he still was present in the workplace, and that he also secured his brother's federal identification and personal effects. Appellant felt that it was not necessary for him to actually perform the cardiopulmonary resuscitation in order to provide assistance in an emergency. He indicated that two other air traffic control specialists responded to the same emergency on March 19, 2013 and had their compensation claims accepted for injuries occurring in the performance of duty. Appellant stated that he was certified in cardiopulmonary resuscitation and use of automated external defibrillators and indicated that the employing establishment had a volunteer program to encourage employees to gain these skills.

In a June 8, 2013 statement, an operations supervisor<sup>5</sup> stated that on March 19, 2013 he was on duty in Area 3 at the Atlanta Air Route Traffic Control Center when he received a telephone call message that appellant's brother might be having a heart attack and that he needed to get appellant over to the ambulance pick-up area. He indicated that he went to the route simulation training laboratory where appellant was conducting job instruction with a coworker and told him that he needed to get to the pick-up area as soon as possible because his brother might be having a heart attack. The operations supervisor accompanied appellant first to the front of the building and then to a transfer training building where the ambulance was found. He stated that appellant went into the building and that the supervisor left appellant at that time.

By decision dated August 13, 2013, OWCP denied appellant's request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a). It found that the newly submitted

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<sup>5</sup> The operations supervisor was not the same person who identified himself as appellant's immediate supervisor on the Form CA-1 completed on April 1, 2013.

evidence and argument did not require reopening of appellant's claim for merit review because it was repetitious or immaterial to the issue of the case.

Appellant again requested reconsideration of his claim. In a February 13, 2014 statement, he asserted that he remained in the course of his employment when he witnessed his brother having a heart attack at work on March 19, 2013 because he was directed to the site of the emergency by his supervisor and rendered assistance in addressing the emergency. Appellant argued that his reaction to witnessing his brother's heart attack on March 19, 2013 was not self-generated, but rather was related to matters incidental to his employment. He also indicated that OWCP failed to acknowledge that he also sustained stress when he attempted to return to work on March 31, 2013. Appellant alleged that his claimed injury was covered under the positional risk doctrine because his employment placed him in the position where he sustained injury.

In a February 7, 2014 statement, a coworker stated that on March 19, 2013 at approximately 10:00 a.m. he and appellant were training in the laboratory. During that time appellant was approached by the operations supervisor who instructed appellant to come with him because there had been an emergency. Appellant immediately accompanied the operations supervisor out of the laboratory. The coworker stated that he understood that the instructions given by the operations supervisor constituted an order. He assumed at that time that the instructions were air-traffic related and he did not find out until later that the emergency involved appellant's brother.

In an undated statement, another coworker stated that on March 19, 2013 he performed cardiopulmonary resuscitation on appellant's brother who was suffering from a major heart attack. While performing cardiopulmonary resuscitation, appellant's brother "died twice in [his] hands" and an automated external defibrillator was used to apply a shock in order to bring him back to life. The coworker stated that appellant's brother was kept alive until the paramedics arrived and were able to take over life support. Appellant's brother later died in the hospital on March 22, 2013.

In an undated statement, a front-line manager described the duties of air traffic control specialists and noted that, as part of a national program, the employing establishment offered training in cardiopulmonary resuscitation and use of automated external defibrillators. The front-line manager indicated that, although participation in this training was voluntary, the employing establishment recognized the value of this skill in responding to an employee in need of assistance and an employee who received this training would be expected to respond to an emergency situation.

In a March 25, 2014 decision, OWCP affirmed its May 16, 2013 decision finding that appellant had not established a March 19, 2013 work injury in the performance of duty. It stated that appellant's regular duties did not bring him into contact with the emergency situation on March 19, 2013 and that he was informed of the emergency by a supervisor because of his familial relationship to the employee in medical distress.

## LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that he or she is an employee within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.<sup>6</sup> The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.<sup>7</sup> Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.<sup>8</sup>

Congress has provided for the payment of compensation for disability or death resulting from personal injury sustained while in the performance of duty.<sup>9</sup> The Board has interpreted the phrase while in the performance of duty to be the equivalent of the commonly found prerequisite in workers compensation law of arising out of and in the course of employment.<sup>10</sup> The phrase, in the course of employment, deals with the work setting, the locale, and the time of injury. Arising out of the employment encompasses not only the work setting, but also a causal concept, the requirement being that an employment factor caused the injury.<sup>11</sup> 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 his master's business; (2) at a place where he may reasonably be expected to be in connection with the employment; and (3) while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto.<sup>12</sup>

The test is similar to the positional risk doctrine discussed by Professor Larson<sup>13</sup> in his treatise on workers' compensation law, which provides that an injury arises out of the employment if it would not have occurred, but for the fact that the conditions and obligations of the employment placed the claimant in the position where he was injured. As further discussed by Larson, this theory supports compensation in situations where the only connection of the employment with the injury is that the obligations placed the employee in the particular place at

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<sup>6</sup> *C.B.*, Docket No. 14-671 (issued August 24, 2015); *Kathryn A. O'Donnell*, 7 ECAB 227 (1954); see 5 U.S.C. § 8122.

<sup>7</sup> *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> *Lillian Cutler*, 28 ECAB 125 (1976). When a claimant has not established any compensable employment factors, the Board need not consider the medical evidence of record. See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>9</sup> 5 U.S.C. § 8102(a).

<sup>10</sup> See *Timothy K. Burns*, 44 ECAB 291 (1992); *Jerry L. Sweeden*, 41 ECAB 721 (1990).

<sup>11</sup> See *M.B.*, Docket No. 15-215 (issued April 24, 2015).

<sup>12</sup> See *id.*

<sup>13</sup> Arthur Larson & Lex K. Larson, *The Law of Workers' Compensation* § 3.05 (2014).

the particular time when he was injured by some neutral force, meaning by “neutral” neither personal to the claimant nor distinctly associated with the employment.<sup>14</sup>

### ANALYSIS

Appellant filed a claim alleging that he sustained injury in the form of mental and emotional trauma at work on March 19, 2013 when he witnessed a coworker, his brother, having a heart attack. He claimed that he sustained disability due to this injury. Appellant indicated that he was performing his work duties during a training session just prior to the time that the operations supervisor directed him to go to the scene of the emergency on the employing establishment premises. He argued that he remained in the performance of duty at the time he witnessed the emergency situation because he was responding to a supervisor’s order and rendered useful services in connection with the emergency. OWCP denied appellant’s claim because he did not show that he sustained an injury in the performance of duty on March 19, 2013. It found that he was not performing work duties or doing something incidental thereto when he witnessed his brother having a heart attack.

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty on March 19, 2013.

As noted above, 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 master’s business; (2) at a place where he may reasonably be expected to be in connection with the employment; and (3) while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto. The test is similar to the positional risk doctrine discussed by Larson in his treatise on workers’ compensation law, which provides that an injury arises out of the employment if it would not have occurred, but for the fact that the conditions and obligations of the employment placed the claimant in the position where he was injured.<sup>15</sup>

Applying this test, in *Larry J. Thomas*,<sup>16</sup> wherein a letter carrier came upon the body of a suicide victim while delivering mail on his route, the Board found that this incident did occur at a time when the claimant was engaged in his employer’s business, at a place where he could reasonably be expected to be, and while he was fulfilling the duties of his employment. Thus, the Board reasoned that, while claimant’s injury in *Thomas* may have been caused by a neutral force, because his employment placed him in the place of injury, his injury was covered under FECA. The Board applied similar reasoning to accept an employment factor in *N.M.*,<sup>17</sup> a case in which a letter carrier delivering mail on his route witnessed a child being struck and killed by a school bus.

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<sup>14</sup> *Id.*

<sup>15</sup> *See supra* notes 12 through 14.

<sup>16</sup> 44 ECAB 291 (1992).

<sup>17</sup> Docket No. 10-2017 (issued August 8, 2011).

In the present case, however, unlike the claimants in *Thomas* and *N.M.*, appellant left the location of his employment duties and did not sustain his injury while engaged in his employer's business, or while fulfilling the duties of his employment. Although appellant had been engaged in a training session at work on March 19, 2013, he stopped the work-related training activities and went to a different building on the employing establishment premises to tend to his brother who was in medical distress. In the present case, it is clear that appellant's emotional condition arose from the knowledge that his brother was in medical distress, rather than from the performance of his day-to-day duties, specially-assigned duties, or any other requirement imposed by his employment. In other words, the claimed injury occurred due to a circumstance that was personal to appellant. On appeal appellant asserts that he was in the performance of duty when he witnessed his brother having a heart attack on March 19, 2013 because the operations supervisor directed him to leave his work area and go to the scene of the medical incident.<sup>18</sup> However, the evidence of record does not indicate that the operations supervisor directed appellant to go to the scene of his brother's medical distress as a result of any work duty or incident of employment. Rather, the evidence of record, including the witness statement of the operations supervisor, reflects that he informed appellant of his brother's situation due to his personal relationship to the employee in medical distress.<sup>19</sup> The Board has held that the fact that an employee learns of a personal tragedy and sustains an emotional condition during working hours does not, in and of itself, provide the necessary nexus to establish that the emotional condition occurred while in the performance of duty, as required by FECA.<sup>20</sup>

On appeal appellant contends that he engaged in an attempt to aid in the rescue of a coworker and that coverage should be extended under the emergency situation theory, consistent with the principles set forth in *Larson*. *Larson*, in his treatise, explains that under familiar doctrines in the law relating to emergencies, generally, the scope of an employee's employment is impliedly extended in an emergency to include the performance of any act designed to save life or property in which the employer has an interest.<sup>21</sup> The evidence of record does not support that appellant actually performed any specific acts designed to save a life, resulting in his emotional condition. Appellant initially indicated that he "watched helplessly" as emergency medical technicians gave medical assistance to his brother on March 19, 2013. He later asserted that he assisted the emergency medical technicians by providing his brother's medical history and that he "actively coordinated between the [emergency medical technicians] and the hospital" while he still was present at the scene of his brother's heart attack. However, appellant did not describe the information he provided or how it aided in his brother's treatment; nor did he explain the nature of the claimed coordination between the emergency medical technicians and the hospital. The evidence of record establishes that appellant's emotional condition arose from

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<sup>18</sup> The Board notes that the operations supervisor was not appellant's immediate supervisor.

<sup>19</sup> A coworker indicated that the operations supervisor instructed appellant to come with him because there had been an emergency and he indicated that he believed at that time that the instructions given by the operations supervisor constituted an order. However, the coworker indicated that he had assumed at that time that the instructions were air-traffic related and he did not find out until later that the emergency involved appellant's brother.

<sup>20</sup> See *Edye Ann Smith*, 49 ECAB 463 (1998); *Kathryn S. Graham Wilburn*, 49 ECAB 458 (1998).

<sup>21</sup> See *supra* note 13 at § 28.01.

the knowledge of the medical incident involving his brother. There is no evidence of record that appellant actually engaged in a rescue action, of benefit to his employer, that led to his emotional condition.<sup>22</sup>

As appellant's emotional condition did not occur on March 19, 2013 as the result of the performance of his federal employment, OWCP properly denied his claim for workers' compensation benefits.<sup>23</sup>

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he sustained an emotional condition injury in the performance of duty.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the March 25, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 22, 2015  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>22</sup> Appellant also claimed that he sustained a work-related injury when he returned to work on March 31, 2013 and experienced symptoms including anxiety, fear, concentration difficulties, and physical symptoms. He did not establish an employment incident with respect to the events of March 31, 2013 because he did not explain how he sustained injury while he fulfilled the duties of his employment or was engaged in doing something incidental thereto on that date.

<sup>23</sup> As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *See supra* note 8.