

**United States Department of Labor
Employees' Compensation Appeals Board**

P.P., Appellant

and

**DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION,
Washington, DC, Employer**

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**Docket No. 15-0753
Issued: November 3, 2016**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 18, 2015 appellant filed a timely appeal from a February 2, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 established that he sustained an emotional condition in the performance of duty on October 27, 2014, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 28, 2014 appellant, then a 36-year-old air traffic control specialist, filed a traumatic injury claim alleging that, following an October 27, 2014 “close call” he was unable to sleep and was “mentally not with it.”

By letter dated December 16, 2014, OWCP requested that appellant submit additional information to support his claim.

In a January 12, 2015 statement, appellant noted that on October 27, 2014 he worked at Potomac “TRACON” and was training a coworker, on the “OJAAY” position. He noted that another coworker was feeding them aircraft within close proximity of each other with fast speeds. Appellant stated that he took the position over from E.K. because she felt she had lost the overall picture. He noted that they had far more airplanes in their airspace than they should have, and he did his best to work the airplanes. Appellant discussed a situation wherein an aircraft was following another to DCA airport and was switched to the tower with last instructions to keep the turn in tight to follow the aircraft. He noted that no supervisor was watching and they asked for an extra set of eyes, but this did not happen until it was too late. The plane following the arrival to runway 19 made a 90-degree turn toward the next arriving airplane, so he called traffic to the aircraft and tried to direct the plane out of the way of the tower-switched aircraft. Appellant noted that the planes came very close together and loss of separation standards occurred. He opined that most of the emotional stress to this situation was supervisor induced, and that, if the supervisor had been watching the area, the position would have split and this situation probably would never have happened. Appellant noted that he was upset and mentally exhausted at the time of the situation. He specifically stated that he was upset over how the controller was delivering airplanes to them and that he was disappointed that no one was watching them. Appellant noted that he had not been under the care of a psychiatrist or psychologist for counseling, had not been hospitalized for an emotional condition, and had not taken any medication for an emotional condition.

In a January 15, 2015 memorandum, Stephen L. Smith, air traffic manager for Potomac “TRACON,” noted that to the best of his knowledge appellant’s statement appeared to be accurate with regard to appellant’s reaction to the event. He noted that appellant stated that he was having a conflict with another controller working an arrival feeder position who was delivering airplanes without sufficient amount of spacing for him to perform his job during a one hour period. Appellant stated that staffing in the operation area was adequate, but that the supervisor did not utilize his resources which may have assisted with this complex arrival period. Mr. Smith noted that appellant had been assigned to train an employee and the position quickly was overwhelmed with airplanes. Appellant was upset with the feeder position controller and the situation elevated distracting him from performing his duties. Mr. Smith noted that this dissension caused appellant to miss some critical turns that caused a loss of standard separation.

By decision dated February 2, 2015, OWCP denied appellant’s claim as he had not submitted sufficient medical evidence to establish a medical condition in connection to the accepted factors of employment. It also noted that, even if he had submitted medical evidence, he had not established an event that occurred within the performance of duty.

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, 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 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 To establish a claim that he sustained an emotional condition in the performance of duty, an employee must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.⁵ There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation.⁶ 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.⁷

In cases involving emotional conditions, the Board has held that when working conditions are alleged as factors in causing a condition or disability, OWCP, 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 a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁸ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.⁹ When the matter asserted is a compensable factor of employment and the evidence of

² *Id.*

³ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

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

⁵ *L.D.*, 58 ECAB 344 (2007).

⁶ *A.K.*, 58 ECAB 119 (2006).

⁷ 5 U.S.C. §§ 8101-8193. *See also Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁸ *D.L.*, 58 ECAB 217 (2006).

⁹ *K.W.*, 59 ECAB 271 (2007); *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.¹⁰

ANALYSIS

Appellant alleged that he sustained an emotional condition in the performance of duty on October 27, 2014 due to a sequence of events that occurred while he was working as an air traffic controller and was training another employee. He noted that another controller was feeding aircraft to them within close proximity of each other and at fast speeds, that he took over for a trainee as she had lost the overall picture. They had a situation in which an aircraft was following another into DCA airport, that this plane was switched to the tower with the last instructions to keep the turn in tight to follow the aircraft, that the plane following the arrival to runway 19 made a 90-degree turn toward the next arriving airplane. He called traffic to the aircraft, the planes came very close together, and loss of separation standards occurred. Appellant also alleged that most of his emotional stress was supervisor induced, arguing that, if the supervisor had been watching the area, the position would have been split and this situation would probably never have happened.

The Board must first determine whether there was a compensable factor of employment. Initially, the Board notes that appellant's opinions with regard to his supervision are not relevant with regard to establishing a compensable factor of employment. The assignment of work and monitoring of performance are administrative functions of the supervisor.¹¹ The manner in which a supervisor exercises his or her discretion falls outside FECA's coverage. This principle recognizes that supervisors must be allowed to perform their duties, and at times employees will disagree with their supervisor's actions. Mere dislike or disagreement with certain supervisor actions will not be compensable absent error or abuse on the part of the supervisor.¹² There is no evidence of abuse or error by appellant's supervisor.

Where an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence established 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.¹³ In this case, appellant alleged that planes were being fed into the position he was monitoring at a fast pace and that an error was made that resulted in a loss of separation standards. This would be a compensable factor of employment as appellant was performing his duties as an air traffic controller when the loss of standard separation occurred. The Board found a compensable factor in the performance of duty in *A.C.*,¹⁴ in which appellant was working on radar and became aware of a potential conflict with two aircraft converging on

¹⁰ *Robert Breeden*, 57 ECAB 622 (2006).

¹¹ *Donney T. Drennon-Gala*, 56 ECAB 469, 475 (2005); *Beverly R. Jones*, 55 ECAB 411, 416 (2004); *Charles D. Edwards*, 55 ECAB 258, 270 (2004).

¹² *Linda J. Edwards-Delgado*, 55 ECAB 401, 405 (2004).

¹³ *Cutler*, *supra* note 7; *see also J.W.*, Docket No. 15-66 (issued March 24, 2015).

¹⁴ Docket No. 12-1050 (issued December 28, 2012).

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. In the instant case, appellant alleged an incident involving an improper distance of separation between two aircraft on October 27, 2014 while he was monitoring the situation. His allegation is supported by a January 15, 2015 memorandum from the air traffic control manager. Appellant was performing his regular duties as an air traffic control under *Cutler* when the potential collision arose, a situation he took effort to remedy. A reaction to regularly or specially assigned duties is a compensable factor of employment under FECA. It is undisputed that appellant had operational control and responsibility of a continual and steady flow of aircraft being handed off at very close intervals to his sector. While handling these fast moving aircraft traveling at high rates of speed in close proximity, he was assigned to train a fellow employee on this sector. While performing these tasks, appellant became overwhelmed without the support of others until things had reached a critical mass where a loss of separation had occurred. The Board finds that totality of this incident gives rise to a reaction to his regular assigned duties that would constitute a compensable factor.

As appellant has established a compensable factor of employment, the Board must now proceed to evaluate the medical evidence. However, he has not submitted any medical evidence in support of his claim. In fact, appellant specifically noted that he had not been under the care of a psychiatrist or psychologist for counseling, had not been hospitalized for an emotional condition, and had not taken any medication for an emotional condition. As he failed to provide rationalized medical opinion evidence establishing a consequential emotional condition as a result of the October 27, 2014 accepted incident of employment, he failed to meet his burden of proof.¹⁵

Appellant may submit new evidence or argument as part of 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 not established an emotional condition in the performance of duty on October 27, 2014, as alleged.

¹⁵ *C.G.*, Docket No. 14-453 (issued November 4, 2014).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 2, 2015 is affirmed.¹⁶

Issued: November 3, 2016
Washington, DC

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

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

¹⁶ James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.