

ISSUE

The issue is whether appellant has met his burden of proof to establish an emotional condition on November 14, 2015 in the performance of duty.

FACTUAL HISTORY

On November 18, 2015 appellant, then a 55-year-old airway transportation system specialist, filed a traumatic injury claim (Form CA-1) alleging that on November 14, 2015 he sustained post-traumatic stress disorder (PTSD) when the New York Terminal Radar Approach Control (NY TRACON) facility experienced a critical event that he perceived to be a terrorist attack. He stopped work on November 18, 2015. On the reverse side of the claim form, the employing establishment checked a box marked “No” indicating that appellant’s injury did not occur in the performance of duty.

By development letter dated December 9, 2015, OWCP advised appellant that no evidence was received to establish his claim. It requested that he respond to the attached questionnaire in order to substantiate the factual element of his claim and that he submit medical evidence to establish that he sustained a diagnosed medical condition as a result of the alleged employment incident. Appellant was afforded 30 days to submit the additional evidence.³

Appellant submitted letters dated November 17 and 24, 2015 from Dr. William C. Padula, an internist, who related that he treated appellant in his office “for an agitated state due to a critical incident that occurred on the job on November 14, 2015.” Dr. Padula noted that appellant could not return to work until further notice and indicated that appellant was being referred for psychiatric evaluation.

In a December 10, 2015 letter, Susan Stancampiano, a nurse practitioner, indicated that appellant had been treated at the hospital and then at the partial hospitalization program from November 25 to December 10, 2015 “for a diagnosis of [PTSD] stemming from an event that occurred at [appellant’s] place of employment on November 14, 2015.” She related that he had not yet been cleared to return to work. Appellant was referred to an outpatient therapist and psychiatrist for a determination of his return to work.

Appellant provided a December 16, 2015 witness statement from K.S., a National Airspace System (NAS) area specialist for the employing establishment, who related that during her November 14, 2015 evening shift at the NY TRACON facility, her department (System Operations) was thrown into immediate chaos due to a major communications failure. She explained that two radar systems, internet services, and all inter-facility telephone lines failed, which caused her extreme psychological and emotional stress. K.S. indicated that there was a lot of confusion as to what was happening since so many events were happening simultaneously and an overwhelmingly large volume of incoming calls were from numerous users who were angry and demanding. She noted that the employing establishment’s communication office was completely unaware of the event happening, so she and her partner on duty had no external support to resolve the major issue. K.S. asserted that she was unable to sleep and lost her appetite for the

³ A similar letter requesting additional information was sent to the employing establishment.

next 48 hours. She alleged that the amount of emotional stress that incurred in such a short period of time left her feeling extremely anxious and tense that took a few days to subside.

On December 21, 2015 OWCP received appellant's response to its development questionnaire. Appellant related that, at 7:00 p.m. on November 14, 2015, the NY TRACON (N90) facility experienced a complete failure of all NAS surveillance, air to ground, and ground to ground services. He noted that the Air Traffic Operations Group (ATOG) immediately implemented failure contingency plans and the N90 Service Operations Center implemented the ATOG tactical response technical analysis, for which he was the lead investigator. Appellant explained that initial assessment of the failure was thought to be a potential terrorist attack due to recent global events that occurred on November 13, 2015. He indicated that, after 45 minutes, it was determined that it was not a terrorist attack. Appellant reported that the whole incident lasted for 4.5 hours, but the critical phase of the incident lasted 45 minutes. He provided the following timeline of various incidents:

November 13, 2015 Paris terrorist attack

November 14, 2015 Critical incident while on duty

November 25, 2015 Admitted inpatient South Oaks Hospital

December 10, 2015 Discharged outpatient South Oaks Hospital

December 14, 2015 Started "EMDR" therapy

January 13, 2016 Appointment scheduled for tapering off prescribed medication

Appellant reported that as the technical lead investigator of the communications failure, his role was to assess what caused the failure and determine mitigations. He related that this critical incident was the second one in six months for him and that according to psychiatric professionals, had a compounding effect, which was the cause of his mental stress in addition to the threat of terrorist events. Appellant noted that his initial symptoms started after his evening shift on November 14, 2015 when he experienced trouble sleeping. He reported for his evening shift on November 15, 2015 and had trouble focusing on tasks related to his job. Appellant indicated that he struggled through the November 15, 2015 shift and again had a sleepless night. He noted that on November 16, 2015 he woke up with physical symptoms manifested in the form of convulsions so he sought medical treatment from his primary care physician. Appellant was admitted to the hospital. He reported that he was prescribed medication that provided some relief and was discharged to an after-care program. Appellant noted that he was currently being treated for PTSD. He indicated that he had no stressors outside of his federal employment and had no prior emotional conditions. Appellant related that his hobbies included photography, boating, fishing, hunting, reading, handyman work, travel, outdoor activities, and exercising.

By letter dated January 4, 2016, K.O., a program consultant for the employing establishment, controverted appellant's claim. She contended that his injury did not occur in the performance of duty, but was a result of his emotional reaction to an alleged "perceived terrorist attack" that did not occur. K.O. confirmed that appellant was employed as a national airspace operations manager working alongside air traffic controllers at the NY TRACON facility and that

his duties included monitoring equipment for the TRACON and surrounding airport and repairing communications equipment when outages occurred. She described that on November 14, 2015 a power line fell on a telecom fiber optic cable, which damaged employing establishment circuits, and a garbage truck ran into a pole, which damaged another telecom cable that ran adjacent to the NY TRACON facility. K.O. indicated that both accidents combined caused a temporary loss of some communication frequencies in the New York area. She noted that in neither instance was any act of terror involved.

K.O. further reported that appellant was not at the facility when these events occurred in the morning, but reported to duty after the incidents occurred for his regular 2:00 p.m. to 12:00 a.m. shift. She indicated that although he perceived these outages to be a “possible terrorist attack,” it was immediately determined that two separate accidents caused some circuits to go down and that there was no such terrorist attack. K.O. alleged that appellant’s “emotional reaction to an imagined terrorist attack that did not actually take place should not be considered to have occurred within the performance of duty, but was rather self-generated.” She further asserted that the medical evidence submitted should not be considered relevant as the imagined event did not happen. K.O. also noted that prior to this event, appellant’s leave request was denied. She related that this may have been a possible motivation for appellant filing this claim.

In a January 11, 2016 addendum, K.O. noted a correction that appellant did not request leave prior to filing his claim. She continued to allege that his emotional condition did not occur in the performance of duty, but was self-generated fear from a perceived terrorist attack that did not actually happen.

OWCP denied appellant’s claim by decision dated January 15, 2016. It accepted that the November 14, 2015 employment incident occurred as alleged, but found that the incident was not a compensable employment factor that caused or contributed to his diagnosed emotional condition.

Appellant submitted a handwritten January 20, 2016 by Dr. William B. Newton, a Board-certified psychiatrist, who indicated that appellant was capable of returning to operational duty without restrictions.

On June 21, 2016 appellant, through counsel, requested reconsideration. In an 11-page memorandum in support of reconsideration, counsel described appellant’s employment duties as an air transportation system specialist. He related that appellant reported to work on November 14, 2015 at 2:00 p.m. and during his shift at 7:00 p.m. the airport facility lost their communications systems, including radar system in use by NY Air Terminal Traffic Control, inter-facility telephone lines, and 90 percent of transmitter and receiver frequencies. Counsel explained that appellant initially determined that a terrorist attack or security incident could be a potential cause for the outage. He indicated that, after 45 minutes, the cause of the outage was discovered and was not related to a terrorist attack. Counsel asserted that appellant submitted sufficient evidence to establish that his injuries were caused as a direct result of performing the duties of his position as an air transportation system specialist. He contended that the totality of the evidence showed that all five basic elements for establishing an injury under FECA had been proven and provided arguments to support that appellant’s claim met the five elements.

Counsel asserted that appellant's injury occurred in the performance of duty as his "perception of a terrorist attack arose directly from the performance of his regularly or specifically assigned job duties." He noted that appellant's job was to determine the cause of the failure and implement solutions to mitigate or solve the systems outage. Counsel contended that it was within appellant's job duties to assess whether the communications failure was the result of a terrorist attack, a security incident, or simply a technical error. He reported that appellant was clearly performing his regularly or specially assigned job duties in assessing and dealing with the outage. Accordingly, counsel concluded that appellant's emotional reaction to the performance of his assigned duties was a compensable factor of employment. He noted that two coworkers provided written statements explaining how stressful the November 14, 2015 situation was. Counsel cited to *A.C.*⁴ As support for his contention that a reaction that arises directly from the performance of a claimant's duties and responsibilities is a compensable work factor. He also alleged that the *A.C.* case showed that the fact that no injuries or catastrophic event actually occurred was not a bar against finding a compensable work factor. Counsel further asserted that Dr. Newton's May 15, 2016 report established causal relationship between appellant's emotional condition and the November 14, 2015 employment incident.

In a May 15, 2016 letter, Dr. Newton related that he initially evaluated appellant on January 13, 2016 with five follow-up visits thereafter, which helped to confirm his evaluative conclusions that appellant "while working on his job with the employing establishment experienced extreme stress and within hours began exhibiting and experiencing stress reactive symptoms and signs leading ultimately to hospitalization and at length to treatment recovery." He accurately described the November 14, 2015 employment incident and noted that it was appellant's job to lead the team to explain and suggest remedies for the communications outage. Dr. Newton noted that appellant initially reasoned that it was quite likely a terrorist attack. He related that appellant experienced intense stress as the pressure to find and correct the issue was intense. Dr. Newton indicated that appellant experienced difficulty sleeping at night and focusing and concentrating at work, so he sought medical treatment. He explained that appellant was seen in the hospital emergency room on November 25, 2015 and provided an excerpt from the hospital record, which indicated that appellant exhibited guarding behavior, disorganized thought with thought blocking, suspiciousness, delusions, and some grandiosity, and poor sleep and appetite. Dr. Newton reported that appellant was admitted to the psychiatric hospital and described the psychological treatment that he had received.

Dr. Newton related that, upon his initial examination on January 13, 2016, appellant's thought processes were logical, coherent, and goal directed. Speech was well and articulated and mood was consistently positive. Dr. Newton indicated that, in follow-up visits, appellant continued to present well and seemed completely restored to his former level of functioning. He diagnosed acute stress reaction. Dr. Newton opined that appellant "experienced intense stress at work and became psychotic in the context of no prior history of psychotic episodes or psychiatric hospitalization." He explained that although appellant was functioning well by the time he first evaluated appellant, hospital descriptions of appellant's presentation confirmed his description of this experience and reported level of functioning. Dr. Newton reported: "In the absence of evidence to suggest stress from any other source and a history of having had no earlier psychiatric

⁴ Docket No. 12-1050 (issued December 28, 2012).

problems, my conclusion is [appellant's] stress and subsequent hospitalization and treatment were the result of his work experience."

Appellant provided an updated statement and explained that his job as the principal expert was to develop workable solutions for anticipated situations adversely affecting operationally critical systems of the NAS. He indicated that the loss of all NY TRACON facility communications occurred at 7:00 p.m. on November 14, 2015 when a vendor severed the network redundancy to repair a fiber optic cable damaged after an automobile accident. Appellant clarified that, although the technical failure initially started at 8:28 a.m. when the network redundancy kicked in, TRACON did not experience the complete loss of communications until 7:00 p.m. when he was on duty. He explained that he initially believed that the November 14, 2015 technical failure was the result of a terrorist attack because of the physical damage of the network capable and the fact that vendor monitoring the network reported no errors. Appellant alleged that his initial assessment of a terrorist attack felt justified due to the November 13, 2015 events in Paris and the September 26, 2014 employing establishment sabotage incident. He reported that he first became aware of the cause of the communications loss at or around 7:40 p.m. when his partner on duty informed him that the vendor severed the cable of the network redundancy to make a repair. Appellant alleged that the November 14, 2015 employment incident was a stressful, traumatic experience because a failure of communications of this magnitude could have resulted in a mid-air collision since the air traffic controllers lost positive control of the aircraft under their preview. He noted that the air traffic controllers on duty that night relied on him to do his job to develop workable solutions for unanticipated situations adversely affecting operationally critical systems of the NAS, but he had no help from the vendor.

In a May 8, 2016 statement, P.G., an air traffic operations manager, explained that in the early evening of November 14, 2015 the NY TRACON facility experienced multiple radar, radio frequency, land line, and other communications and data outages simultaneously, which adversely affected air traffic facilities. He explained that appellant was the NAS operations manager in charge that night and was responsible for identifying the cause of the outages and restoring service. P.G. indicated that appellant assessed the situation in the operations control room, methodically checked with the five operational areas at the NY TRACON facility, updated air traffic personnel, and searched for the cause of the outages. He noted that appellant's search led to the discovery of the cause shortly after the outages occurred and necessary repairs were completed in order to restore the facility to full operational status. P.G. opined that appellant was instrumental in identifying the cause of the outages and overseeing necessary repairs. He commended appellant for his performance during this stressful situation.

Appellant resubmitted K.S.'s December 16, 2015 statement. He also submitted an article titled "Car Crashes Cut Communications Cables, Controllers Cope" dated January 21, 2016, which described the November 14, 2015 incident, and a daily record of facility operation dated November 14, 2015.

By decision dated November 23, 2016, OWCP denied modification of its January 15, 2016 decision. It found that the evidence of record failed to substantiate a compensable factor of employment that caused or contributed to appellant's diagnosed emotional condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence⁶ including that he or she sustained an injury in the performance of duty and that any specific condition or disability from work for which he or she claims compensation is causally related to that employment injury.⁷

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.⁸ There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation.⁹ In the case of *Lillian Cutler*,¹⁰ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition under FECA. Where the injury or illness results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employing establishment or by the nature of the work, the injury or illness comes within the coverage of FECA.¹¹ On the other hand, when an injury or illness results from an employee's feelings of job insecurity per se, fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or hold a particular position, unhappiness with doing work, or frustration in not given the work desired or hold a particular position, such injury or illness falls outside FECA's coverage because they are found not to have arisen out of employment.¹²

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 work 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 compensable factors of employment and may not be considered.¹³ If an employee does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional

⁵ *Supra* note 2.

⁶ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁷ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

⁹ *A.K.*, 58 ECAB 119 (2006); *David Apgar*, 57 ECAB 137 (2005).

¹⁰ 28 ECAB 125 (1976).

¹¹ *Cutler*, *id*; *see also Trudy A. Scott*, 52 ECAB 309 (2001).

¹² *William E. Seare*, 47 ECAB 663 (1996).

¹³ *Dennis J. Balogh*, 52 ECAB 232 (2001).

condition claim. The claim must be supported by probative evidence.¹⁴ If a compensable factor of employment is substantiated, OWCP must base its decision on an analysis of the medical evidence.¹⁵

ANALYSIS

The Board finds that this case is not in posture for decision.

Appellant was on duty at the time that the November 14, 2015 employment incident occurred. The evidence of record reveals that on November 14, 2015 his work shift was from 2:00 p.m. to midnight. Although the cables that were severed, which ultimately led to the communications outage, occurred in the morning of November 14, 2015, the evidence of record confirms that the total communications outage did not occur until around 7:00 p.m. Appellant explained in a statement received by OWCP on June 21, 2016 that the NY TRACON facility did not experience the complete loss of communications until 7:00 p.m. when a vendor severed the network in order to repair a fiber optic cable that was damaged that morning. The Board further notes that two witnesses confirm that the major communications failure did not occur until the evening of November 14, 2015. In a December 16, 2015 statement, K.S. noted that she was working the evening shift at the NY TRACON facility when two radar systems, internet service, and all inter-facility telephone lines failed. Additionally, in a May 8, 2016 statement, P.G. related that “in the early evening of November 14, 2015” the NY TRACON facility experienced a loss of communications and data outages simultaneously.

The Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensation under *Cutler*.¹⁶ Where a claimed disability results from an employee’s emotional reaction to his or her regular or specially assigned duties or to an imposed employment requirement, the disability comes within the coverage of FECA.¹⁷

The Board finds that in this case appellant has attributed his emotional reaction to his specific employment duties. Given the totality the circumstances in this case of all communications going down at once in a high trafficked area of aviation coupled with the timing of recent terrorist events and the tense atmosphere generated by the incident in the facility, taken together, constitutes a compensable employment factor. The Board finds, therefore, that appellant was on duty performing his specific employment duties to investigate and repair the cause of the communications outage that occurred on November 14, 2015 when he sustained an emotional reaction to the performance of these duties.

¹⁴ *Charles E. McAndrews*, 55 ECAB 711 (2004).

¹⁵ *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹⁶ See *Lillian Cutler*, *supra* note 10.

¹⁷ *Jack M. Terrell*, Docket No. 00-1276 (issued September 18, 2001); *Robert Bartlett*, 51 ECAB 664 (2000); *Ernest St. Pierre*, 51 ECAB 623 (2000).

In this case appellant's emotional reaction occurred as a result of him actively performing his duty to investigate the cause of the communications outage and make appropriate repairs. The employing establishment confirmed in a January 4, 2016 letter that his duties as the NAS operations manager was to monitor equipment for the TRACON facility and repair communications equipment when outages occur. Furthermore, in a May 8, 2016 statement, P.G., explained that appellant was the NAS operations manager in charge during the November 14, 2015 evening shift and was responsible for identifying the cause of the outages in order to restore service. He indicated that appellant assessed the situation in the operations control room, checked with the five operational areas at the NY TRACON facility, and updated air traffic personnel while searching for the cause of the communication outages.

As appellant was performing his regular duties as an air transportation system specialist and lead investigator when the emergency situation occurred on November 14, 2015, the Board finds that he has established a compensable work factor under *Cutler*.¹⁸ The case will be remanded to OWCP for proper consideration of the medical evidence. After such further development as is deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for a decision.

ORDER

IT IS HEREBY ORDERED THAT the November 23, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.¹⁹

Issued: December 7, 2018
Washington, DC

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

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

¹⁸ See *A.C.*, *supra* note 4.

¹⁹ Colleen Duffy Kiko, Judge participated in the preparation of this decision, but was no longer a member of the Board effective December 11, 2017.