United States Department of Labor
Employees' Compensation Appeals Board

J.K., Appellant	)	
and	)	**Docket No. 19-0720**
	)	**Issued: November 21, 2019**
DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Washington, DC, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 15, 2019 appellant filed a timely appeal from an August 30, 2018 merit decision 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 has met his burden of proof to establish an emotional condition in the performance of duty, as alleged.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.[2] The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On April 21, 2010 appellant, then a 49-year-old air traffic control specialist, filed a traumatic injury claim (Form CA-1) alleging that on March 21, 2010 he developed severe emotional anxiety due to a fear of death for the flying public while in the performance of duty. He further alleged that the emotional anxiety prevented him from working. Appellant attributed his emotional condition to watching an employing establishment-directed video, "Heads UP -- Safety Depends on You" (Heads UP), which involved graphic violence and death.

In a May 13, 2010 development letter, OWCP requested that appellant provide additional factual and medical evidence in support of his emotional condition claim. By separate letter of even date, it also requested additional information from the employing establishment concerning appellant's allegations. Both parties were afforded 30 days to respond.

In a May 28, 2010 letter, the employing establishment noted that appellant had advised management that subsequent to viewing a mandatory training video on aircraft accidents he began to experience difficulty performing his duties. Appellant requested that a supervisor monitor him after watching the video to ensure that he was not compromising safety. Due to his emotional condition he was restricted from performing air traffic control duties and the regional flight surgeon determined that he was medically incapacitated and could not perform air traffic control duties.

In a June 8, 2010 statement, appellant noted that, after May 21, 2010, he felt continually nervous and eventually experienced anxiety attacks. He noted that he could not get the quivering voice he heard on the Heads UP video out of his mind.

Dr. Thomas Keapu, a licensed clinical psychologist, examined appellant and diagnosed acute stress disorder. He noted that appellant was attending a mandatory training meeting at which he saw a video of two airplanes colliding. Dr. Keapu reported that appellant experienced the graphic reality of the controller "quivering their voice in fear." He opined that this experience triggered an anxiety reaction to the general work environment. Dr. Keapu diagnosed occupational/career stress in reaction to the traumatic training experience and subsequent loss of full duties at work.

The employing establishment provided additional information. It explained that appellant stopped performing safety-related duties beginning on April 10, 2010 and stopped work entirely on April 11, 2010. Appellant returned to work on June 7, 2010 performing administrative duties. The employing establishment described the video which appellant viewed on March 3, 2010 as depicting specific air traffic events. In one event, a small aircraft almost collided with a departing jet. The audio indicated a very high level of stress in the controller's voice when he recognized what he had done. In another event was a small aircraft that flew into a weather system and

[2] Docket No. 17-1215 (issued January 10, 2018).

crashed, killing the pilot. Another event involved two aircrafts that collided, killing five people. One of the airplanes barely missed a high rise building, but did hit a house. Finally, the video also included a helicopter and airplane colliding as well as aerial footage of aircraft crash sites. The conclusion of the video was the phrase "Stay out of court, stay out of the headlines."

The employing establishment further explained that the Heads UP video was mandatory at the time it was viewed by appellant on March 3, 2010. It further noted that sometime after March 3, 2010 the video was revised. Controllers were not required to see the revised video if they had seen the original. Appellant was advised that the video was about safety issues and that it had originally been shown to managers. The employing establishment noted that appellant had not previously seen the video and that he had been employed since 1984. It reported showing other videos about safety and aircraft accidents from time to time, but noted that determining how similar the prior videos were to the Heads UP video was difficult to assess.

By decision dated August 13, 2010, OWCP denied appellant's traumatic injury claim finding that the evidence of record was insufficient to establish that the March 21, 2010 event occurred, as alleged.

On June 21, 2011 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. By decision dated July 14, 2011, the hearing representative denied appellant's request for a hearing, finding that it was untimely filed. It exercised its discretion, and determined that the issue in the case could be addressed through the reconsideration process.

On August 8, 2011 appellant requested reconsideration of the August 13, 2010 decision.

In a July 8, 2011 report Dr. C. Alec Pollard, a licensed clinical psychologist, diagnosed post-traumatic stress disorder (PTSD) as a result of watching the Heads UP video at work on March 3, 2010. A July 15, 2011 note from Dr. Geeta K. Aatre-Prashar, a licensed clinical psychologist, diagnosed PTSD as a result of viewing a video at work on March 3, 2010.

By decision dated October 6, 2011, OWCP reviewed the merits of appellant's claim and determined that he had established that the claimed event of viewing the Heads UP video had occurred. However, it denied his claim finding that viewing the video was not considered a compensable factor of employment. OWCP found that directing appellant to watch the video was an administrative function of the employing establishment and he had not met his burden of proof to establish error or abuse by the employing establishment.

Appellant provided additional information to OWCP on October 12, 2011. He alleged that he received no warning regarding the content of the Heads UP video. Appellant further noted that he was previously involved in a fatal aviation accident when, on October 13, 1987, a plane that he was controlling developed smoke in the cockpit and crashed.

On October 1, 2012 appellant, through counsel, requested reconsideration. In support of this request, appellant provided his June 3, 2012 application for retirement. Counsel contended that watching the Heads UP video occurred while appellant was in the performance of duty as part of proficiency training and should be considered a compensable factor of employment. He further contended that, in the alternative, even if appellant's injury occurred as a result of an administrative

function of his employing establishment, the employing establishment acted unreasonably and negligently in showing the video without warning because appellant had previously witnessed a fatal air accident.

By decision dated December 26, 2012, OWCP denied modification of its October 6, 2011 decision.

On December 16, 2013 appellant requested reconsideration of the December 26, 2012 decision and provided additional factual information.

By decision dated November 14, 2014, OWCP denied modification of its prior decision. On November 6, 2015 appellant requested reconsideration of the November 14, 2014 decision.

In a report dated October 16, 2015 Dr. Larry Shapiro, a licensed clinical psychologist, diagnosed PTSD and opined that appellant had developed this condition as a direct response to exposure to the work-related training video.

By decision dated November 18, 2016, OWCP denied appellant's request for reconsideration of the merits of his claim. It found that he failed to submit relevant and pertinent new evidence or argument in support of his November 3, 2015 request for reconsideration.

On May 12, 2017 appellant appealed OWCP's November 18, 2016 decision to the Board. By decision dated January 10, 2018, the Board remanded the case, ordering OWCP to conduct a merit review and issue an appropriate merit decision.

In a May 18, 2018 development letter, OWCP asked appellant a series of questions regarding the Heads UP video and his reaction to the fatality accident on October 13, 1987. It specifically queried whether he was restricted from watching videos such as Heads UP and whether he advised the employing establishment of these restrictions. In a separate letter of even date, OWCP requested additional information from the employing establishment regarding the Heads UP video.

On July 6, 2018 appellant responded to the May 18, 2018 development letter and denied receiving restrictions following the October 13, 1987 employment incident. The employing establishment did not respond.

By decision dated August 30, 2018, OWCP denied appellant's emotional condition claim, finding that he had not met his burden of proof to establish a compensable employment factor as he was contending that the employing establishment required him to watch the video without due diligence of a warning given his personal history of involvement in an air traffic fatality in 1987. It further found that the showing of the video, without a warning to employees previously involved in an air traffic fatality, had not occurred within the performance of duty.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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,[3] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[4] 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.[5] To establish an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying an employment factor or incident alleged to have caused or contributed to his or her claimed emotional condition; (2) medical evidence establishing that he or she has a diagnosed emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.[6]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.[7] In the case of *Cutler*,[8] the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition under FECA. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the concept or coverage under FECA.[9] 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.[10] 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, his or her frustration from not being permitted to work in a particular environment unhappiness with doing work, or frustration in not given the work desired or to hold a particular position, such injury or illness falls outside FECA's coverage because they are found not to have arisen out of employment.[11]

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

[3] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *See S.K.*, Docket No. 18-1648 (issued March 14, 2019); *M.C.*, Docket No. 14-1456 (issued December 24, 2014); *Debbie J. Hobbs*, 43 ECAB 135 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

[7] *T.L.*, Docket No. 18-0100 (issued June 20, 2019): *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

[8] 28 ECAB 125 (1976).

[9] *Supra* note 6; *A.K.*, 58 ECAB 119 (2006); *David Apgar*, 57 ECAB 137 (2005).

[10] *Supra* note 8; *O.P.*, Docket No. 19-0445 (issued July 24, 2019) *Trudy A. Scott*, 52 ECAB 309 (2001).

[11] *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *William E. Seare*, 47 ECAB 663 (1996).

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 compensable factors of employment and may not be considered.[12] If an employee does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. If a compensable factor of employment is substantiated, OWCP must base its decision on an analysis of the medical evidence which has been submitted.[13]

ANALYSIS

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

Appellant alleged that he sustained an emotional condition as a result of being required to view the Heads UP training video at work on March 3, 2010. The record establishes that he completed the mandatory training which included images of graphic violence and death. The Board has long held that emotional reactions to situations in which an employee is trying to meet his regularly or specially assigned position requirements are compensable. The Board therefore finds that appellant has established a compensable employment factor under *Cutler*.[14]

As the Board finds that appellant established a compensable employment factor, the case must be remanded for consideration of the medical evidence as to whether appellant has met his burden of proof to establish that his emotional condition is causally related to the compensable employment factor. After such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

[12] *B.S., id.*; *Dennis J. Balogh*, 52 ECAB 232 (2001).

[13] *S.K., supra* note 6; *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[14] *Supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the August 30, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision of the Board.

Issued: November 21, 2019
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board