

ISSUE

The issue is whether appellant has met his burden of proof to establish an emotional condition in the performance of duty, as alleged.

FACTUAL HISTORY

On July 5, 2019 appellant, then a 40-year-old air traffic controller, filed a traumatic injury claim (Form CA-1) alleging that on that date he developed mental trauma, stress, and anxiety as a result of working a radar position with an aircraft just prior to it crashing. On the reverse side of the claim form, the employing establishment acknowledged that he was injured in the performance of duty on July 5, 2019 and noted that he had stopped work on the date of injury. It indicated that its knowledge about the facts of appellant's injury was consistent with his statements.

In a development letter dated July 8, 2019, OWCP advised appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to provide the necessary information. In a separate development letter of even date, it requested that the employing establishment provide details regarding his claim and indicate whether it concurred with his allegations. OWCP afforded the employing establishment 30 days to provide the necessary information.

OWCP subsequently received a July 9, 2019 duty status report (Form CA-17) containing an illegible signature which indicated that on July 5, 2019 a plane crashed, causing appellant to experience trauma. It noted that, as a result, he experienced sleeplessness, depression, and anxiety.

A July 16, 2019 e-mail from J.S., appellant's supervisor, indicated that he attached two audio files to his e-mail that demonstrated appellant's calm behavior before and after the airplane accident, which consisted of an airplane crash landing in a lake and four passengers swimming to safety. He contended that appellant had not shared any concerns during the relief briefing between him and the relieving controller. J.S. indicated that the recorded voices and actions of appellant and the pilot revealed that when appellant terminated his radar services the airplane was on track, and he stated that appellant handled the situation in a routine manner. J.S. also stated that none of appellant's actions caused the accident, and that appellant's behavior had not changed from the time he took his break until when he found out about the accident. He related that appellant returned to work from his break without hesitation when he learned of the accident.

A July 17, 2019 controversion letter from the employing establishment indicated that it was challenging appellant's claim because he failed to establish that he was injured in the performance of duty. It contended that the crash occurred during his break, and none of his actions caused the accident. The employing establishment further contended that, because appellant was not in charge of the airplane during the accident, he was therefore not in the performance of duty. It additionally noted that, when he returned from his break, he was assigned to the radar position he worked at prior to his break, accepted it without hesitation, and worked an additional 18 minutes prior to learning of the accident, which was when he asked to be relieved from his position. The employing establishment stated that appellant did not exhibit any signs of stress immediately prior

to or after his break, and that all of his transmissions with the aircraft appeared normal and gave no indication that he was experiencing difficulties.

In a July 18, 2019 response to OWCP's development letter, the employing establishment noted that appellant had been on his break for 15 minutes when the airplane accident occurred, and that all actions by him and the airplane prior to his break appeared normal. It related that he took his break from 12:10 p.m. to 1:18 p.m., and that the last displayed image of the airplane was at 12:25 p.m. The employing establishment further noted that, after his break, appellant worked for an additional 18 minutes.

An August 19, 2019 Form CA-17 containing an illegible signature indicated that on July 5, 2019 a plane crashed and caused appellant to experience trauma, which further caused depression, anxiety, and sleeplessness.

An August 20, 2019 report of work status (Form CA-3) indicated that appellant had returned to work full-time, regular-duty work that same day.

By decision dated August 22, 2019, OWCP denied appellant's emotional condition claim, finding that the evidence of record was insufficient to establish a compensable employment factor as the cause of his alleged emotional condition and, thus, there was no injury sustained in the performance of duty.

On September 6, 2019 appellant requested reconsideration. In an accompanying letter, he indicated that after he returned to work from his break on July 5, 2019 he was informed that the aircraft he was responsible for prior to his break was involved in an accident. Appellant stated that he was shocked because in his 22 years as an air traffic controller he had never been informed of something like that. He indicated that he had not recognized that he was in shock at the time and asked the controller-in-charge what was needed of him. The controller asked appellant to relieve his coworker working the same position that appellant had worked prior to his break. Appellant sat at the position for 18 minutes and could not concentrate because he was focused on how the aircraft he had been in control of had crashed and what he could have done differently. Because he could not focus, he asked to be relieved of his position. Appellant indicated that he immediately went to see a psychologist.

A June 9, 2019 initial evaluation report by Dr. Bruce Herman, a clinical psychologist, indicated that appellant was referred to him for treatment by his supervisor D.W. due to anxiety resulting from a July 5, 2019 incident where he was working as an air traffic controller and was involved in an incident where an aircraft crash landed. He noted that, although appellant tried to continue working after the accident occurred, appellant was too anxious and on edge to continue working and was asked to leave. Dr. Herman opined that appellant's depression, anxiety, and constant rumination over the July 5, 2019 incident was a direct result of his involvement in the incident.

A September 19, 2019 attending physician's report, Part B of an authorization for examination and/or treatment (Form CA-16), by Dr. Herman indicated that appellant experienced trauma due to "witnessing a plane crash" and suffered from sleeplessness, nervousness, and

depression. He noted that he treated appellant from July 8 through August 19, 2019, and that appellant could return to full-duty work on September 20, 2019.

On September 27, 2019 appellant responded to OWCP's development questionnaire and indicated that on Friday July 5, 2019 he was working a radar position and communicating with an aircraft when it requested to land at Morristown Airport. He stated that, since another aircraft was landing at that airport, the requesting aircraft was not allowed to land there. Appellant asked the pilot to state his intentions and the pilot radioed he was going to attempt to land at Sussex Airfield. The pilot then radioed that he was going to land at Aeroflex-Andover Airport. Appellant related that both of those airports were small, uncontrolled airports within his jurisdiction. He informed the pilot that either of those airports "were fine," and then, per his procedures, he instructed the pilot to switch frequencies before he ceased communication with him. A few minutes later, he took his break. Appellant was subsequently informed by his operations manager A.D. that the aircraft appellant had last communicated with was involved in an accident. He asked if everyone was alright, and A.D. responded that the aircraft landed in a lake because it overshot the runway, and everyone swam to safety. Appellant felt relieved, but expressed that he had a knot in his stomach because there was damage to the aircraft. He related that he unknowingly went into shock and returned to work in the same control position he had been working because his sector was extremely short-staffed and he knew that his coworkers needed to take breaks from their highly stressful jobs. After 18 minutes, appellant stopped work because he could not focus on the task before him. He related that he broke out into a sweat and was constantly thinking about the accident and what he could have done differently to better assist the pilot. Appellant thought that if he had suggested that the pilot land at Caldwell Tower, an airport that was closer to the employing establishment airport and had an air traffic control tower, instead of letting the pilot select an uncontrolled airport, perhaps the crash would not have occurred. He also related that he should have known by the sound of the pilot's voice and indecision that he should have provided more assistance. After appellant realized that he was replaying the scenario in his head and second guessing himself, he asked to be relieved from his position. His coworker N.B. asked if anything was wrong, and appellant responded "no" and then went outside to get some fresh air.

Appellant later watched the radar replay and listened to an audio recording of his interactions with the pilot from the plane that crashed. He then filed a traumatic injury claim form to report this traumatic experience. Appellant indicated that, for weeks, he was constantly distracted by the traumatic incident and continually thought about what he could have done to better assist the pilot. He noted that, even though he took time off, he still replayed the memory in his head, and that he needed the time off and assistance from his psychologist to help him get over the event. Appellant noted that he saw a psychologist that had successfully assisted many of his coworkers in dealing with the stressors of being an air traffic controller. He indicated that he had no preexisting emotional conditions.

An October 2, 2019 controversion letter from the employing establishment indicated that it was irrelevant that appellant was responsible for the aircraft involved in the accident prior to the accident, because it is part of an air traffic controller's job to pass off an aircraft to another air traffic controller once an aircraft is outside of their airspace. It related that, once the handing-off occurs, the aircraft is no longer the previous air traffic controller's responsibility. The employing establishment repeated previous arguments and asserted that, while any stress that appellant

experienced due to the aircraft accident was understandable, it was not considered to have occurred in the performance of duty.

An additional controversion letter from the employing establishment, dated October 16, 2019, asserted that appellant's medical documentation noted that the aircraft actually crashed when it was under a different air traffic controller's control, and appellant was not in the control room when it occurred.

On November 26, 2019 OWCP denied modification of its August 22, 2019 decision.

On December 22, 2019 appellant requested reconsideration. In an accompanying letter, he recounted the July 5, 2019 sequence of events and reiterated that his trauma came from being informed that an aircraft he had responsibility for had just crashed. Appellant worried that, because he had told the pilot that he could not land at a particular airport and had not directed the pilot to a closer airport with an air traffic control facility, the pilot made a poor decision to land at an unfamiliar airport and therefore crashed.

A December 22, 2019 witness statement from N.B. indicated that on July 5, 2019 he saw appellant returning from his break and noticed that something was strange with appellant's demeanor. Appellant related that an aircraft he had just worked with was involved in an accident. N.B. indicated that he decided to keep an eye on appellant and could tell after appellant worked for 10 minutes that appellant was having trouble processing the information, and appellant ultimately asked to be relieved from his position. Later in the day, appellant explained to N.B. that he felt partially responsible for the accident, and appellant kept insisting that, if he had suggested a different airport, the accident may have not occurred. N.B. suggested that appellant seek professional help after many hours of discussing this issue.

By decision dated December 26, 2019, OWCP denied modification of its November 26, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 filed within the applicable time limitation, that an injury was sustained while 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.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

³ *Id.*

⁴ *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

⁵ 20 C.F.R. § 10.115(e); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *see T.O.*, Docket No. 18-1012 (issued October 29, 2018); *see Michael E. Smith*, 50 ECAB 313 (1999).

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 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. 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.⁸

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 compensable factors of employment and may not be considered.⁹ 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 condition claim. The claim must be supported by probative evidence.¹⁰ If a compensable factor of employment is substantiated, OWCP must base its decision on an analysis of the medical evidence which has been submitted.¹¹

ANALYSIS

The Board finds that appellant has met his burden of proof to establish an emotional condition in the performance of duty, as alleged.

Appellant attributed his emotional condition to his regularly assigned job duties. He alleged that he developed an emotional condition because he had provided landing instructions to the pilot of a plane minutes before its crash on July 5, 2019. The case record establishes that, on

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.G.*, Docket No. 19-0071 (issued May 28, 2019); *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

⁸ *L.H.*, Docket No. 18-1217 (issued May 3, 2019); *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁹ *Y.W.*, Docket No. 19-1877 (issued April 30, 2020); *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹⁰ *L.S.*, Docket No. 18-1471 (issued February 26, 2020); *Charles E. McAndrews*, 55 ECAB 711 (2004).

¹¹ *M.A.*, Docket No. 19-1017 (issued December 4, 2019); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

that date, appellant was responsible, as part of his regularly assigned job duties, for monitoring an aircraft and providing instructions regarding its landing prior to its crash. He was working a radar position when a pilot requested to land at Morristown Airport. Appellant responded that, since another aircraft was landing at that airport, the requesting aircraft was not allowed to land there. He asked the pilot to state his intentions and the pilot radioed he was going to attempt to land at Sussex Airfield. The pilot then radioed that he was going to land at Aeroflex-Andover Airport. Appellant advised that both of those airports were small, uncontrolled airports within his jurisdiction. He informed the pilot that either of those airports “were fine,” and then, per procedures, he instructed the pilot to switch frequencies before he ceased communication. The record establishes that the plane crashed 15 minutes later, while appellant was on break. Appellant was subsequently informed by operations manager A.D. that the aircraft appellant had just communicated with was involved in an accident. At the time, he indicated that he had not recognized that he was in shock at the time and asked the controller-in-charge what was needed of him. Appellant was then instructed to return to the same control position that he had occupied due to understaffing. While in the position for 18 minutes he could not concentrate because he was focused on how the aircraft he had been in control of had crashed and what he could have done differently. Appellant kept replaying in his mind the landing instructions he gave to the pilot, worrying that the plane crashed because he had prohibited the pilot from landing at the pilot’s initial choice and did not direct the pilot to a closer airport with an air traffic control facility. Because he could not focus, he asked to be relieved of his position and immediately sought psychiatric treatment.

The Board has held that, were 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 is compensable FECA.¹² The evidence of record is sufficient to establish that appellant experienced stress due to the performance of his regular assigned duties in that he provided landing instructions to the pilot and 15 minutes later the plane crashed as it overshot the runway. Furthermore, the employing establishment acknowledged on the claim form that he was injured in the performance of duty and noted that its knowledge about the facts of his injury was consistent with his statements. The Board thus finds that appellant has established a compensable work factor.

The Board notes that this case is distinguishable from *A.M.*,¹³ wherein an air traffic controller similarly alleged that he sustained an emotional condition after monitoring an airplane that subsequently crashed. In *A.M.* the air traffic controller aided the aircraft to ascend without issue and relinquished control. The plane subsequently crashed when he was on break due to a quick descent due to icing. The Board found that the incident did not arise out of his assigned duties, and his emotional reaction was therefore not in the performance of duty. In the current case, however, appellant’s landing instructions to the pilot, which were provided as part of his regularly assigned duties, set in motion the events that led to the plane’s crash on landing at an uncontrolled small airport. Therefore, the landing instructions he provided to the pilot forms the

¹² *L.H.*, Docket No. 18-1217 (issued May 3, 2019); *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

¹³ Docket No. 14-711 (issued March 18, 2015).

nexus that connects him to the plane crash and gives rise to a compensable factor of federal employment.

As OWCP found that there were no compensable employment factors, it did not analyze or develop the medical evidence. Accordingly, the Board will set aside OWCP's December 26, 2019 decision and remand the case for consideration of the medical evidence with regard to whether appellant has established an emotional condition in the performance of duty causally related to the compensable employment factor, *i.e.*, communicating landing instructions to a pilot minutes before the plane crashing. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has met his burden of proof to establish a compensable factor of employment. The Board further finds, however, that the case is not in posture for decision with regard to causal relationship between appellant's diagnosed condition(s) and the accepted compensable employment factor.

ORDER

IT IS HEREBY ORDERED THAT the December 26, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 5, 2021
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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