

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

D.B., Appellant

and

DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION,
Oberlin, OH, Employer

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**Docket No. 08-82
Issued: April 8, 2008**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 10, 2007 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated September 11, 2007, denying his claim for compensation. Pursuant to 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 or physical condition causally related to compensable work factors.

FACTUAL HISTORY

On November 28, 2006 appellant, then a 30-year-old air traffic controller, filed an occupational disease claim (Form CA-2) alleging that he sustained injuries as a result of his federal employment. He noted that he was having stomach and bowel problems that would

occur while at work. Appellant also indicated that he had been diagnosed with anxiety and depression.

By letter dated January 4, 2007, the Office requested additional information regarding the claim. In a decision dated February 21, 2007, the Office denied the claim for compensation.

Appellant requested an oral hearing before an Office hearing representative and submitted additional evidence. In a statement dated January 31, 2007, he stated that in December 2005 he began having abdominal pain and digestive problems. Appellant indicated that on July 13, 2006 his medical clearance was denied and he began performing administrative duties, stopping work on November 13, 2006. According to him he was diagnosed with anxiety and depression, and his physicians felt it was related to work stress. Appellant referred to his "Operational Error and new work rules" as a cause of stress.

The record contains a December 2, 2004 letter from the employing establishment indicating that on November 30, 2004 appellant was working at the radar position, when he made an operational error resulting in two airplanes failing to maintain proper separation. The employing establishment explained in a March 19, 2007 letter that as a result of the operational error appellant was given skill enforcement training, which he completed and returned to work on December 2, 2004. According to the employing establishment on July 13, 2006 appellant was temporarily disqualified for controller duties by the aviation medical division because he was diagnosed with anxiety and depression, and he was taking medications. With respect to "new work rules," the employing establishment indicated that there was a new bargaining agreement in September 2006, but it was unclear how this affected appellant.

With respect to medical evidence, the record contains a December 28, 2005 report with a diagnosis of colitis, etiology uncertain. The report does not contain any identification other than the typed initials "EL." The history stated that appellant had not felt well since he returned from Costa Rica in November.

A hearing before an Office hearing representative was held on July 10, 2007. As to the operational error, appellant explained that the instructions he had given to a controller in Detroit had failed to keep two airplanes from maintaining proper separation.¹ He indicated that it was not the disciplinary action that bothered him, but he had "lost confidence and just kept beating myself up as far as what I should have done different, how I should have done it different." Appellant also referred to a new contract occurring in what he believed September 2005, which required two hours on position. He stated that it concerned him that he could not use the restroom and he was afraid he would have an accident.

By decision dated September 11, 2007, the hearing representative found that appellant had not met his burden of proof to establish an injury in the performance of duty. She found that appellant had not established any compensable work factors. The hearing representative found that the disciplinary action following the operational error was not a compensable work factor, and that appellant had not been affected by work changes commencing in September 2006.

¹ At the hearing there was reference to the incident occurring in March 2005, but the record establishes that the incident occurred on November 30, 2004.

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment.² This burden includes the submission of detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.³ A claimant must also submit rationalized medical opinion evidence establishing a causal relationship between the claimed condition and the established, compensable work factors.⁴

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁵

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors causing a condition or disability, the Office, 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.⁶ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁷

A reaction to an administrative or personnel matter is generally not covered as it is not related to the performance of regular or specially assigned duties.⁸ Nevertheless, if the evidence demonstrates that the employing establishment erred, acted abusively or unreasonably in the

² *Pamela R. Rice*, 38 ECAB 838 (1987).

³ *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

⁴ *See Bonnie Goodman*, 50 ECAB 139, 141 (1998).

⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *See Norma L. Blank*, 43 ECAB 389-90 (1992).

⁷ *Id.*

⁸ *See Brian H. Derrick*, 51 ECAB 417, 421 (2000).

administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.⁹

ANALYSIS

Appellant alleged that his federal employment contributed to both an emotional condition, as well as a stomach and intestinal condition. Before examining the medical evidence, he must first establish that the work factors he believed contributed to an emotional or physical condition are compensable work factors. In this case, appellant's claim rests primarily on two allegations: (1) an operational error he made on November 30, 2004 that resulted in two airplanes failing to maintain a proper separation; and (2) changes in work rules that he alleged would require him to work two hours without using the restroom.

The hearing representative made a finding as to the first allegation that it was not a compensable work factor, because it was based on a disciplinary action that was not erroneous or abusive. The evidence, however, indicated that appellant was not alleging a reaction from being sent for skill enhancement training. He indicated at the July 10, 2007 hearing that it was not the corrective actions taken by the employing establishment that bothered him. Appellant alleged that it was the employment incident itself which caused him to lose confidence and dwell on what he could have done differently. On November 30, 2004 he was performing his assigned duties at the radar and an incident occurred while performing his duties. Appellant was attempting to coordinate the approach of two aircraft and appropriate separation standards were not met. It is well established that a reaction to the performance of assigned duties is compensable under the Act.¹⁰ The Board finds that appellant established a compensable work factor in this regard.

The second allegation related to a work rule change that appellant asserted would not allow him to use the restroom for two hours. Appellant did not provide further detail with respect to this allegation. He referred to September 2005, but the employing establishment indicated the new employment agreement took effect in September 2006. If the alleged work rule took effect in September 2006, appellant was not working as a controller and it is unclear how it affected his administrative job. He did not provide specific and relevant details as to this allegation of stress from a work requirement. The Board finds that he did not establish a compensable work factor in this regard.

Since appellant did establish a compensable work factor with respect to the November 30, 2004 incident, the Board will review the medical evidence. To establish an injury in the performance of duty, the record must contain a medical report with a diagnosis and a rationalized medical opinion on causal relationship between a diagnosed condition and the compensable work factor. The record transmitted to the Board does not contain any probative medical evidence. The December 28, 2005 report is of no medical value, as it is not clear whether a physician under the Act prepared the report. It is well established that medical

⁹ *Margrethe Lublin*, 44 ECAB 945, 956 (1993).

¹⁰ See *Lillian Cutler*, *supra* note 5; see also *Donna M. Schmiedeknecht*, 56 ECAB 726 (2005) (appellant's anxiety regarding the ability to carry out her assigned duties was a compensable work factor).

evidence lacking proper identification is of no probative medical value.¹¹ Although appellant referred to medical treatment for both psychiatric and physical conditions, the record does not contain probative medical evidence. In the absence of any relevant medical evidence on the issue of causal relationship, appellant has not met his burden of proof.

CONCLUSION

The record establishes a compensable work factor, but the medical evidence is insufficient to meet appellant's burden of proof to establish an injury causally related to a compensable work factor.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 11 and February 21, 2007 are modified to reflect a compensable work factor and affirmed as modified.

Issued: April 8, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹¹ *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004); *Merton J. Sills*, 39 ECAB 572 (1988).