

File Number:
HR10-D-H

RECEIVED DEC 10 2018

U.S. DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 50
LONDON, KY 40742-8300
Phone: (202) 693-0045

Date of Injury:
Employee:

Dear

This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review.

A hearing was held on . As a result of such hearing, it has been determined that the decision issued by the District Office should be vacated and the case remanded to the district office for further action as explained in the enclosed copy of the Hearing Representative's Decision.

Your case file has been returned to the Jacksonville District Office. You may contact that office by writing to our Central Mail Room at the following address:

US DEPARTMENT OF LABOR
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 6 JAC
LONDON, KY 40742-8300

Sincerely,

Division of Federal Employees' Compensation
Branch of Hearings and Review

PAUL H FELSER
7393 HODGSON MEMORIAL DR
SUITE 102
SAVANNAH, GA 31406

If you have a disability and are in need of communication assistance (such as alternate formats or sign language interpretation), accommodation(s) and/or modification(s), please contact OWCP.

Washington DC, December 04, 2018

U.S. Department of Labor
Office of Workers' Compensation Programs

DECISION OF THE HEARING REPRESENTATIVE

In the matter of the claim for compensation under Title 5, U.S. Code 8101 et seq. of
Claimant; Employed by the

No.:

A telephone hearing was held on

Case

The issue for determination in this case is whether the claimant has developed a stress or psychiatric condition in any way causally related to factors of her federal employment.

date of birth

is employed by the

, as an

On she filed a Form CA-2, Notice of Occupational Disease, indicating the development of emotional trauma, post-traumatic stress disorder (PTSD), and panic disorder, which she felt to be causally related to factors of her Federal employment.

By Formal Decision dated the Office denied the claimant's entitlement to compensation as the evidence of record failed to support her having sustained an injury as defined under the Federal Employees' Compensation Act.

By letter dated , the claimant wrote requesting a telephone hearing with a representative of the Office of Workers' Compensation Programs.

A telephone hearing was held on Representing the claimant at hearing was Paul H. Felser. (The claimant was not present.) At hearing the claimant's representative indicated the claim at issue is based on employment exposure from (claimant's first day back following traumatic stress claim of through

The claimant was the controller on duty at the time of an incident which occurred on between an F16 and a Cessna aircraft which resulted in loss of life. (File No.) The claimant's representative indicated the claimant on her first day back following such incident she gave instructions to an aircraft and he such did the exact opposite of what they were instructed. She unplugged and indicated she was going home but was eventually calmed down and able to continue her duties. Another incident occurred when the claimant was sitting in the radar room and observed two F-16 aircraft flying low along the shoreline and noticed such had potential conflict with a "BFR" aircraft. Although the claimant was not controlling the aircraft, the controller did say something to the aircraft involved, and the incident was a non-event with the employing agency, it triggered a panic attack for the claimant. The claimant's representative indicated there is a small

helicopter that gives tours around Charleston numerous times per day, that his flight path is right below the final approach to the Charleston Airport, and that the claimant held her breath every time until he landed and/or provided extra and unnecessary spacing to ensure safety. The claimant's representative indicated in part that the claimant sometime on the night of _____ or morning of _____ received an email with an article that contained the findings of the National Transportation Safety Board (NTSB), and that following such the claimant could not continue to work beyond _____. The claimant was permitted 30 days within which to submit additional evidence in support of the claim.

On _____ and _____, the Office received copies of letters from the claimant's representative, Paul H. Felser, along with several copies of statements from witnesses and the claimant, and a copy of a medical report prepared by Dr. _____, dated _____.

A copy of the transcript was submitted to the employing agency for review and comment. No response has been received in the allotted time frame.

After a thorough review of the evidence and testimony, I find the District Office decision of _____, must be VACATED.

The claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.¹ This burden includes the submission of a detailed description of the employment conditions or factors that the claimant believes caused or adversely affected the condition for which he claims compensation, and submission of a rationalized medical opinion evidence, based upon a complete and accurate statement and medical background of the claimant, showing a causal relationship between the condition for which compensation is claimed and the implicated factors or conditions of his federal employment.²

The mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of an employment relationship.³ Neither the fact that a condition became apparent during a period of employment, nor the belief of the claimant that the condition was caused or aggravated by employment factors, are sufficient to establish causal relationship.⁴ Causal relationship is a medical issue that can be established only by medical evidence.⁵

¹ Barbara J. Latham, 53 ECAB 316 (2002); Janet L. Teery, 53 ECAB 570 (2002); Myrna Parayno, 53 ECAB 593 (2002); Ellis F. Harrell, 53 ECAB 713 (2002); Andrea J. Sheppard, 53 ECAB 170 (2001).

² Barbara J. Latham, 53 ECAB 316 (2003); Judy L. Kahn, 53 ECAB 321 (2002); Alice F. Harrell, 53 ECAB 713 (2002).

³ William S. Wright, 45 ECAB 498 (1994); Paul D. Weiss, 36 ECAB 720 (1985).

⁴ Kimper Lee, 45 ECAB 565 (1994); Froilan Negron Marrero, 33 ECAB 796 (1982).

⁵ Mary J. Briggs, 37 ECAB 578 (1986); Ausberto Guzman, 25 ECAB 362 (1974).

Workers' Compensation Law is not applicable to each and every injury or illness that is somehow related to an employee's employment. When an employee experiences an emotional reaction to his or her regular or special assigned employment duties or a requirement imposed by the employer or has fear and anxiety regarding his or her ability to carry out employment duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such a situation, the disability is generally regarded as due to an injury arising out of and in the course of employment and comes within the coverage of the Act.⁶ On the other hand, when the disability results from an employee's emotional reaction to employment situations which were not related to the employee's regular or special assigned duties or a requirement of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the coverage of the Act.⁷

Where the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.⁸ In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his or her regular or special assigned duties. When the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee, but rather, caused by the employing establishment.⁹ However, where the evidence demonstrates that the employing establishment has neither erred¹⁰ nor acted abusively in the administration of personnel matters, coverage cannot be afforded.¹¹

In the case at hand, before a proper analysis of the medical evidence of record can be undertaken it is necessary that the Office establish a framework for such through a Statement of Accepted Facts. A review of the evidence of record reflects that on

the claimant was working as a controller when the aircraft she was handling made contact resulting in loss of life. The Office accepted the claim for "other acute reaction to stress, unspecified," under File No. (The medical evidence supports the claimant having sustained post-traumatic stress disorder as a result of the accepted employment trauma.)

(On the claimant filed Forms CA-1, Notices of Traumatic Injury, indicating claims were being made to the claimant having developed a stress condition causally related to employment trauma of when she learned of the NTSB results. (File No. (denied due to claimant not having sustained an injury as defined under the Federal Employees' Compensation Act (FECA) since she was not at work

⁶ Lillian Cutler, 28 ECAB 125 (1976).

⁷ Id.

⁸ Anna C. Leanza, 48 ECAB 116 (1996).

⁹ Thomas D. McEuen, 42 ECAB 566 (1991).

¹⁰ Mary Alice Cannon (Aubrey B. Cannon), 32 ECAB 1235 (1981).

¹¹ Leonard Durseau, Jr., 39 ECAB 1062 (1988); Ralph O. Webster, 38 ECAB 521 (1997).

when she learned of and read the NTSB results) and File No. _____, short term closure.))

In addition to the accepted employment incident of _____, involving the mid-air collision of aircraft, potential employment factors consist of the claimant on giving instructions to aircraft which failed to perform as directed, the claimant's many times on a daily basis being subjected to collision alarm sounds every time a helicopter took off crossing the main approach runway at the Charleston Airport, and an incident which occurred on _____ when she was in the radar room when another controller was handling aircraft and observed two F-16 aircraft flying low over the shore in a potential conflict situation with another aircraft. (The claimant's learning of the results of the NTSB investigative result is an administrative determination not incurred in the performance of her Federal duties and therefore not a potential employment factor incurred by the claimant in the performance of her Federal duties.) Although the employing agency has in a statement dated _____, has indicated the _____, to be "undocumented" such does not mean the incident did occur as described. It merely means there was no documentation made of such. The claimant has indicated no documentation was made since there was no real air incident to have occurred since the controller merely directed the aircraft appropriately.

On REMAND, the district office is directed to direct correspondence to the employing agency requesting review and comment with regard to the aforementioned potential employment factors. The employer should supply a complete and thorough response to each of the claimant's allegations along with any supportive documentation it deems necessary to support their position.

(Although the claimant has supplied a fairly thorough medical report prepared by Dr. _____, dated _____, in which she has displayed knowledge of several potential employment and non-employment related factors, before such can be analyzed in terms of weight, the Office must be able to determine what factually occurred and what occurred in the performance of the claimant's Federal duties. (Statement of Accepted Facts.))

Upon implementation of the aforesaid action the district office is directed to take appropriate action to be followed by issuance of a de novo decision.

ISSUED:
WASHINGTON, D.C.

Hearing Representative
Branch of Hearings and Review
For
Director, Office of Workers'
Compensation Programs