



## U.S. MERIT SYSTEMS PROTECTION BOARD

### Case Report for July 22, 2022

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#### BOARD DECISIONS

**Appellant:** Franklin Martin  
**Agency:** U.S. Postal Service  
**Decision Number:** [2022 MSPB 22](#)  
**Docket Number:** DC-0752-17-0281-I-1  
**Issuance Date:** July 20, 2022  
**Appeal Type:** Adverse Action (Constructive)

**Jurisdiction - Constructive Suspension**  
**Discrimination - Rehabilitation Act**

The appellant, a Window Clerk, left work on December 15, 2016, after suffering an anxiety attack that triggered an asthma attack. On January 12, 2017, his psychologist contacted the agency, stating that the appellant's episode was psychological in nature and that he had sufficiently recovered to return to work with no restrictions. He reported to work on January 26, 2017, but a supervisor sent him home, indicating that he had not been cleared to return to work.

The appellant filed a Board appeal, alleging that the agency had constructively suspended him and discriminated against him on the basis of disability. Shortly thereafter, he received a February 6, 2017 letter from his station manager, informing him that his psychologist's return-to-work letter was deficient because it did not state whether the

appellant was a threat to himself or others. The appellant's psychologist provided the agency with another letter, stating that the appellant was not a threat to himself or others, and the appellant subsequently returned to work. The agency indicated that it would provide the appellant back pay and benefits, but the administrative judge denied its motion to dismiss the appeal as moot, noting the appellant's outstanding discrimination claim.

The administrative judge instead dismissed the appeal for lack of jurisdiction, finding that the appellant had failed to show that he was constructively suspended. In so finding, the administrative judge determined that the agency had a reasonable basis for requesting the additional documentation. The appellant petitioned for review.

**Holding:** The Board found that, under the circumstances, the agency violated the Rehabilitation Act by requiring the appellant to provide documentation showing that he was not a danger to himself or others. Because the agency imposed wrongful conditions for returning to work, it constructively suspended the appellant when it refused to permit him to return to work following his medical absence. Accordingly, the Board found jurisdiction, reversed the constructive suspension on due process grounds, and found that the appellant established his disability discrimination claim.

1. To demonstrate that his absence was a constructive suspension, an appellant must show that (1) he lacked a meaningful choice in the matter; and (2) it was the agency's wrongful actions that deprived him of that choice. Here, once the appellant submitted the January 12, 2017 medical letter releasing him to work without restrictions, the agency's decision not to permit him to return to work deprived him of a meaningful choice in the matter. Hence, if the agency's conditions for returning to work were wrongful, then the appellant's absence following the agency's refusal to allow him to work was a constructive suspension.
2. The Rehabilitation Act incorporates the substantive standards of the Americans with Disabilities Act (ADA), as amended. Under the ADA, an agency may require a medical examination or make a medical inquiry regarding whether an employee "is an individual with a disability or as to the nature or severity of the disability" only when such injury or examination "is shown to be job-related and consistent with business with business necessity." 42 U.S.C. § 12112(d)(4)(A). The Board found it appropriate to defer to the EEOC regulations implementing that statutory provision.

3. Under the relevant EEOC regulations, a disability-related inquiry or medical examination may be “job-related and consistent with business necessity” if an employer “has a reasonable belief, based on objective evidence, that: (1) an employee’s ability to perform essential job functions will be impaired by a medical condition; or (2) an employee will impose a direct threat due to a medical condition.” The agency’s Employee and Labor Relations Manual (ELM), at section 865.1, incorporates that standard and similarly provides that the agency can require employees returning from medically related absences to submit documentation to clear their return to work when it “has a reasonable belief, based upon reliable and objective information” that the employee may be unable to perform the essential functions of his position or may present a “direct threat to the health and safety of [himself] or others due to that medical condition.”
4. Here, the agency argued that the station manager acted within her discretion under ELM, section 865.1, to require language regarding whether the appellant was a risk to himself or others (i.e., a direct threat) because his absence was related to a mental health condition. In addition, the station manager testified that she requested the additional information because she heard that the appellant engaged in a “back-and-forth” with his supervisor just before he left work on December 15, 2016, and because she was aware that he could not work with a particular supervisor at another facility. The administrative judge found that these reasons were sufficient to provide the agency with a reasonable basis to require the appellant to submit the additional medical documentation.
5. The full Board disagreed, finding that the agency lacked a reasonable belief that the appellant presented a direct threat. The mere fact that an employee’s absence is related to a mental health condition does not constitute objective and reliable evidence establishing, or even suggesting, that he is likely to be violent or do harm. The station manager’s knowledge that the appellant had unspecified difficulties with a particular supervisor and that working with that supervisor contributed to his anxiety disorder also did not constitute objective and reliable evidence establishing, or even suggesting, that the appellant was likely to be violent or do harm. Lastly, the alleged workplace altercation between the appellant and his supervisor on December 15, 2016 (which the appellant disputed on review), was not a proper basis for requiring the appellant to submit additional information. In sum, the Board concluded that the agency violated the

Rehabilitation Act when it refused to permit the appellant to return to work and ordered him to provide additional medical documentation that was not job-related or consistent with business necessity.

6. Because the agency's actions were wrongful, the Board concluded that the appellant constructively suspended the appellant when it refused to permit him to permit him to work. Thus, the Board found jurisdiction over the appeal. Because the appellant did not receive due process for the constructive suspension, the Board reversed the action. Furthermore, because the agency violated the Rehabilitation Act, the Board found that the appellant established his disability discrimination claim.
7. The Board declined to address the appellant's claims of status-based disability discrimination and failure to accommodate. Under the particular facts of the case, the Board discerned no basis on which the appellant could seek additional damages for those claims.

## COURT DECISIONS

### NONPRECEDENTIAL:

*Edwards v. Department of the Navy*, [No. 2022-1799](#) (Fed. Cir. July 15, 2022) (DC-3330-21-0525-I-1) Because of Mr. Edwards's failure to pay the docketing fee and the required Statement Concerning Discrimination, the court dismissed his petition for failure to prosecute in accordance with the rules, pursuant to Federal Circuit Rule 52(a)(1).

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