

DEPARTMENT OF HOMELAND SECURITY
TRANSPORTATION SECURITY ADMINISTRATION
OFFICE OF PROFESSIONAL RESPONSIBILITY
APPELLATE BOARD

XXXXXX XXXXXXXXX

Transportation Security Officer
Appellant,

v.

TRANSPORTATION SECURITY ADMINISTRATION,
Management.

DOCKET NUMBER
OAB—15-067

April 27, 2015

Issue: Medical Disqualification

OPINION AND DECISION

On January 30, 2015, management removed the appellant from his position as a Transportation Security Officer (TSO) with the Transportation Security Administration based on the non-disciplinary Charge: *Failure to Meet the Medical Qualifications of the Transportation Security Officer Position*. The appellant filed a timely appeal with the Office of Professional Responsibility Appellate Board (Board). For the reasons noted below, the Board GRANTS the appeal.

ANALYSIS AND FINDINGS

In proceedings before the Board, management bears the burden of proving the charge(s) by a preponderance of the evidence or substantial evidence, as applicable. In the present case, the applicable standard is a preponderance of the evidence. A preponderance of the evidence simply means that a fact is more likely to be true than untrue. In this matter, the Board must determine whether the charge of *Failure to Meet the Medical Qualifications of the Transportation Security Officer Position* is proven by a preponderance of the evidence.

Management supported the charge with one specification based on the May 13, 2014, determination from a Federal Occupational Health (FOH) physician. The FOH physician determined that based on the medical documentation provided by the appellant and the appellant's health care providers, the appellant is disqualified from work as a TSO due to obsessive compulsive disorder and depression. The FOH physician determined that the appellant does not meet the Medical and Psychological Guidelines for Transportation Security Administration Transportation Security Officer Job Series.

TSOs are required to meet the physical/medical standards established by TSA pursuant to the Aviation and Transportation Security Act (ATSA) for the TSO position. 49 U.S.C. § 44935(f). The *Medical and Psychological Guidelines for Transportation Security Administration Transportation Security Officer Job Series*, Social Interaction Dysfunction (page 72), provide that "social dysfunction that is problematic in

performing job tasks is unacceptable”, and under Depression Related Disorders (page 70), provides that individuals are disqualified for “depression that interferes with job performance”.

In a letter dated May 13, 2014, the FOH physician described the relevant facts of the appellant’s serious health condition. The FOH physician indicated that the appellant has been diagnosed with obsessive compulsive disorder and depression. The FOH physician stated that he considered WH-380-E forms, *Certification of Health Care Provider for Employee’s Serious Health Condition* (Family and Medical Leave Act) from the appellant’s physician dated April 29, 2013; May 9, 2012; May 1, 2011; and had discussed the case directly with the appellant’s doctor. The FOH physician indicated that the appellant’s physician stated that he sees the appellant twice a year for medical treatment but that he did not do any detailed psychological assessment and that, as far as he knows, the appellant’s symptoms revolve around his frequent need to clean himself. The FOH physician noted that there is no specific guideline in the *Medical and Psychological Guidelines for Transportation Security Administration Transportation Security Officer Job Series* that covers obsessive compulsive disorder, although under Social Interaction Dysfunction, “social dysfunction that is problematic in performing job tasks is unacceptable.” The FOH physician also noted that individuals are disqualified under the Depression Related Disorders guideline for “depression that interferes with job performance.” The FOH physician found that the appellant’s last WH-380-E form indicated that he might need to take off 2-3 times per month for periods of 2-3 days and that the appellant’s actual FMLA leave record indicates that in recent months he had taken 2-5 days off of work. The FOH physician determined that given the appellant’s need for frequent leave for his medical conditions, he is medically disqualified for the TSO position.

On June 25, 2014, the appellant was issued a written Notice of Proposed Removal based on the non-disciplinary Charge: *Failure to Meet the Medical Qualifications of the Transportation Security Officer Position*. On July 9, 2014, the appellant provided a letter dated July 2, 2014, from his physician which stated that he had a mild form of obsessive compulsive disorder but that it did not affect the appellant’s ability to interact with others. The July 2, 2014, letter from the appellant’s physician was forwarded by management to FOH for additional consideration. By letter dated July 30, 2014, the FOH physician determined that the information provided by the appellant’s physician in the July 2, 2014, letter was not consistent with the appellant’s need for frequent leave for his condition. The FOH physician therefore considered the appellant still medically disqualified for his position. The FOH physician also forwarded his findings to the

Office of the Chief Medical Officer (OCMO). By letter dated September 15, 2014, the OCMO provided a summarized review of the appellant’s case and concurred with the original FOH findings and stated that all of the evidence received indicates the appellant is unable to perform all essential requirements of his job due to Obsessive Compulsive Disorder and therefore is disqualified to work as a TSO. On December 7, 2014, the appellant provided an additional letter from his physician dated November 26, 2014, which stated again that he had a mild form of obsessive compulsive disorder which did not affect the appellant’s ability to interact with others and that the appellant would probably only miss one day per month due to his medical condition. The November 26, 2014, letter from the appellant’s physician was forwarded by management to the OCMO. By letter dated January 27, 2015, a second Medical Review Officer with the OCMO determined that based on the Medical Guidelines for Social Interaction Dysfunction, the appellant is not medically qualified to perform the full and unrestricted duties of a TSO due to obsessive compulsive disorder and depression.

In accordance with TSA Human Capital (HCM) Policy No. 339-2, *Job Search Program for Medically Disqualified Transportation Security Officers Eligible for Reassignment*, dated August 29, 2014; the appellant was issued an options letter which asked the appellant to elect whether he wished to be considered for reassignment and to define the specific parameters of the job search. The appellant returned the completed options letter on October 9, 2014, requesting that TSA initiate a job search on his behalf. In an email dated January 8, 2015, the appellant was advised that both the thirty (30) day TSA job search and the fifteen (15) day DHS job search had been completed and that no job matches were found where it was determined that the appellant met the minimum qualifications for a vacant funded position.

The evidence management relied upon to support the appellant's removal consisted of a letter from the FOH physician dated May 13, 2014; Pages 70 and 72 of *Medical and Psychological Guidelines for Transportation Security Administration Transportation Security Officer Job Series*, dated October 1, 2013; a letter from an FOH physician dated July 30, 2014; a letter from the OCMO dated September 15, 2014; and a letter from the OCMO dated January 27, 2015.

The appellant argued that his removal was based on his decision to use FMLA leave and that management did not cite the specific days that he had taken leave, nor did they provide evidence that he was not using his approved FMLA for instances of leave. The appellant also argued that his physician has repeatedly stated that he suffers from a mild form of obsessive compulsive disorder which does not affect his ability to interact with others and that management failed to state a specific incident where his obsessive compulsive disorder and depression interfered with his work performance. Additionally, the appellant argued that management has not proven that a mild form of obsessive compulsive disorder falls under Depression Related Disorders or Social Interaction Dysfunction per TSA's Medical and Psychological Guidelines.

The Board found that there was no evidence in the record to show that management provided the appellant with all of the underlying documentation used to remove him from the TSO position and thus deprived him of his due process rights. Specifically, the Deciding Official referred to three additional FOH and OCMO letters issued after the initial FOH letter dated May 13, 2014, wherein FOH and the OCMO reconsidered the appellant's medical condition and rendered an opinion. There is no evidence to show that management provided the appellant with the letters dated July 30, 2014; September 15, 2014; and January 27, 2015, thus depriving the appellant of the opportunity to respond. The Board finds that not providing the appellant with the opportunity to review this relevant evidence was a harmful error. The appellant's due process rights were violated by failing to provide him with the additional FOH and OCMO decisions. Therefore, the Board did not uphold management's decision to remove the appellant.

Decision. Accordingly, the appeal is GRANTED. The appellant is ordered reinstated to his position as a Transportation Security Officer, and returned to duty subject to meeting TSA employment standards. Further, the appellant will receive back pay from the effective date of his removal, subject to TSA rules and regulations. This is a final decision issued pursuant to TSA policy as set forth in TSA Management Directive 1100.77-1.