

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

GONZALO CORPUS,
Petitioner

v.

DEPARTMENT OF VETERANS AFFAIRS,
Respondent

2023-1861

Petition for review of the Merit Systems Protection Board in No. DA-1221-22-0029-W-2.

Decided: April 10, 2024

GONZALO CORPUS, San Antonio, TX, pro se.

REBECCA SARAH KRUSER, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, for respondent. Also represented by BRIAN M. BOYNTON, ELIZABETH MARIE HOSFORD, PATRICIA M. MCCARTHY.

Before TARANTO, STOLL, and STARK, *Circuit Judges*.

PER CURIAM.

Mr. Gonzalo Corpus appeals a decision of the Merit Systems Protection Board (“Board”) denying his request for corrective action under the Whistleblower Protection Act (“WPA”) and the Whistleblower Protection Enhancement Act (“WPEA”). We affirm.

I

A

Mr. Corpus was a medical instrument technician employed at a medical facility operated by the Department of Veterans Affairs (“VA”). Medical instrument technicians are required to perform procedures and examinations on patients. “Physical requirements for the technician position include frequent standing, walking, bending, and reaching,” and the technicians “are required to wear lead-lined clothing that weighs 20 pounds during all procedures, must be able to lift and/or move over 50 pounds, and must have good manual dexterity and keyboarding skills.” S.A. 5.¹ (internal citation marks omitted). At the medical facility, Mr. Corpus was assigned to the Cardiac Catheterization Lab (“CCL”), which required him to perform, under a physician’s direction, invasive and noninvasive diagnostic tests of patients’ pulmonary and cardiovascular systems.

Between November 2019 and January 2020, Mr. Corpus’ supervisors became aware of reports from various staff members that he was experiencing seizure-like episodes while on duty. The staff members reported that because of these episodes, Mr. Corpus had needed to be taken to the emergency room on more than one occasion. On January 7, 2020, Mr. Corpus was diagnosed with psychogenic non-epileptic spells (the “Condition”), which is a psychological

¹ “S.A.” refers to the supplemental appendix filed with the government’s response (ECF No. 15).

condition that manifests physically as seizure-like episodes.

As a result, on January 15, 2020, the deputy director of patient care services removed Mr. Corpus from direct patient care, citing “concerns regarding [his] fitness for duty related to multiple accounts of inability to move extremities, blank stares, apparent disorientation, and difficult[y] in forming words.” S.A. 43. She added that the removal was also due to “potential safety risks for both [Mr. Corpus] and . . . veteran[s].” S.A. 43. The deputy director indicated that “[d]uties will be assigned by [Mr. Corpus]’ supervisor, . . . or designee.” S.A. 43. Later that month, one of Mr. Corpus’ supervisors requested that he appear for a fitness for duty examination (“FFDE”) scheduled for February 5, 2020.

Mr. Corpus submitted himself to this FFDE, and the doctor who performed it recommended that he undergo a psychological evaluation to determine the extent of his impairment. After that evaluation, the doctor concluded that Mr. Corpus’ ability to perform the essential elements of his position was “questionable.” S.A. 47. Thus, the examining doctor, noting the “safety sensitive nature of [Mr. Corpus]’ position,” recommended that the medical facility convene a physical standards board (“PSB”). S.A. 47. The PSB was convened on May 7, 2020. It determined that Mr. Corpus was not able to safely perform his duties, given that his condition caused “involuntary loss of control of cognitive and motor functions which could pose a serious risk of harm to patients and [his] fellow coworkers.” S.A. 48.

On June 15, 2020, Mr. Corpus was notified that the deputy director was proposing to remove him from his position. Mr. Corpus responded that he was interested in applying for disability retirement instead of being removed. Before he could retire, however, Mr. Corpus became seriously ill with COVID-19 and was unable to work until August 20, 2020.

After Mr. Corpus returned to work, the director of the medical center, who was responsible for evaluating the proposed removal, was informed by the human resources department that Mr. Corpus was interested in reassignment to another position in lieu of removal. Mr. Corpus, however, ultimately decided that he was not interested in reassignment. Nevertheless, Mr. Corpus' supervisor reassigned him to a temporary position with duties that did not involve direct patient care and later to a position of Medical Support Assistant. Mr. Corpus refused to sign the reassignment notice.

Mr. Corpus subsequently filed an appeal at the Board contending that he had been involuntarily reassigned to a lower-grade position. The VA responded by withdrawing both the notice of reassignment and the notice of proposed removal, and Mr. Corpus then withdrew his appeal. The Board dismissed the appeal on January 14, 2021. Meanwhile, the human resources department contacted Mr. Corpus, reiterating the finding that he was unable to perform his duties and offering to find him reasonable accommodation.

On March 15, 2021, Mr. Corpus participated in a follow-up neurological examination. The examining doctor, a different person than the doctor who had conducted the first FFDE, concluded that he could resume his duties without any limitation. Less than a month later, however, Mr. Corpus' representative informed the VA that Mr. Corpus was experiencing serious medical problems as a direct result of COVID-19. The representative also stated that Mr. Corpus had suffered a convulsion in the VA parking lot and was then taken to the emergency room.

Around this time, the Department of Labor ("DOL") Office of Workers' Compensation Programs ("OWCP") accepted Mr. Corpus' claim for traumatic injury due to COVID-19. The OWCP determined that Mr. Corpus had an injury that was proximately caused by employment

CORPUS v. DVA

5

under, and was compensable pursuant to, the American Rescue Plan Act of 2021. On May 3, 2021, a VA representative contacted Mr. Corpus to follow up on the reasonable accommodation process and potential reassignment. Mr. Corpus (through his representative) advised the VA that his health issues were being addressed by the OWCP process, which he asserted had “jurisdictional control” over his claim.

On June 8, 2021, the VA requested that Mr. Corpus appear for a second FFDE, due to reports of him experiencing “difficulty speaking, hand tremors, disorientation, and appearing unable to properly perform [his] duties.” S.A. 54. Mr. Corpus responded on June 15, 2021 with a letter (“June 2021 Letter”) stating that his symptoms were due to COVID-19. He further espoused the view that because his injury was accepted by DOL, he was now entitled to “benefits and protections.” S.A. 57. Mr. Corpus further asserted in the June 2021 Letter that the VA was “coercing” him “with threats” and “forcing” him to “violate federal statutes, HIP[A]A, DOL/OWCP, [and] VA Directives” and disclose his “private medical information” that he did “not want to release.” S.A. 57. The same letter added that he was being “coerced” to submit to a physical examination against his will. S.A. 57. The next day, June 16, 2021, Mr. Corpus’s representative contacted the Office of Inspector General (“OIG”) hotline (“2021 Hotline Report”), making similar allegations and raising similar concerns.

Mr. Corpus arrived as requested at the specified location for the second FFDE on June 17, 2021. However, he refused to complete the required examination forms and did not consent to the exam. Thus, the scheduled FFDE did not occur.

On July 16, 2021, the deputy director proposed to remove Mr. Corpus for failure to submit to a directed examination. The proposed removal notice stated that Mr. Corpus’ position was critical and directly affected patient

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.