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Ex-Logan Airport manager's fight for 9/11 disability benefits continues

By: Kris Olson October 7, 2021



The recent 20-year anniversary of the Sept. 11 terrorist attacks may have been hard on many people, but for the former manager of a Logan Airport terminal through which some of the hijackers passed there was a unique twist.

By way of a 61-page decision of a Division of Administrative Law Appeals magistrate mailed out on Sept. 3, Jan Witkowski learned that he will have to fight further to access accidental disability benefits that even the Legislature seems to believe he deserves.

Walter M. Foster, an attorney at Eckert, Seamans, Cherin & Mellott in Boston, has been working pro bono for Witkowski for years and has already filed a notice of objections with the Contributory Retirement Appeal Board, saying his client "objects to the entirety" of Magistrate Kenneth L. Bresler's decision.

That decision "contains numerous incorrect statements of fact which are contradicted by the record before DALA, as well as clear errors of law governing applications for accidental disability retirement benefits under M.G.L.c. 32," Foster argues.

In the summary of his decision, Bresler indicates that he would have needed to find that the events of 9/11 — and specifically Witkowski's guilt over failing to prevent the attacks — were the first domino that triggered a cascading series of medical issues that Witkowski has suffered in the years since.

Those issues started with Post-Traumatic Stress Syndrome and were followed by heart problems requiring surgery, Chronic Fatigue Syndrome and fibromyalgia, among other ailments.

In Bresler's estimation, Witkowski had not proven that his job duties caused those conditions, that he suffered all of them, or both.

But Bresler went astray in overriding without basis the unanimous conclusion of the Public Employee Retirement Administration Commission's independent medical panel that PTSD has permanently disabled Witkowski, Foster argues.

Instead, the “seven-factor chain of causation” Bresler “concocted” — viewing the medical conditions as “train cars” that must all be hitched to one another — is an improper method to probe the required causation element under G.L.c. 32, Foster says.

Witkowski began working for the Massachusetts Port Authority as a communications specialist in 1997 and then became the manager of Logan’s Terminal C in 2000.

Bresler discounts the degree to which Witkowski’s duties included airport security and emergency response. But Foster notes that such duties were clearly part of his written job description and, as a factual matter, Witkowski spent the days after 9/11 working alongside the FBI, helping to check the terminal for hidden bombs and weapons.

To Bresler, it mattered greatly that by the time Witkowski arrived at work on Sept. 11, 2001, the hijackers would have already passed through the terminal and boarded their flights. That foreclosed the possibility — perhaps remote to begin with — that Witkowski would have spotted them and foiled their plot, Bresler finds.

But Witkowski says Bresler is using too narrow a lens in requiring him to show that his disability was caused by an event on Sept. 11 itself, when the reality is that his health deteriorated over time due to fresh injuries he suffered each day upon arriving for work.

“It all came flooding back,” Foster says.

Witkowski worked his last day at Massport on Oct. 15, 2009, and applied for both accidental and ordinary disability retirement benefits on June 9, 2011.

As required by G.L.c. 32, Witkowski was examined by an independent medical panel. Each of its three members opined that Witkowski was mentally or physically incapable of performing the essential duties of his job; the incapacity was likely permanent; and the incapacity might be the natural and proximate result of the hazard he had claimed to have undergone.



The Massport Authority Employees’ Retirement System Board granted Witkowski’s original application for ordinary disability retirement benefits but found that his claim for accidental disability benefits was time barred, as G.L.c. 32, §7(1), generally requires such claims to be filed within two years of undergoing a hazard, while the 9/11 attacks had occurred a full decade earlier.

Over the years, it has become apparent that the two-year limit is a flaw in the statute, especially when it comes to mental disabilities that may manifest more gradually, Foster notes.

Seemingly recognizing an injustice, the Legislature on Sept. 27, 2018, created a onetime exception, passing An Act Relative to Accidental Disability Retirement for Jan Witkowski. The special law declared that Witkowski “shall be eligible to see an accidental disability retirement,” the deadline notwithstanding.

Weeks later, Witkowski filed an amended application for disability benefits, which was again denied.

In his notice to the Contributory Retirement Appeal Board, Witkowski says his objections to Bresler’s decision are “too numerous to list.”

For example, there are differences of opinion over what to make of Witkowski’s refusal to submit to an examination by the Massport Authority Employees’ Retirement System Board’s expert, Dr. Roger Pitman.

Pitman ultimately wrote a report, which he acknowledged was “significantly” limited by not having a chance to examine Witkowski personally. The report concluded that Witkowski’s records “do not support a diagnosis of PTSD in Mr. Witkowski stemming from his personal experience of 9/11.”

Foster argues that the board’s request was improper under G.L.c. 32, which is even more reason not to give Pitman veto power over the conclusions of both the independent medical panel and Witkowski’s expert, Dr. Nancy Pruett.

Pruett did examine Witkowski personally and testified that he met every criterion for PTSD under both the current Diagnostic and Statistical Manual of Mental Disorders and its predecessor, DSM-IV.

Bresler places at least some significance in what he saw as Witkowski overstating the number of people he knew personally who perished on Sept. 11. Bresler believes the number to be two — Witkowski testified to three, Foster says — which “does not constitute several people.”

But perhaps more critically, Bresler’s decision is imbued with some fundamental misunderstandings about PTSD, Foster maintains. For example, Bresler implies that Witkowski’s PTSD and subsequent symptoms could have been avoided if someone had “gently reassured” him that the events of Sept. 11 were not his fault.

“If someone reassured him, Mr. Witkowski apparently remains unconvinced,” Bresler writes.

Bresler also expresses concern about opening the floodgates to accidental disability benefit claims.

“If Mr. Witkowski prevails, then police officers and firefighters who allege disabling PTSD because they failed to stop tragedies, even when they were not on the scene of the tragedies or even when they were not on duty, might be eligible for accidental disability retirement benefits,” he writes. “A town hall employee who was not a first responder and who alleged disabling PTSD because he had failed to stop a murder or a fire death might be eligible for such benefits.”

But especially with an event as horrific and as prolonged as 9/11, it is quite possible for a person to have suffered PTSD without being at Ground Zero or working in the Pentagon. Indeed, some people have been diagnosed with PTSD from watching the events of 9/11 unfold on TV, Foster notes.

Given the nature of his job as “gatekeeper” to Terminal C, it makes even more sense that Witkowski might be vulnerable to a particularly pernicious form of “survivor’s guilt,” Foster says.

A Massport spokesperson declines to comment on the case, citing Witkowski’s pending appeal before the Contributory Retirement Appeal Board.

Issue: OCT. 11 2021 ISSUE

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