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No. 21-777

In the
Supreme Court of the United States

BLAKE EDWARD HALFACRE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Tenth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Are the "exclusive provisions" in the FECA (Federal Employment Compensation Act) applicable, or available to Federal Employees who also have no formal light duty job offer on file by their employing agency?

LIST OF PROCEEDINGS

United States Court of Appeals for the Tenth Circuit
No. 20-4101

Blake Edward Halfacre, *Plaintiff-Appellant*, v.
United States of America, *Defendant-Appellee*.

Date of Final Opinion: June 2, 2021

Date of Rehearing Denial: July 1, 2021

United States District Court District of Utah
No. 1:19-cv-038

Blake Edward Halfacre, *Plaintiff*, v.
United States of America, *Defendant*.

Date of Final Order: August 28, 2021

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Blake Edward Halfacre respectfully requests the issuance of a writ of certiorari to review the judgement of the United States Court of Appeals for the Tenth Circuit.



OPINIONS BELOW

The opinion of the United States Court of Appeals for the Tenth Circuit, dated June 2, 2021, is included in the Appendix at App.1a-7a. The order Denying Petition for Rehearing, dated July 1, 2021, is included at App.17a. The Order of the United States District Court District of Utah, dated August 28, 2020, is included below at App.8a.



JURISDICTION

The Tenth Circuit entered judgement on July 2, 2021. Time was extended by order on March 19, 2020. (ORDER LIST: 589 U.S.).

IT IS ORDERED that the deadline to file any petition for a writ of certiorari due on or after the date of this order is extended to 150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for re-hearing. *See* Rules 13.1 and 13.3.

This Court has jurisdiction under 28 U.S.C. § 1254(a).



STATUTORY AND REGULATORY PROVISIONS PROVISIONS INVOLVED

STATUTES

5 U.S.C. § 8102

Definitions et seq.

(a) The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty.

REGULATIONS

5 CFR § 293.311

Availability of information

(a) The following information from both the OPF and employee performance file system folders, their automated equivalent records, and from other personnel record files that constitute an agency record within the meaning of the FOIA and which are under the control of the Office, about most present and former Federal employees, is available to the public:

- (1) Name;
- (2) Present and past position titles and occupational series;
- (3) Present and past grades;
- (4) Present and past annual salary rates (including performance awards or bonuses, incentive awards, merit pay amount, Meritorious or Distinguished Executive Ranks, and allowances and differentials);
- (5) Present and past duty stations (includes room numbers, shop designations, or other identifying information regarding buildings or places of employment); and
- (6) Position descriptions, identification of job elements, and those performance standards (but not actual performance appraisals) that the release of which would not interfere with law enforcement programs or severely inhibit agency effectiveness. Performance elements and standards (or work expectations) may

be withheld when they are so intertwined with performance appraisals that their disclosure would reveal an individual's performance appraisal.

20 CFR § 10.115

What evidence is needed to establish a claim?

- (1) The claim was filed within the time limits specified by the FECA;
- (2) The injured person was, at the time of injury, an employee of the United States as defined in 5 U.S.C. 8101(1) and § 10.5(h) of this part;
- (3) The fact that an injury, disease or death occurred;
- (4) The injury, disease or death occurred while the employee was in the performance of duty; and
- (5) The medical condition for which compensation or medical benefits is claimed is causally related to the claimed injury, disease or death. Neither the fact that the condition manifests itself during a period of Federal employment, nor the belief of the claimant that factors of employment caused or aggravated the condition, is sufficient in itself to establish causal relationship.)



STATEMENT OF THE CASE

I. The Plaintiff (Mr. Halfacre) Brought Forward a Complaint Pursuant to the Federal Tort Claims Act (“FTCA”) in the United States District Court for the District of Utah, Northern Division in 2018.

The complaint was directed at the Defendant (U.S. Government’s) employees/ agents for falsifying the Plaintiff’s post-on-the-job injury, (post-surgical) work restrictions, and making statements knowing they were false or made statements recklessly and without regard to the truth. The plaintiff made it known to the court that reckless conduct of OMS Doctors and his supervisor during the January 2013 recognized injury event had negatively impacted his subsequent Office of Worker’s Compensation Program injury claim for the June 2013 post-surgical return because proper protocols weren’t followed for proper re-employment for him to communicate to OWCP any verifiable form of agency assigned duty. The Defense in turn moved to dismiss claiming that the court lacked subject matter jurisdiction because FECA should be the Plaintiff’s exclusive remedy. The Defense quoted from a written personal statement written by the Plaintiff’s initial injury supervisor that was extracted from evidence in official FECA claim denial documents, and argued to the Judge as to how the verbiage of that personal statement had proven the existence, or satisfied the definition of accepted agency assignment or “Performance of Duty” Because the Defense had made it appear as if the Plaintiff was claiming he wasn’t also a federal employee at the

time of the June 2013 return. The Judge sided with the Defense's interpretation of the law and the way it was argued that the Plaintiff was indeed a federal employee and that had also fulfilled the necessary FECA requirement for "performance of duty". The Judge dismissed the complaint under FTCA for lack of subject matter Jurisdiction.

II. The Plaintiff Filed for Appeal in the United States Court of Appeals for the Tenth Circuit on November 19, 2020.

The Tenth Circuit Court of appeals affirmed the trial court's motion to dismiss, stating:

[t]he district court here lacked subject-matter jurisdiction over the FTCA complaint, and Mr. Halfacre's arguments to the contrary are unavailing. First Mr. Halfacre takes issue with the strength of evidence on which his second and third claims were resolved and asks the court to re-examine the evidence to reach a different result. But we have no authority to conduct a review.

Second, Mr. Halfacre suggests that he was not a federal employee when he returned to light-duty in May 2013 because he was not given a federal job classification or wage code. We agree with the government that this argument is baseless. Mr. Halfacre filed his claims under the FECA as a federal employee, and at a hearing in the district court on the government's motion to dismiss, Mr. Halfacre's counsel acknowledged that he was a federal employee for purposes of determining FECA coverage. It is obviously

too late, and inaccurate, for Mr. Halfacre to argue he was not a federal employee.

III. CONCLUSION

The judgement of the district court is affirmed.

(App.6a-7a).

III. Plaintiff Files a Petition for Rehearing En Banc, in the 10th Circuit Court of Appeals Case Number: 20-4101, on June 11th, 2021. Petition Was Denied July 1st, 2021.



REASONS FOR GRANTING THE PETITION

This Court Should Grant Certiorari to this case to recognize the mistake/ misapplication of jurisdictional determination at the District Court level, and what was also ultimately affirmed the Appellate Court level. That mistake is: Both courts have now determined that once a Plaintiff's proof of federal employment is established in a TORT claim . . . that requirement is all that is needed to dismiss in place of FECA's exclusive Jurisdictional purview.

That determination is incorrect.

Proof of Federal Employment is only ONE of FIVE "Essential Elements" or "Pillars" in a successful FECA claim. *See CFR Title 20, § 10.115: What Evidence Is Needed to Establish a Claim?*

- (1) The claim was filed within the time limits specified by the FECA;

- (2) The injured person was, at the time of injury, an employee of the United States as defined in 5 U.S.C. 8101(1) and § 10.5(h) of this part;
- (3) The fact that an injury, disease or death occurred;
- (4) The injury, disease or death occurred while the employee was in the performance of duty; and
- (5) The medical condition for which compensation or medical benefits is claimed is causally related to the claimed injury, disease or death. Neither the fact that the condition manifests itself during a period of Federal employment, nor the belief of the claimant that factors of employment caused or aggravated the condition, is sufficient in itself to establish causal relationship.)

With regard to that list of "Essential Elements" of a FECA claim: The Plaintiff was only ever able to satisfy the first 2 for that June 2013 return as stated in the multiple documented FECA/OWCP denial decision's evidence submitted at trial.

For the Claimant/Plaintiff (Mr. Halfacre) there was no offer of, or record of acceptance of any light-duty assignment from his Employing Agency for the June 2013 return as evidenced in every subsequent FECA/ OWCP claim denial decision letters submitted at trial that further support this fact by also sharing the AFGE Union Vice President's written testimony that proper agency protocol wasn't followed for Light Duty Guidance for employees returning from an on the job injury.

This missing "Essential Element" of Performance of Duty in the Petitioner's FECA claim also exists in the Defense's own argued findings of fact shared at trial. That missing requirement was shared verbatim to the Judge in trial transcript record:

"T" Page 34, Lines 23, and 24 "There is no formal light duty job offer on file and no evidence of error by the employing agency"

The Petitioner (Mr. Halfacre) begs of the Supreme Court Judges to carefully examine this quoted statement by the Defense . . . as it applies to the initial Question Presented that having "no formal light duty job offer on file" is the primary basis for the Petitioner's initial TORT claim.

A Federal Agency's record of "duty assignment" is essential for linking causality to any formally accepted on the job proof of injury within the Federal Employment Compensation Act (FECA).

Furthermore the Supreme Court must maintain continuity in the message of their past decisions: (*McDaniel v. U.S.*, 970 F.2d 194, 198 (1992)).

If the Secretary determines that the injury did not occur in the performance of duty, FECA does not cover the injury, and the employee may proceed in court. On the other hand, if the employee was injured in the performance of duty, the Secretary's decision regarding coverage will be binding on the court, regardless of whether compensation is actually awarded.

Properly understood . . . The FECA Law provides injury compensation coverage to Federal Employees

who are injured in the “Performance of their Assigned Federal Duties” that are held within the records of the claimant’s employing agency. And critically . . . the FECA rules for injury claim acceptance cannot construe any other person’s testimony, or definition for “Federal Duty Assignment” other than what is contained on record within an Employing Agency’s (formally offered and accepted) Federal Duty Assignment, and accompanying “PD” or (Position Description).

See 5 C.F.R. § 293.311, Availability of information.
Part (a)(6).

Position descriptions, identification of job elements, and those performance standards (but not actual performance appraisals) that the release of which would not interfere with law enforcement programs or severely inhibit agency effectiveness. Performance elements and standards (or work expectations) may be withheld when they are so intertwined with performance appraisals that their disclosure would reveal an individual’s performance appraisal.

This Court should grant its powers of a *de novo* judicial review for both the document, and trial transcript evidence in this case to provide added clarity in what fulfills the Federal Employment Compensation Act’s “essential elements”, or “pillars” as required in accepted on-the-job injury claims for all Federal Employees.

And conversely what should be sought through the provisions of FTCA (Federal Tort Claims Act), or instead be determined by the Secretary of Labor when evidence is ever submitted that shows FECA Claim

Denial rationale highlighting the Plaintiff/Claimant's employing agency having no formal light duty job offer on file.



CONCLUSION

Mr. Blake Halfacre respectfully requests that this court issue a writ of certiorari.

Respectfully submitted,

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NOVEMBER 18, 2021