No._____

In The
Supreme Court of the United States

Timothy O'Neill

Petitioner,

v.

UNUM Life Insurance Company of America

Respondents.

On Petition For Writ of Certiorari
to the
United States Court Of Appeals
For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED:

QUESTION 1 : Did the UNITED STATES COURT OF APPEALS for the SIXTH CIRCUIT wrongfully and grievously apply the doctrine of STARE DECISIS in upholding the decision of Magistrate Judge Ellen Carmody in the UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MICHIGAN (1:16-cv-01061).

QUESTION 2: Did the UNITED STATES COURT OF APPEALS for the SIXTH CIRCUIT wrongfully apply Hoover v. Provident 290 F.3d when deciding the plan administrator correctly interpreted the plan in denying O'Neill LTD benefits.

PARTIES TO PROCEEDING:

UNUM Life Insurance Company of America

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United States District Court for the Western District of Michigan

United States Court of Appeals for the Sixth Circuit

TABLE OF CONTENTS:

INDEX TO APPENDIX

TABLE OF AUTHORITIES

Cases

OPINIONS BELOW

The opinion of the court of appeals for the Sixth Circuit is reported at 18-1382 and is reprinted at Appendix A, 1a.-14a. The opinion and order of the district court finding for defendant UNUM is reported at 1:16-cv-01061 and reprinted at Appendix B, 1b.-37b.

JURISDICTION

The Judgement of the court of appeals for the Sixth Circuit was entered on November 19, 2018. The jurisdiction of this Court is evoked under 28 U.S.C.§1254(1)

STATEMENT OF CASE

On March 19, 2018 a decision was entered by US Magistrate Judge Ellen Carmody in the United States District Court Western District of Michigan finding for Defendant UNUM Life Insurance Company of America.(1:16-cv-01061)

On May 22, 2018, I filed a Pro Se appeal of this decision in the United States Court of Appeals for the Sixth Circuit. At the outset, at the direction of Sixth Circuit, I was asked to detail how Judge Carmody had erred in reading of the facts contained in the administrative record. After some 44 pages of detailed discussion including complete citations in the administrative record showing how Judge Carmody had committed nothing short of irresponsible judicial bias, I respectfully asked the court to overturn this egregious decision. (18-1382 Page ID 1-48). On November 19, 2018, the Sixth Circuit Court of Appeals affirmed Judge Carmody's decision. Stating that: "While there is ***no question*** that O'Neill will need accommodations in order to preform the material and substantial duties of his occupation, we cannot conclude that O'Neill is entitled to the continuation of his long term disability benefits or that Unum misinterpreted the plan. *Hoover,*290F.3d at 808-809." As I pointed out in my petition for rehearing filed November 23, 2018, this conclusion is clearly inconsistent with the courts own writing. Either I can perform my job unencumbered or I can't.

If the Sixth Circuit truly believes that there is ***no question*** that I will need accommodations then by definition I am entitled to LTD benefits as defined by the plan. In addition, this conclusion is in direct conflict with Judge Carmody's assertion that I am not disabled at all. The Sixth Circuit failed to cite any legal precedent supporting Defendant UNUM's right to change its job description including adding accommodations at its convenience to allow me to preform my job and thus allow denial of benefits. In fact, the district court dismisses the Social Security Administration redetermination of my disability as irrelevant because, otherwise a claimant could avoid certain limitations, simply by choosing to re-characterize his disability. (ECF No. 34 at Page ID.6867). This is precisely what the Sixth Circuit is allowing UNUM to do by saying there is ***no question*** I will need accommodations but then finding UNUM correctly denied me benefits. This decision by the Sixth Circuit clearly establishes a dangerous precedent allowing plan administrators to deny benefits simply by changing the job description of the insured to allow denial of benefits, thus placing thousands of American citizens in jeopardy of being denied long term disability benefits on the whim of the plan administrator.

Now, it is clearly outlined in SUPREME COURT RULE 10 that review on a writ of certiorari is not a matter of right, but of judicial

discretion. A petition for a writ of certiorari will be granted only for compelling reasons. What is of grave importance here is that every citizen has the right to fair consideration by the courts in this country devoid of the misplaced application of a precedent of upholding lower courts merely to save face. Arguing a bad outcome, even a very bad outcome is clear ground for dismissal of this petition, that is not what is at stake here. I believe the Sixth Circuit committed grievous judicial misconduct by affirming their colleague in the United States District Court despite voluminous, fully cited, examples of extreme judicial prejudice, as an attempt to cover the lower courts indiscretions under the guise of the long held doctrine of stare decisis. This is especially glaring as the Sixth Circuit itself agreed that I am in fact not able to perform my job as defined by Defendant: "While there is no question that O'Neill will need accommodations in order to perform the material and substantial duties of his occupation, we cannot conclude that O'Neill is entitled to the continuation of his long-term disability benefits or that Unum misinterpreted the plan. *Hoover,*290F.3d at 808-809." What the court concluded in Hoover was that the plan administrator shall have the right to require as part of the proof of claim satisfactory evidence... In addition, when applying a *de novo* standard in the ERISA context, the role of the court reviewing denial of benefits "is to determine whether the administrator made a correct

decision." The administrator's decision is accorded no deference or presumption of correctness. The review is limited to the record before the administrator and the court must determine whether the administrator properly interpreted the plan. *Hoover,*290F.3d at 809. All of the experts in my case, to one degree or another opined that I could not perform my occupation without limitation, clearly proving UNUM's decision was incorrect. The Sixth Circuit itself agreed with the experts that I am in fact disabled by stating: "expert medical analysis that O'Neill could still practice anesthesiology with *appropriate accommodations*" and "there is no question that O'Neill will need *accommodations* in order to perform his occupation." I was performing my occupation without any accommodations whatever prior to my diagnosis. So the Sixth Circuit readily admits according to all experts, including UNUM's own paid experts that I am unable to perform my job unencumbered. This by any definition, including that which is outlined in Hoover,290F.3d at 808-809, the case law that the Sixth Circuit apparently relied on, constitutes "satisfactory evidence" of my disability. Despite this the Sixth Circuit still choose to affirm Judge Carmody. This action is tantamount to committing an extreme abuse of judicial power. As the Supreme Court recently opined, this concept of upholding lower courts decisions should be based on humility and sound legal reasoning, not on insulating a lower

court from committing extreme prejudice in deciding the facts of a case. (Gamble v. United States, No. 17-646). It is clear that Judge Carmody ignored facts, misread the record or didn't read the record at all. Equally as serious, from the outset of this action, Judge Carmody attempted to assassinate my charter and the character of all my treating providers without any factual basis to support her assertions. Judge Carmody even attacked the federal government itself. Then the Sixth Circuit states: "There is no question that O'Neill will need accommodations in order to perform the substantial duties of his occupation...",but affirms the District Court anyway. There is only one plausible explanation for Sixth Circuit affirming Judge Carmody. It has clearly committed a flagrant abuse of judicial power. All citizens of this country deserve our courts to do the right thing, not the convenient thing.

REASONS FOR GRANTING THE PETITION

First, this court should grant the petition as a means to exercise its supervisory power and hold the lowers courts to a standard to which all citizens of the United States of America deserve. This case clearly shows extreme judicial bias which prevented a correct decision to be rendered by the United States District Court for the Western

District of Michigan. A decision which was then grievously affirmed by the United States Court of Appeals for the Sixth Circuit in an obvious attempt to allow magistrate Judge Ellen Carmody to save face. The Sixth Circuit itself agreed that I am in fact disabled as defined by the language contained in the policy written by defendant UNUM but affirmed the District Court anyway. This court must send clear guidance to the lower courts that this behavior will not be allowed. By doing so this Court will also provide clear guidelines for applying the long held doctrine of Stare Decisis. Second, if this court allows this decision to stand it sets a very dangerous precedent allowing, in all further disability cases under ERISA, the plan administrator to simply change the job description at its convenience to suit their motive of denying benefits that are due under the original agreed upon policy.

CONCLUSION

The Court should grant the petition for a writ of certiorari as an opportunity to provide clear guidance to lower courts on the importance of fair evaluation of unequivocal written facts completely devoid of bias and instruct the lower courts that the doctrine of Stare Decisis requires humility and sound legal reasoning and is not to be applied simply to protect the districts court's application of flawed standards of conduct. I addition, the Court should allow this petition to prohibit the establishment of a very dangerous precedent allowing plan administrators to arbitrarily change the job description of policy holders to allow denial of benefits. This matter is of grave importance to all American citizens and to the integrity of our judicial system and the rule of law.

Respectfully Submitted,

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