18-8062

No._____

In The

SUPREME COURT OF THE UNITED STATES

SAUNDRA TAYLOR
Petitioner

v.

D.C. DEPT OF EMPLOYMENT SERVICES
Respondent ET AL

ON PETITION FOR A WRIT OF CERTIORARI TO DISTRICT OF COLUMBIA COURT OF APPEALS' MEMORANDUM AND OPINION OF AUGUST 20, 2018. PETITION FOR A WRIT OF CERTORARI.

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QUESTIONS PRESENTED FOR REVIEW

1. Whether memorandum and opinion is not supported by substantial evidence in the record, is not in accordance to the law and an abused of discretion.

2. Whether D.C. Court of Appeals committed reversible error in affirming CRB's August 18, 2017 decision and order that affirmed a dismissal with prejudice.

List of Parties

SAUNDRA TAYLOR, Plaintiff and Petitioner, Pro se

D.C. Department of Employment Services, Defendant and Respondent

Verizon Communication Inc, Defendant and Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES CITED

CASES PAGE NUMBER

STATUTES AND RULES

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of District of Columbia Court of Appeals of August 20, 2018 to review the merits appears at Appendix A to the petition and is unpublished.

JURISDICTION

On August 20, 2018 the District of Columbia Court of Appeals decided my case. A copy of the memorandum and opinion appears at "Appendix A". A timely petition for rehearing was thereafter denied on February 7, 2019, and a copy of the order denying rehearing appears at Appendix B. A state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals. The jurisdiction of the Court is invoked under 28 U.S.C. § 1257 (a).

CONSTITUTIONAL PROVISION INVOLVED

The Supremacy Clause, U.S. Constitution, Article VI, Clause 2, states This Constitution, and The Laws of the United States which shall be made In Pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the Supreme Law of the Land, and the Judges in every State shall be bound thereby, anything [sic] in the Constitution or Laws of any state to the Contrary notwithstanding.

STATEMENT OF CASE

1. Facts Giving Rise to This Case

On August 6, 2010 ALJ Joan E. Knight issued a Compensation Order (CO) denying Petitioner's workers' compensation claim AHD 03-216D for Permanent Total Disability Benefits. In the CO the findings of ALJ Joan E. Knight was that "Claimant's testimony is found to be incredible. This finding is based upon the inconsistent, self-serving nature of her responses and her presumptuous attempts on cross-examination to obfuscate factual findings" In the October 1, 2009 formal hearing majority of Petitioner's employer Verizon Communication Inc's cross-examination was on the Bluff Magazine's internet impeachment document that the employer submitted into the record as EE 11 which discloses Ms. Taylor's past poker tournament winnings for the years of 2004 through 2009.

On September 3, 2010 the Petitioner filed an application for review of ALJ Joan E. Knight's CO of August 6, 2010. In September 14, 2009 Self-Insured Employer's Opposition To Claimant Saundra Taylor's Application For Review the Petitioner's employer Verizon Communication Inc. presented the issue/ argument that the credibility findings of ALJ in the CO are supported by substantial evidence and the CO should be affirmed. On January 14, 2010 the CRB issued a decision and order affirming ALJ Joan E. Knight's CO of August 6, 2010 that denied Ms. Taylor's workers' compensation claim AHD 03-216D for Permanent Total

Disability Benefits. In the decision and order the findings of CRB was that "the transcript has been reviewed, and there is substantial evidence to support the characterization of Ms. Taylor's testimony as inconsistent, self-serving, and misleading. Similarly, Ms. Taylor testified that in her answers to interrogatories she had indicated she had not received any money from any source other than Verizon since her 2001 work-related accident; however, evidence reveals Ms. Taylor received money as a result of her professional gambling".

On April 25, 2011 Petitioner discovered factual inconsistencies in the material facts of Ms. Taylor's past poker tournament winnings information that were disclosed in the impeachment evidence of the Bluff Magazine's internet document known as (EE 11) that brought Ms. Taylor's testimony and credibility into question in pursuant to D.C. Code § 32-1520 (7) that the Petitioner's employer submitted into the record in the documents of the October 1, 2009 hearing transcript, Self-Insured Employer's Proposed Findings of Fact, Conclusions of Law, and Closing Brief to the ALJ Joan E. Knight and Self-Insured Employer's Opposition To Claimant Saundra Taylor's Application For Review to CRB that are part of the record preceding the schedule June 16, 2011 formal hearing. The Petitioner had filed an application for formal hearing on March 8, 2011 as a Pro se litigant seeking a modification of ALJ Joan E. Knight's CO of August 6, 2010 on the ground that a change of condition has occurred in pursuant to D.C. Code § 32-1524 which raises issues concerning the fact, degree and extent of her disability.

After, discovering factual inconsistencies in the record of the previous case Petitioner made a request of the impeachment evidence of the Bluff Magazine's internet document known as (EE 11) that the Petitioner's employer submitted into the record on October 1, 2009 in Ms. Taylor's previous workers' compensation claim AHD 03-216D that ALJ Joan E. Knight denied for Permanent Total Disability Benefits. On May 4, 2011, Petitioner was presented a the copy of the Bluff Magazine's internet document known as (EE 11) from the office of hearings and adjudication

(OHA) however, the copy presented to Ms. Taylor was a single (1) page document that was very much different from the two (2) page document described in the October 1, 2009 court transcript. Also, the single (1) page Bluff Magazine's internet document discloses material fact of Ms. Taylor's past poker tournament winnings for the years of 2000 through 2009 which show that Petitioner played poker before her work-related accident of August 24, 2001 however, only the disclosed material fact of Ms. Taylor's past poker tournament winnings for the years of 2004 through 2009 are detailed in the October 1, 2009 hearing transcript which gives a false impression that Petitioner never played poker before her work-related accident of August 24, 2001.

On May 5, 2011 Petitioner notified the respondent (Office of Hearings and Adjudication (OHA)) regarding the single page document of the Bluff Magazine's internet documents that was presented to Ms. Taylor on May 4, 2011 in the communication via telephone the Petitioner addressed the differentiate between the pages and additional disclosure of material facts of Ms. Taylor's past poker tournament winnings information for the years of 2000 through 2002 that are not detailed in the October 1, 2009 hearing transcript. On May 24, 2011, while communicating with Mr. Mohammad Sheikh, Director of Labor Standard Bureau via telephone Petitioner a Pro se litigant (Ms. Taylor) with no legal knowledge was misdirected to present the new evidence Respondent presented Petitioner on May 24, 2011 to CRB. On June 6, 2011 Ms. Taylor filed a motion to CRB to set aside the CRB's January 14, 2011 decision and order that affirmed ALJ Joan E. Knight's CO of August 6, 2010.

On June 16, 2011 in pursuant to D.C. Code § 32-1524 ALJ Leslie A. Meek denied Ms. Taylor a formal hearing seeking a modification of ALJ Joan E. Knight's CO of August 6, 2010 that was affirmed by CRB's January 14, 2011 decision and order. On July 27, 2011, CRB dismissed Ms. Taylor's June 6, 2011 post-judgment motion to set aside, in which CRB lack subject-matter jurisdiction in pursuant to 7 DCMR § 268.1 CRB because the ten (10) calendar days had expired to seek a reconsideration of CRB's January 14, 2011 decision and order that affirmed

ALJ Joan E. Knight's CO of August 6, 2010. On May 19, 2014 ALJ Leslie A. Meek's issued Second Order on Remand after the issuance of CRB's two (2) remand orders. On October 30, 2014 CRB issued a decision and order affirming ALJ Leslie A. Meek's May 19, 2014 second order on remand. During the appeal of CRB's October 30, 2014 decision and order (At No. 14-AA-1253) on January 15, 2015 DCCA denied Ms. Taylor's December 2, 2014 post-judgment motion to adduce additional evidence that was filed in pursuant to D.C. Code § 32-1522 (b) (3). Also, during the appeal of CRB's October 30, 2014 decision and order, on March 3, 2015 DCCA denied without prejudice Ms. Taylor's January 20, 2015 motion to supplement the record. Furthermore, during the appeal of CRB's October 30, 2014 decision and order, on April 28, 2015 the CRB denied Petitioner's March 4, 2015 post-judgment motion to supplement the record and add new evidence in which CRB also lack subject-matter jurisdiction. Moreover, during the appeal of CRB's October 30, 2014 decision and order, on August 31, 2015 DCCA denied and addressed Petitioner's February 19, 2015 post-judgment motion to set aside ALJ Joan E. Knight's CO of August 6, 2010, as a summary reversal in which DCCA also lack subject-matter jurisdiction. On September 29, 2016 DCCA affirmed the CRB's decision and order of October 30, 2014. On November 15, 2016 DCCA denied Petitioner's petitioner for rehearing.

On April 17, 2017 this court denied Ms. Taylor's petition for a writ of certiorari. On April 18, 2017, Petitioner filed a motion for reopening of evidentiary hearing and motion for leave to adduce additional evidence, motion for order to show cause and motion to set aside/vacate to set aside ALJ Joan E. Knight's (CO) of August 6, 2010 because of fraud. On May 1, 2017, ALJ Donna J. Henderson issued an order to show cause. On May 8, 2017, Ms. Taylor filed a response to the order to show cause. On May 17, 2017, ALJ Donna J. Henderson issue, a second order to show cause. On May 22, 2017, Ms. Taylor filed a response to second order to show cause. On June 12, 2017, ALJ Donna J. Henderson issued an order dismissing with prejudice

April 18, 2017 post-judgment motions that the ALJ denied in May 17, 2017 second order to show cause despite the fact, the record presents no final judgment on the merits of the same cause of action because Ms. Taylor could not have raised the issue of fraud in the initial hearing adjudicated by ALJ Joan E. Knight, never had the opportunity to litigate the subsequent actions in the earlier dismissal and denied of DCCA and CRB and lost on the merits.

2. The Compensation Review Board Proceedings

On August 18, 2017 CRB's decision and order affirmed ALJ Donna J. Henderson's CO of June 12, 2017 that denied with prejudice the Petitioner's April 18, 2017 post-judgment motion for order to show cause and argued in the motion to set aside/vacate a judgment and motion for reopening of evidence hearing and motion for leave to adduce additional evidence in pursuant to 7 DCMR § 267.3 which is based on ALJ Joan E. Knight's CO of August 6, 2010 and the earlier dismissal and denial of DCCA and CRB. (At App. C, page 3, Footnote 1) 7 DCMR § 267.3 states: "In appropriate cases, such as where the issues raise on appeal have been thoroughly discussed and disposed of in earlier cases by the Board or the courts, or where the findings of fact and conclusions of law are both correction and adequately discussed in the compensation order under review, the Board in its discretion may issue a brief, summary written decision disposing of the appeal and/or adopting the compensation order under review".

3. The Appellate Court Proceedings

On August 24, 2017, Petitioner filed a notice of appeal from the Compensation Review Board's Decision and Order of August 18, 2017. In the memorandum and opinion of District of Columbia Court of Appeals of August 20, 2018 in "Appendix A" DCCA found "that Ms. Taylor seeks either to relitigate issues that have previously been decided by the CRB and this court or (2) rely on information that could have been presented earlier and

thus, provides no basis for reopening Ms. Taylor's claim". (App. A, page 2, lines 1-5). Also, DCCA concludd that under "7 DCMR § 264.1 (2018) "(party) seeking to introduce additional evidence after decision of ALJ must establish "that there existed reasonable ground for the failure to present the evidence""(At p. 2 line 5-7) however, the conclusion of law of 7 DCMR § 264.1 (2018) is different from 7 DCMR § 267.3 (2018) that was presented in the CRB's decision and order of August 18, 2017 that was affirmed. (At App. C) On February 7, 2019 the District of Columbia Court of Appeals (DCCA) denied the petitioner's petition for rehearing and rehearing en banc. (App. B)

REASON FOR GRANTING THE PETITION

I. Review Is Warranted Because Supreme Court Allows Review On A Writ Of Certiorari Of Judicial Decision Of State (And D.C.) Courts Of Last Resort.

A. The Opinions Of DCCA Conflicts With Decisions Of This Court And DCCA.

The August 18, 2018, D.C. Court of Appeals (DCCA) memorandum and opinion in this case creates a conflict with DCCA's holding in *Landesberg v. District of Columbia Dept.* of *Employment Services*, 794 A.2d 607 (D.C. 2002) "The Court of Appeals said, it is limited to determining whether an order of Director of Department of Employment Services (DOES) is in accordance with the law and supported by substantial evidence in the record". Consequently, the memorandum and opinion of August 18, 2018 of DCCA is not supported by substantial evidence in the record and is not in accordance with the law which does not support a dismissal with prejudice. In *Consolidated Edison Corp v. Labor Board*, 305 U.S. 197 (1938) the Supreme Court stated, "the evidence supporting the agency's conclusion must be substantial in consideration of the record as a whole, even including the evidence that is not consistent with the agency's onclusion."

B. This Court Should Reverse The August 20, 2018 Memorandum And Opinion.

The August 20, 2018 memorandum and opinion affirmed the CRB's August 18, 2017 decision and order that was not supported by substantial evidence in the record and was not in accordance to the law which is in conflict with the holding in *Landesberg v. District of Columbia Dept.* of *Employment Services*, 794 A.2d 607 (D.C. 2002) which DCCA said, DCCA will not affirm a ruling of Director of Department of Employment Services, if it is arbitrary, capricious, or otherwise an abuse of discretion and not in accordance to the law.

1. The memorandum and opinion of District of Columbia Court of Appeals is not supported by substantial evidence in the record and is not in accordance to the law.

Courts have expressed that "Substantial evidence" means something "more than a mere scintilla" of evidence. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. In *Marriott Int'l v. District of Columbia Dep't of Emp't Servs.*, 834 A.2d 882, 885-86 (D.C. 2003) D.C. Court of Appeals noted under D.C. Code § 2-510(a)(3) (2001) "In workers' compensation cases, we (DCCA) defer to the decision of the agency director provided that the decision flows rationally from facts supported by substantial evidence in the record". In the instant case, the record reveals new evidence of the Bluff Magazine's internet document (App. G) that the Respondent (Office Of Hearings and Adjudication (OHA)) presented to the Petitioner on May 4, 2011, five months after the CRB's January 14, 2011 decision and order that affirmed ALJ Joan E. Knight's CO of August 6, 2010 that Ms. Taylor alleges the employer procured judgment by fraud on the court which substantiate the new evidence was "hidden[1]" by the employer in the first suit and the assertion of fraud present in the subsequent actions could not have been raised in the initial October 1, 2009 formal hearing therefore, the conclusion of law of "7 DCMR § 264.1 (2018)

"(party) seeking to introduce additional evidence after decision of ALJ must establish "that there existed reasonable ground for the failure to present the evidence[2]"" (At App. A, p. 2 line 5-7) in the memorandum and opinion is not supported by substantial evidence in the record. In addition to that, DCCA's finding "that Ms. Taylor seeks either to relitigate issues that have previously been decided by the CRB and this court or (2) rely on information that could have been presented earlier[3] and thus, provides no basis for reopening Ms. Taylor's claim[4]". (At page 2, lines 1-5) do not rationally support the conclusion of law of 7 DCMR § 264.1 (2018) because the dismissal and denial of DCCA and CRB were for a lack of subject-matter jurisdiction and pursuant Rule 41 (b) (1) (B) were not an adjudication on the merits.

In addition to, the conclusion of law of 7 DCMR § 264.1 (At App. A) is different from the conclusion of law of 7 DCMR § 267.3[5] presented in the CRB's August 18, 2017 decision and order (At App. C) that was affirmed. Thus, the memorandum and opinion is in conflict with the holding in *District of Columbia v. District of Columbia Dep't of Employment Servs.*, 734 A.2d 1112, 1115 n. 3 (D.C.1999) (citation omitted) in which DCCA said, "an agency decision cannot be uphold "on grounds other than those actually relied upon by the agency"". For this

[1]The employer (Verizon Communication Inc) presented and submitted in the record a different Bluff Magazine's internet document known as EE 11, while concealing the new evidence of the Bluff Magazine's internet document (At App. G) that displays dates before the October 1, 2009 initial hearing of August 31, 2009 on page 1 and September 18, 2009 on page 2 at the bottom of pages.

[2&3]May I remind this court, on May 24, 2011, while in communications with Mr. Mohammad Sheikh, Director of Labor Standard Bureau (Respondent) via telephone Petitioner a Pro se litigant (Ms. Taylor) with no legal knowledge was misdirected to present the new evidence Respondent presented Petitioner on May 24, 2011 to CRB which prevented Ms. Taylor from presenting the new evidence to an ALJ in pursuant to 7 DCMR § 211.1. Two (2) weeks later, on June 6, 2011 Petitioner filed a Rule 60 (b)(3) motion to set aside to CRB. See App. E (CRB's dismissal)

[4]Contrary to, Super. Ct. R. Civ. R. Rule 60 (d)(2) functions as a saving clause: it allows courts to "set aside a judgment for fraud on the court" without a strict time bar.

[5]Contrary to, Petitioner never had an opportunity to litigate the issue of fraud in the first suit or in any subsequent action.

reason, the conclusion of law in not in accordance to the law.

Apart from that, res judicata only "bar claims that could have been brought or were brought in a previous action" which is not this case because Ms. Taylor never had her day in court, in which Petitioner had an opportunity to litigate the post-judgment motions or issue of fraud in the initial hearing or in any subsequent action. In *Allen v. McCurry*, 4498 U.S 90, 94 (1980) Supreme Court held "[u]nder res res judicata a final judgment on the merits of an action preclude the parties on their privies from relitigating issue that were or could have been raised in that action". Also, in *Walden v. D.C. Dept. of Employment Services*, 759 A.2d 186, 189 (D.C. 2000) and *Oubre v. D.C. Dept. of Employment Services*, 630 A.2d 699, 703 (D.C. 1993) D.C Court of Appeals noted "res judicata and the related doctrine of collateral estoppel is applicable in administrative proceedings when the agency is acting, as in the instant proceedings, in a judicial capacity "resolving disputed issues of fact properly before it which the parties have an adequate opportunity to litigate"". Consequently, claims need not have been litigated to barred in a later action; they need only have been available to Petitioner in the first suit. Contrary to, the record reveals new evidence of the Bluff Magazine's internet document (At App.G) that the Respondent (Office of Hearings and Adjudication (OHA)) presented the Petitioner on May 4, 2011, after the CRB's January 14, 2011 decision and order that affirmed ALJ Joan E. Knight's CO of August 6, 2010 that was previously presented to DCCA and CRB that Petitioner also presented in the April 18, 2017 post-judgment motions to set aside ALJ Joan E. Knight's August 6, 2010 CO because of fraud on the court which substantiate new evidence was unavailable in the first suit therefore, Ms. Taylor could not have raised the issue of fraud or had the opportunity to litigate the issue of fraud presented in the first suit. Generally, Courts follow the concept that Petitioner must have a fair and full opportunity to litigate claim presented and lost on the merit.

On June 27, 2011 the CRB dismissed the Petitioner's June 6, 2011 motion to set aside in pursuant to 7 DCMR § 268.1 because Petitioner filed the previous action

after the expiration of ten (10) days allowed within the regulation of January 14, 2011 CRB's decision and order. 7 DCMR § 268.1 states, "Any party may, within ten (10) calendar days from the date shown on the certificate of service of the decision and order of the Board or of any order issued by the Board, File a request for reconsideration thereof with the Clerk of the Board". It has long been the law in this jurisdiction that Petitioner may seek relief from ALJ Joan E. Knight's CO of August 6, 2010 that employer procured by fraud by collaterally challenging the final alleging fraud in the procurement of the order in that original forum. *Mitchell v. Gales*, 61 A.3d 678 92013 (quoting *Indemnity Ins. Co. v. Smoot*, 152 F.2d 667, 669, 80 U.S. App. D.C. 287, 289 (1945) (emphases added) (citation omitted)) In addition to that, under 7 DCMR § 221.1 "all pre-hearing conference and formal hearing on claims shall be conducted by a Hearing or Attorney Examiner designated by the Hearings and Adjudication Section" and not by CRB. Pursuant to Rule 41 (b) (1) (B) a dismissal for a lack of subject-matter jurisdiction is not an adjudication on the merits. Super. Ct. R. Civ. P. 41 (b) (1) (B) states, "Result of Dismissal. An order dismissing a claim for failure to prosecute must specify that the dismissal is without prejudice, unless the court determines that the delay in prosecution of the claim has resulted in prejudice to an opposing party. Unless the dismissal order states otherwise or as provided elsewhere in these rules, a dismissal by the court—except a dismissal for lack of jurisdiction or for failure to join a party under Rule 19—operates as an adjudication on the merits". Also, OAH Rule 2818.1 states,

> "For failure of the Petitioner to prosecute or to comply with these Rules or any order of this Administrative court, a Respondent may move for a dismissal of an action or any claim against the Respondent, or the presiding administrative Law Judge may order such dismissal on his or her own motion. Subject to the limitations of Section 2818.2, and unless otherwise specified, a dismissal under this Section, other than a dismissal for lack of jurisdiction constitutes an adjudication on the merits".

In addition to that, in the July 27, 2011 dismissal order CRB found "that an incomplete document is not a fraudulent document". (App. F) In *Ruiz v. Snohomish County Public Utility District No. 1*, No. 14-35030 (2016) 9th Cir. Court said, "Restatement (Second) Judgments and three sister circuits held "any finding made by a court that does not have subject-matter jurisdiction carries no res judicata consequences."" (citations omitted)); *See* also 18 Federal Practice § 4421, at 575–78 Also, on October 26, 2011 DCCA dismissed Petitioner's appeals of the earlier dismissal of CRB's July 27, 2011 order. It is a well-settle law a judgment entered by a court lacking subject-matter jurisdiction is absolutely void and will not support an appeal; which an appellate court must dismiss an attempted appeal from such a void judgment.

In addition to, on January 15, 2015, during the appeal of CRB's October 30, 2014 decision and order DCCA denied Ms. Taylor's December 2, 2014 motion to adduce additional evidence that was filed in pursuant to D.C. Code § 32-1522 (b) (3) the new evidence (At App. G) that was not material to Petitioner's claim of a change of condition in pursuant to D.C. Code § 32-1524 was not made part of the record[6]. D.C. Code § 32-1522 (b) (3) states,

> "If any party shall apply to the Court for leave to adduce additional evidence and shall show to the satisfaction of the Court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the Mayor, the Court may order such additional evidence to be taken before the Mayor, and to be made part of the record".

While this is true, the Petitioner was not allow to supplement the record with the new evidence presented on March 3, 2015 D.C. Court of Appeals Rule 10 (e) states: "Correction or Modification of the Record. (2) If anything, material to any party is omitted from or misstated in the

[6]In both *Bennett* and *King*, DCCA decided, "that once that request was made by the petitioner, the Director was required to determine whether "reasonable grounds existed for not introducing [the evidence] at the initial hearing" and whether the evidence is material, i.e., whether it relates to the original claim for compensation. *Bennett*, *supra* at 30 and *King*, *supra* 560 A.2d at 1073

record by error or accident, the omission or misstatement may be corrected, and a supplemental record may be certified and forwarded".

Furthermore, the filing of a notice of appeals confers the jurisdiction on the D.C. Court of Appeals and divest the CRB of its control over those aspects of the case involved in the appeal. On April 28, 2015 the CRB lack subject-matter jurisdiction in denying Petitioner's March 4, 2015 motion to adduce additional evidence and motion to supplement the record during the appeal of CRB's October 30, 2014 decision and order. (At App. E) Also, in *Bennett v. District of Columbia Department of Employment Services*, 629 A.2d 28 (D.C. 1993) DCCA noted under D.C. Code § 32-1522 (b),

> "The District of Columbia Workers' Compensation Act provides that "[i]f any party shall apply ... for leave to adduce additional evidence and shall show ... that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the initial hearing ... [the Director] may order such additional evidence ... be made a part of the record." D.C. Code § 36-322(b)(2). Before the Director's decision affirming the hearing examiner was issued, Bennett moved the Director to consider the records from the surgery which was performed after the hearing examiner denied her request for benefits. Once Bennett made this request, "the Director was *obligated* by statute to consider whether this proffered evidence was material and whether there were reasonable grounds for the failure to adduce such evidence in the initial hearing. " *King v. Dep't of Employment Servs.*, 560 A.2d 1067, 1073 (D.C.1989) (quoting D.C. Code § 36-322(b)(2)) (internal quotations omitted) (emphasis added). In *King*, the petitioner sought to supplement the record by adding the discharge summary from surgery that occurred, as in this case, after the hearing examiner's decision, but before the

> Director had acted on on the appeal from that decision. This court held that once that request was made by the petitioner, the Director was required to determine whether "reasonable grounds existed for not introducing [the evidence] at the initial hearing" and whether the evidence is material, i.e., whether it relates to the original claim for compensation. *King, supra,* 560 A.2d at 1073".

In both *Bennett* and *King,* DCCA considered that "the claimant filed the motion to adduce additional evidence and motion to supplement the record during the application for review before the Director acted on the appeal of that decision". In reaching its decision DCCA decided,

> "Where a motion to adduce additional evidence is not made while a Compensation Order is under appeal, the determination as to materiality and reasonable grounds (including the "unusual circumstances" analysis required under Young, supra) are the province of "the Mayor" that does not refer to the Director (now, CRB) but to the hearing examiner (-," the ALJ).

Pursuant to Rule 41 (b) (1) (B) the denial of CRB was not an adjudication on the merits.

In addition, in pursuant to D.C. Code § 32-1520 (c) "[N]o additional information shall be submitted by claimant or other interested parties after the date of hearing, except under unusual circumstances as determined by the Mayor". *Jones v. DOES*, 584 A.2d 17 (D.C. 1990) In the instant case, the Petitioner filed the previous actions to DCCA and CRB and subsequent action to ALJ Donna J. Henderson in an effort to set aside ALJ Joan E. Knight's CO of August 6, 2010 because of fraud On August 31, 2015, during the appeal of CRB's October 30, 2014 decision and order, DCCA denied the post-judgment motion to set aside. However, it has long been the law in this jurisdiction that Petitioner may seek relief from ALJ Joan E. Knight's CO of August 6, 2010 that employer procured by fraud by collaterally challenging the final alleging fraud in the procurement of

the order in that original forum. *Mitchell v. Gales*, 61 A.3d 678 92013 (quoting *Indemnity Ins. Co. v. Smoot*, 152 F.2d 667, 669, 80 U.S. App. D.C. 287, 289 (1945) (emphases added) (citation omitted)) Again, pursuant to 7 DCMR § 221.1 "all pre-hearing conference and formal hearing on claims shall be conducted by a Hearing or Attorney Examiner designated by the Hearings and Adjudication Section" and not by DCCA. By the same token, DCCA lack subject-matter jurisdiction to address the post-judgment motion to set aside ALJ Joan E. Knight's CO as a summary reverses and pursuant to Rule 41 (b) (1) (B), the denial also was not an adjudication on merits. (App. D) Also, in *Herringdine v. Nalley Equipment Leasing LTD*, No. A99A0246 District Court held "the denial of motion for summary reversal is not the procedure to address post-judgment motion to set aside/vacate a judgment for fraud". Under Super. Ct. R. Civ. P. 56 a summary judgment always operates as adjudication on the merits however, it is a well-settle law a judgment entered by a court lacking subject-matter jurisdiction is absolutely void. In addition to that, in *Ruiz v. Snohomish* the 9th circuit court of appeals said, an earlier dismissal on alternative grounds, where one ground is a lack of jurisdiction is not res judicata. A lack of jurisdiction is defined as a court that exceeded it statutory authority. *Rosenstiel v. Rosenstiel*, 278 F. Supp 794 (S.D.N.Y. 1967) In order for a court to act it must have jurisdiction over both the person and the subject-matter. Pursuant to Super. Ct. R. Civ. P. 41 (b) (1) (B) a decision of a court that lack of subject-matter jurisdiction does not operate as an adjudication on the merits". Also, In *Bunker Ramo Corp. v. United Business Forms Inc.*, 713 F.2d 1272 (7th Cir. 1983) the court said, a dismissal for lack of subject-matter jurisdiction in not on the merits. Res judicata requires a final adjudication on the merits. An order is final only if it deposes of the whole cases on its merits, so that the [trial] court has nothing remaining to do but execute the judgment or decree already rendered. *In re Estate of Chuong,* 623 A.2d 1154, 1157 (D.C. 1993) (en banc) (Internal quotation marks omitted) (quoting *McBryde v. Metropolitan Life Ins, Co.*, 221 A.2d 718, (D.C. 1966)

Equally important, the two (2) dismissals rule

is not implicated in this case. In *Water v. Castillo* No. 98-CV-1388, DCCA held: "By using the term 'notice of dismissal,' makes clear that it is that form of voluntary dismissal that, following 'a previous dismissal,' operates as an adjudication of the merits". "Under this 'two dismissal rule,' it is the second voluntary dismissal which is in essence with prejudice, and the third suit which is therefore, barred". In reaching its decision in *Water v. Castillo*, DCCA considered that,

> "appellants' previous voluntary dismissals of this action in two Maryland District Courts resulted in an adjudication on the merits that warranted summary judgment in the trial court. On October 27, 1997, appellants' suit prepared for filing in the District Court of Maryland for Prince George's County ("Prince George's County"), was filed through administrative error on the part of their attorneys' office in the District Court of Maryland for Montgomery County ("Montgomery County"). On January 13, 1998, after learning of the mistake and before the summons was served upon appellee, appellants filed a notice of dismissal in Montgomery County. On January 8, 1998, appellants filed a complaint in Prince George's County. After appellee and co-defendant Genevieve Wood were served on February 3, 1998, appellants filed suit in the Superior Court of the District of Columbia. On or about February 27, 1998, appellants filed a voluntary notice of dismissal in Prince George's County".

In the instant case, pursuant to Rule 41 (b) (1) (B) the dismissal and denied of DCCA and CRB were for a lack of subject-matter jurisdiction which do not apply to the double dismissal rule under Super. Ct. R. Civ. P. 41 (a) (1) (B) which states, "Effect. Unless the notice or stipulation states othewise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits". In

Semtek Inc. v. Lockheed Martin Corp, 531 U.S 497 (2001) this Court said, "Rule 41 (b) does not govern whether the judgment is on the merits for res judicata purposes". In the memorandum and opinion for the purpose of res judicata DCCA does not specify whether the findings "that Ms. Taylor seeks either (1) to relitigate issues that have previously been decided by the CRB and this court or (2) rely on information that could have been presented earlier and provides no basis for reopening Ms. Taylor's claim" operates as an adjudication "on the merits" although, CRB's August 18, 2017 decision and order affirmed ALJ Donna J Henderson's June 12, 2017 order with prejudice in pursuant to 7 DCMR § 267.3 based on res judicata of ALJ Joan E. Knight's CO of August 6, 2010 and the dismissal and denial of DCCA and CRB during the appeal of CRB's October 30, 2014 decision and order (At App. C, page 3, Footnote 1) however, pursuant to Super. Ct. R. Civ. P. 41 (b) (1) (B) and OAH Rule 2818.1 the dismissal and denial of DCCA and CRB for a lack of subject-matter jurisdiction were not an adjudication on the merits. Also, in *Frederiksen v. City of Lockport*, 384 F.3d 437, 438 (7th Cir. 1983) the court said, "no jurisdiction" and "with prejudice" are mutually exclusive. *Id.* At 438

Furthermore, Black's law Dictionary (7th ed. 1999) defines "dismissed without prejudice" as "removed from the court's docket in such a way that the Plaintiff may refile the same suit on the same claim," *id.*, at 482, and defines "dismissal without prejudice" as "[a] dismissal that does not bar the plaintiff from refiling the lawsuit within the applicable limitations period," *ibid.* Pursuant to Ct. R. Civ. P. 41 (a) (1) (B) and (b) (1) (B) the dismissal and denial of DCCA and CRB were not an adjudication "on the merits" or "dismissal with prejudice" therefore, doctrine of res judicata does not preclude Petitioner from filing the April 18, 2017 post-judgment motion for reopening of evidentiary hearing and motion for leave to adduce additional evidence, motion for order to show cause and motion to set aside/vacate ALJ Joan E. Knight's CO of August 6, 2010 because of fraud on the court in a court that have jurisdiction. Also, in *Semtek Inc. v. Lockheed Martin Corp*, 531 U.S. 497 (2001)

Supreme Court held "Rule 41 makes clear that "an adjudication upon the merits" in Rule 41 (b) is the opposite of a dismissal without prejudice-that is, it is a dismissal that prevents refiling of the claim in the same court". Likewise, on April 18, 2017 Ms. Taylor acted within Supreme Court's decision in *Semtek* and 7 DCMR § 211.1 by not re-filing the same cause of actions post-judgment motion for reopening of evidentiary hearing and motion for leave to adduce additional evidence, motion for order to show cause and motion to set aside/ vacate to DCCA and CRB that were earlier dismissed and denied by DCCA and CRB.

2. **DCCA committed reversible error in affirming CRB's August 18, 2017 decision and order that affirmed a dismissal with prejudice.**

Pursuant to Super Ct. R. Civ. P. Rule 12 (h) (3) "subject-matter jurisdiction cannot be waived or conferred upon a court by consent or agreement of the parties." If it [jurisdiction] doesn't exist, it cannot justify conviction or judgment". A court without subject-matter jurisdiction is sometimes described as a "void" judgment. On top of that, a judgment entered by a court lacking subject-matter jurisdiction is absolutely void. In *United States v. Lopez*, 514 U.S. 549, (1995) and *Hagans v. Lavine*, 415 U.S. 528 (1974) the Supreme Court held " subject-matter jurisdiction may be raised at any time". Also, in *Strand v. Frenkel*, 500 A.2d 1368 (D.C. 1985) the court reaffirmed that [t]he only defenses to a timely action filed upon a final judgment are lack forum jurisdiction and procurement of the judgment by fraud. *Id.* at 1373 n.8 (emphases added)

On October 15, 2018 in support of the Petitioner's August 21, 2018 petition for rehearing Ms. Taylor filed Super Ct. R. Civ. P. Rule 60 (b) (4) motion to vacate the void order of DCCA and CRB of April 28, 2015 that denied the Petitioner's March 4, 2015 motion to adduce additional evidence and of August 31, 2015 that denied and addressed Ms. Taylor's March 3, 2015 post-judgment motion to set aside as a summary reversal even though,

the dismissal and denial of DCCA and CRB are an absolute nullity, it can have no binding force or effect, either in the tribunal in which it is rendered, or in any other in which it may be brought in question. In the August 20, 2018 memorandum and opinion DCCA found "that Ms. Taylor seeks either (1) to relitigate issues that have previously been decided by the CRB and this court or (2) rely on information that could have been presented earlier and thus, provides no basis for reopening Ms. Taylor's claim" (At App. A, page 2, lines 1-5) however, the dismissal and denial of DCCA and CRB were for a lack of subject-matter jurisdiction therefore, dismissal and denial of DCCA and CRB were not an adjudication on the merits. Generally, the test for subject-matter jurisdiction is whether the court has the power to enter upon an inquiry and not whether its conclusions are correct.

In *Kammerman v. Kammerman*, 543 A.2d 794, 799 (D.C.1988) (citations omitted) DCCA said, a judgment is void "only if the court that entered it had no jurisdiction over the parties or the subject matter" or "if the court's action was otherwise so arbitrary as to violate due process of law." Pursuant to Rule 60 (b) the court may on its own motion or motion of either party, set aside any void judgment, a judgment may be void if the issuing court lacked subject-matter jurisdiction over the action, and personal jurisdiction over the defendant, if the judgment or order granted relief that court had no power to grant, or if the judgment was procured by a fraud on the court.

Generally, a court consider an order is "void" under Rule 60 (b) (4) for lack of subject-matter jurisdiction, that is a "'clear usurpation of power.'" In *Nemaizer v. Baker*, 793 F.2d 58, 65 (2d Cir. 1986) the court said, a court plainly usurps jurisdiction "'only when there is a "total want of jurisdiction' and no arguable basis on which it could have rested a findings that it had jurisdiction." In the instant case, Petitioner pro se, litigant with no legal experience, lack of legal knowledge and unable to afford legal representation on June 6, 2011, Ms. Taylor filed a motion to set aside to CRB after, CRB's January 14, 2011 decision and order. It has long been the law in this jurisdiction that Petitioner may seek relief from ALJ Joan E. Knight's CO of August 6,

2010 that employer procured by fraud by collaterally challenging the final alleging fraud in the procurement of the order in that original forum. *Mitchell v. Gales*, 61 A.3d 678 92013 (quoting *Indemnity Ins. Co. v. Smoot*, 152 F.2d 667, 669, 80 U.S. App. D.C. 287, 289 (1945) (emphases added) (citation omitted)) While this is true, 7 DCMR § 221.1 states "all pre-hearing conference and formal hearing on claims shall be conducted by a Hearing or Attorney Examiner designated by the Hearings and Adjudication Section"and not by CRB nor DCCA. Therefore, both DCCA and CRB lack subject-matter jurisdiction in the dismissal and denial of July 27, 2011 and May 27, 2015. Moreover, the filing of a notice of appeals confers the jurisdiction on the D.C. Court of Appeals and divest the CRB of its control over those aspects of the case involved in the appeal. Also, while that is true, during the appeal of CRB's October 30, 2014 decision and order, CRB also lack subject-matter jurisdiction in the denial on April 28, 2015 of Petitioner's March 4, motion to adduce additional and motion to supplement the record. Under the law subject-matter jurisdiction cannot be waived as a result of, DCCA and CRB had no authorities but to dismissal the previous actions in pursuant to Super. Ct. R. Civ. P. Rule 12 (h) (3).

On February 7, 2019 DCCA denied Petitioner's October 5, 2018 Rule 60 (b)(4) motion. However, at the same time, on February 7, 2019 DCCA denied Petitioner's August 21, 2018 petition for rehearing en banc even though, Ms. Taylor presented the same unequivocal, clear, and precise legal arguments in the Petitioner's appeal brief, and petition for rehearing/en banc of the new evidence in the record of the Bluff Magazine's internet document (App. G) that Respondent presented to the Petitioner on May 4, 2011 after, the CRB's January 14, 2011 decision and order that affirmed ALJ Joan E. Knight's CO August 6, 2010 that Ms. Taylor alleges the Employer procured by fraud on the court which affirmed the new evidence was unavailable at the time of the initial hearing of October 1, 2009 which substantiate the conclusion of law in the memorandum and opinion under "7 DCMR § 264.1 (2018) (party) seeking to

introduce additional evidence after decision of ALJ must establish "that there existed reasonable ground for the failure to present the evidence" (App. A, page 2, lines 5-7) is not supported by substantial evidence in the record in conjunction with, DCCA's findings in the memorandum and opinion "that Ms. Taylor seeks either (1) to relitigate issues that have previously been decided by the CRB and this court or (2) rely on information that could have been presented earlier and provides no basis for reopening Ms. Taylor's claim" which do not rationally support the conclusion of law (At App. A, page 2, lines 1-5) under "7 DCMR § 264.1 because the dismissal and denial of DCCA and CRB for lack of subject-matter jurisdiction were not an adjudication on the merits.

Under both the fifth and fourteenth amendments Ms. Taylor has a right to due process of the law even though, the Petitioner has severely inconvenient the courts in the past. As a pro se litigant with no legal experience, lack of legal knowledge and no representation the Petitioner was "completely unaware" when Ms. Taylor sought numerous appeals and writs of certiorari of the past decisions that Ms. Taylor had acted improperly within the rules, statutes, regulations and procedures upon filing of the previous post-judgment motions to DCCA and CRB because of fraud on the court that was committed in the denial of Ms. Taylor's workers' compensation claim for permanent total disability benefits. Pursuant to Super. Ct. R. Civ. P. Rule 60 (d) (2) relief is granted under the saving clause to "set aside a judgment for fraud on the court" without a strict time bar. Fraud on the court by an officer of the court is define as the "most egregious, unimaginable and reprehensible misconduct " that gravely hindered our judicial system presenting a ""very" extraordinary circumstances" because the concept of fraud upon the court challenges the very principle upon which our judicial system is based: the finality of a judgment.

A court has inherent power to dismiss an action with prejudice if it is vexatious brought in bad faith, or when there has been a failure to prosecute it within a reasonable time. When Petitioner has commenced a history of frivolous lawsuits (many duplicative), filing a

lawsuit with the knowledge that it has no legal basis, acting in bad faith in the litigation process failing to comply with discovery devices and a court order. In the memorandum and opinion the conclusion of law of "7 DCMR § 264.1 (2018) (party) seeking to introduce additional evidence after decision of ALJ must establish "that there existed reasonable ground for the failure to present the evidence" is not supported by substantial evidence in the record and the findings "that Ms. Taylor seeks either (1) to relitigate issues that have previously been decided by the CRB and this court or (2) rely on information that could have been presented earlier and provides no basis for reopening Ms. Taylor's claim" that do not rationally support the conclusion of law in the memorandum and opinion of "7 DCMR § 264.1 (2018) do not substantiate vexatious, brought in bad faith, or when there has been a failure to prosecute within reasonable time whatsoever in support of a dismissal with prejudice. For this reason, DCCA erred in affirming CRB's August 18, 2017 decision and order that affirmed ALJ Donna J. Henderson's June 12, 2017 order "dismissing with prejudice" Petitioner's April 18, 2017 post-judgment motion to set aside/vacate, motion for reopening of evidentiary hearing and motion leave to adduce additional evidence and motion for order to show cause filed because of fraud on the court. Under the law a dismissal with prejudice is a final judgment and the Petitioner's case of fraud on the court become res judicata on the claims that were or could have been brought in it; for this reason, the August 20, 2018 memorandum and opinion of DCCA should be reversed because the record substantiate conclusion of law is not supported by substantial evidence in the record, the findings do not rationally support the conclusion of law in the memorandum and opinion, in support of dismissal with prejudice the dismissal and denial of DCCA and CRB were not an adjudication on the merits because of a lack of subject-matter jurisdiction, doctrine of res judicata does not bar Petitioner's April 18, 2018 subsequent claim on the same cause of action that were previously dismissed ordenied by DCCA and CRB and Super. Ct. R. Civ. R. Rule 60 (d) (2) functions as a saving clause: it allows courts to

"set aside a judgment for fraud on the court" without a strict time bar, this court can disturbed an appellate court's findings and conclusion of law they are not supported by substantial evidence in the record as a whole because of this Court can declare August 20, 2018 memorandum and opinion of DCCA is unlawful and set aside decisions of the appellate courts.

3. DCCA abused its discretion in affirming the CRB's August 18, 2017 decision and order.

In determining whether DCCA abused its discretion, consideration is given to "whether the decision maker failed to consider a relevant fact whether he [or she] relied upon an improper factor and whether the reasons given reasonably support the conclusion. In the instant matter, DCCA ignored and failed to consider rules, statutes, regulations and laws in regard to the facts and evidence in this case.

In the memorandum and opinion DCCA first, ignored and failed to consider the findings and conclusion of law in the CRB's August 18, 2017 decision an order were not supported by substantial evidence in the record that the August 20, 2018 memorandum and opinion affirmed. In *Franklin v. District of Columbia Dep't of Employment Servs.*, 709 A.2d 1175, 1176 (D.C. 1998) DCCA said, "This court only "affirm" an agency's decision if the findings of fact and conclusions of law are supported by substantial evidence."

Second, in the memorandum and opinion DCCA found "that Ms. Taylor seeks either (1) to relitigate issues that have previously been decided by the CRB and this court or (2) rely on information that could have been presented earlier and thus, provides no basis for reopening Ms. Taylor's claim" (At page 2, lines 1-5) however, DCCA ignored and failed to consider pursuant to Super. Ct. R. Civ. P 41 (b) (1) (B) and OAH Rule 2818.1 the earlier dismissal and denial of DCCA and CRB were not an adjudication on the merits for a lack of subject-matter jurisdiction, as a result of, the doctrine of res judicata does not preclude the same cause of action (Petitioner's April 18, 2017 post-judgment motions) that

was dismissed with prejudice and "7 DCMR § 264.1 (2018) is not appropriate of Petitioner's April 18, 2017 motion to set aside under Super. Ct. R. Civ. P. Rule 60 (d) (2) in which allow courts to "set aside a judgment for fraud on court" without a strict time bar.

Third, DCCA ignored and failed to consider the new evidence of the Bluff Magazine's internet document (App. G) in the record affirms the new evidence was unavailable to the Petitioner at the time of the initial hearing on October 1, 2009 which substantiate Ms. Taylor could not have raise the issue of fraud and presented the new evidence in the first case because discovered the fraud on the court after, the Petitioner received the new evidence from the Respondent on May 4, 2011, after the CRB's January 14, 2011 decision and order that affirmed ALJ Joan E. Knight's CO of August 6, 2010 that Ms. Taylor alleges the employer procured by fraud on the court.

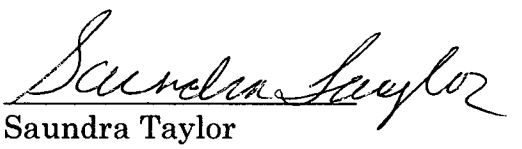
At last, DCCA ignored and failed to consider DCCA's holding in *District of Columbia v. District of Columbia Dep't of Employment Servs.*, 734 A.2d 1112, 1115 n. 3 (D.C.1999) (citation omitted) which DCCA said, "an agency decision cannot be uphold "on grounds other than those actually relied upon by the agency"". In the August 20, 2018 memorandum and opinion the conclusion of law of 7 DCMR § 264.1 (At App. A) is difference from the conclusion of law of 7 DCMR § 267.3 presented in the CRB's August 18, 2017 decision and order that was affirmed. (App. C) On top of that, DCCA ignored and failed to consider the conclusion of law in the memorandum and opinion of "7 DCMR § 264.1 (2018) (party) seeking to introduced additional evidence after decision of ALJ must establish "that there existed reasonable ground for the failure to present the evidence" is not supported by substantial evidence in the record and is not in accordance to the law. For these reasons, the August 20, 2018 memorandum and opinion of DCCA does conflict with the abuse of discretion standard.

CONCLUSION

For the reasons set forth above, Petitioner respectfully submit this Petition For A Writ Of Certiorari

should be granted. This Court may wish to consider summary reversal of the memorandum and opinion of District of Columbia Court of Appeals.

Respectfully submitted,



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