No. 18-8062

In The

SUPREME COURT OF THE UNITED STATES

**SAUNDRA TAYLOR**
Petitioner

v.

**D.C. DEPT OF EMPLOYMENT SERVICES, Et al**
Respondent

**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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# PETITION FOR REHEARING

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## PETITION FOR REHEARING

Petitioner, Saundra Taylor Pro se, respectfully petitions for rehearing of the order denying a petition for writ of certiorari, pursuant to Rule 44.2 of this Court. On April 15, 2019, this Court denied the Petitioner's petition for writ of certiorari of August 20, 2018 memorandum and opinion that conflicts with decisions of District of Columbia Court of Appeal [DCCA] and this Court, even though, the Supreme Court allows a review on a writ of certiorari of judicial decision of State (And D.C.) Courts of last resort. One of the prime purposes of the certiorari jurisdiction is to bring about the uniformity of decision on these matters among the court of appeals, regardless of the importance of the particular issue.

A review is necessary because of DCCA's holding in August 20, 2018 memorandum and opinion of 7 DCMR § 264.1 (2018) "(party) seeking to introduce additional evidence after the decision of ALJ must establish "that there existed reasonable grounds for the failure to present the evidence" to ALJ" is contrary to precedents of DCCA and this Court that have not been discredited or lost all weight as an authority. The conflict provides a basis for a reconsideration of the denied petition for writ of certiorari.

A review is warranted because in *Calderon v. Thompson*, 523 U.S. 538, 118 S. Ct. 1489, 1499, 140 L.Ed.2d 728 (1998) this Court reversed the decision of Ninth Circuit Court of Appeals and held "that cases involving claims of fraud on the court may warrant different treatment." *Id.* At 1501-02. Subsequently, in *Appling v. State Farm Mut. Auto. Ins. Co.*, 340 F.3d 769, 780 (9th Cir. 2003) the Ninth Circuit Court of Appeals said, "one year limitation period for relief from judgment in Rule 60 does not apply to fraud on the court," which only applies in an egregious case, that is to be construed narrowly and is considered distinct from other types of fraud in most cases. *Id.* at 784. According to Super. Ct. R. Civ. P. Rule 60 (d) (2) the saving clause allows courts to "set aside a judgment for fraud on the court" without a strict time bar. Under 7 DCMR § 261.4 "..., the Board may rely upon the Rules of the District of Columbia Courts of Appeals, and the Rules of Civil Procedure of the D.C. Superior Court where appropriate." This case does concern the affirmative of the Compensation Review Board's [CRB] decision and order of August 18, 2017, which affirmed ALJ Donna J. Henderson's order of June 12, 2017, that dismissed with prejudice the Petitioner's April 18, 2017 post-judgment motions

(to set aside, to show cause, and to adduce additional evidence) for fraud on the court.

In *Universal Camera Corp. v. NLRB,* 340 U.S. 474, 71 S. Ct 456, 95 L.ED 456 (1951) this Court said, "that a court reviewing an administrative decision must not reweigh the evidence." In theory, the CRB is the fact-finding body, not DCCA. In the affirmed CRB's decision and order of August 18, 2017, District of Columbia Dep't of Employment Services [DOES] holds under 7 DCMR § 267. 3 "In appropriate cases, such as where the issues raised on appeal have been **thoroughly discussed and disposed** (See Footnote 1 & 2) 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." In *Jackson v. District of Columbia Dep't of Employment Servs.*, 955 A.2d 728, 731 (D.C. 2008) DCCA said, "DCCA review an agency decision to determine whether it findings are supported by substantial evidence." *See* D.C. Code § 1-1509(e) (1981) Also, in *Consolidated Edison Corp v. Labor Board*, 305 U.S. 197 (1938) this Court said, "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 conclusion." Therefore the findings of fact in CRB's decision and order of August 18, 2017, must be supported by substantial evidence in the record as a whole. In the memorandum and opinion DCCA held that under 7 DCMR § 264.1 (2018) a "(party) seeking to introduce additional evidence after the decision of ALJ must establish "that there existed reasonable grounds for the failure to present the evidence" to ALJ[1] and 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[2] and thus provides no basis for reopening Ms. Taylor's claim," which do not support nor substantiate doctrine of res judicata that DOES' holding of

[1]7 DCMR § 221.1 states "all pre-hearing conference and formal hearings on claims shall be conducted by an **ALJ**" therefore, CRB and DCCA lack subject-matter jurisdiction and the earlier dismissals and denials were not an adjudication on the merits.

[2]On the contrary, the record substantiates the Petitioner received new evidence of Bluff Magazine's internet document (At App. G) from the Respondent on May 4, 2011, therefore, the new evidence was unavailable on October 1, 2009, in the first suit.

7 DCMR § 267. 3 is based upon. Under the law DCCA cannot make independent findings of facts, reweigh evidence, or substitute its judgment for that of DOES on the question of facts. 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) DCCA said, "DCCA cannot uphold an agency decision on a different ground." However, in the memorandum and opinion DCCA's holding of 7 DCMR § 264.1 (2018) is on a different ground than DOES' holding of 7 DCMR § 267.3 in the affirmed CRB's decision and order of August 18, 2017, and is contrary to this Court's holding in *Calderon* (Decisions by this Court are binding on all federal and state courts in subsequent cases that have the same pattern of facts or events), and Ninth Circuit's holding in *Appling.* In *Jahallah v. District of Columbia Dep't of Employment Servs.*, 476 A.2d 671, 676 (D.C. 1984) (quoting *Hawkins v. District of Unemployment Compensation Board*, 381 A.2d 619, 622 (D.C. 1977)) DCCA said, "DCCA is required to set aside DOES' holding of 7 DCMR § 267.3 in CRB's decision and order of August 18, 2017, that was not supported by substantial evidence in the record" that the memorandum and opinion of August 20, 2018, affirmed. This court cannot free itself to deny a review of DCCA's ruling that is irreconcilable with decisions of DCCA and this Court.

## CONCLUSION

In pursuant to Sup. Ct. R. 44.2 a rehearing of denial of a petition for writ of certiorari is appropriate when intervening circumstances of a substantial, controlling effect, and other substantial grounds were not previously presented. This Court's decision in *Calderon v. Thompson*, 523 U.S. 538, 118 S. Ct. 1489, 1499, 140 L.Ed.2d 728 (1998) and *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 71 S. Ct 456, 95 L.ED 456 (1951) are significant precedents, which abrogate the District of Columbia Court of Appeals' [DCCA's] memorandum and opinion of August 20, 2018 (At App. A) that is contrary to the law, which is supported by substantial evidence in the record as a whole that is relative to the petition here. The abrogation of the District of Columbia Court of Appeals' [DCCA's] dismissal of Petitioner's appeals (at No. 17-AA-0956) greatly affects the issue of fraud on the court. For the reasons mentioned above, this court should grant the petition for rehearing of the order denying a petition for writ of certiorari. This court also may wish to consider a GVR [Grant, Vacate and Remand] order of memorandum and opinion of the District of Columbia Court of Appeals of August 20, 2018.

## CERTIFICATE OF GOOD FAITH

Contrary to Margaret Thatcher's Quote "You may have to fight a battle more than once to win it" the Petitioner, Saundra Taylor hereby certifies that this petition for rehearing is restricted to the grounds specified in Rule 44.2 of the rules of Supreme Court and is presented in good faith and not for delay.

Respectfully submitted,

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April 24, 2019