

No. 18-9077

ORIGINAL

In The

Supreme Court of the United States

Supreme Court, U.S.  
FILED

APR 22 2019

OFFICE OF THE CLERK

Cecelia D. Walton,

*Petitioner*

v.

North Carolina Department of Health and Human Service, Disability  
Determination Services,

*Respondent*

On Petition For A Writ of Certiorari To  
The 4<sup>th</sup> Circuit of the United States Appeals Court

PETITION FOR WRIT OF CERTIORARI

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April 22, 2019

## QUESTIONS PRESENTED

The anti-discrimination investigatory work and laws enforced by the United States Equal Employment Opportunity Commission (hereafter "EEOC") are vital to this country and its citizen's workplace civil rights in all 50 states. However, in some parts of this country "Reasonable Cause Determinations" issued by EEOC are deemed inadmissible at trial or at the summary judgment pretrial stage. In other parts of this country's circuits, those EEOC Reasonable Cause Determinations are automatically admissible, thereby precluding dismissal at the summary judgment stage or from being reviewed by a jury or judge in a bench trial. . This inadmissible of the EEOC cause determination is stripped from the record by way of a motion in limine or through section 403 of the Federal Rules of Evidence. To the citizens in the former parts of the country and those circuits that prescribe to "discretionary admission" or inadmissible for those cause determination, those citizens with valid charges of discrimination proven through the investigation of EEOC are not given fair consideration and have their complaints dismissed or subject to that vital evidence being deemed inadmissible at the trial or summary judgment stage

Question 1: With regards to EEOC Reasonable Charge Determinations issued pursuant to the EEOC investigation conducted, is the Reasonable Cause Determination automatically admissible or otherwise relevant enough to preclude summary judgment and dismissal by said evidence being deemed inadmissible or ignored through the judge's discretion for those parties whose claims failed EEOC conciliation in a jury or judge-tried case under Federal Rules of Evidence 403?

Under the Burden Shifting requirement for Retaliation for Title VII of the Civil Rights Act of 1964, as amended a charging party must first present a "prima facie case" by showing 1) she is in the protected class of citizens, 2) she engaged in a protected activity, and 3) the employer (Respondent) took an adverse action as a result of that protected activity. Once a charging party or Petitioner has presented a prima facie case, the employer has an opportunity to provide a legitimate, valid nondiscriminatory reason for taking the adverse action. The burden at the final stage in retaliation under Title VII, then shifts back to the charging party or Petitioner to show that the stated reasons put forth by the employer are pretextual or a cover-up for discriminatory or illegal retaliatory reasons. Often in a pretrial motion for summary judgment, the final question of "pretext" is answered by the judge pursuant to a motion for dismissal at summary judgment.

Question 2: With regards to the words "valid nondiscriminatory" and "pretext" (material fact), what is the adequate definition or standard for evidence to be used where a prima facie case of retaliation has been put forth? Should the final stage of retaliation regarding "pretext" be resolved by the fact finders (jury or judge) following a trial either jury or bench, thereby precluding summary judgment?

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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I. The Fourth Circuit upholding of the district court's summary judgment without de novo review and the district court's excluding of Plaintiff's "Reasonable Cause Determination" from EEOC issued 12/12/2016 is in direct contradiction of the procedures with regards to summary judgment in the Ninth and Fifth circuits.	
II. The Fourth Circuit upholding and summary affirmance without de novo review and the district court's discussions of "pretext" and "valid or genuineness of Defendant's reasons for termination" are in direct contradiction or relevance of handling of such evidence in the Ninth, Fifth and Third Circuits.	
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**Appendix A.**

**Cecelia D. Walton v. NC Department of Health and Human Services,  
Disability Determination Services (18-2343, 4<sup>th</sup> Circuit 2019)**

**Appendix B**

**Cecelia D. Walton v. NC Department of Health and Human Services,  
Disability Determination Services; 5:17-cv-00085-BR (NC Eastern  
District Western Div. November 7, 2018)**

## TABLE OF AUTHORITIES

*Plummer v. Western Int'l Hotel* [656 F. 2d 502, 847 (9<sup>th</sup> Cir. 1986)]

*Goldberg v. B. Green & Co.* [836 F. 2d 845, 848 (4<sup>th</sup> Cir 1988)]

*Carvalho-Grevious v. Delaware State University* [No. 15-3521 3<sup>rd</sup> Cir. Of Appeals 2017]

*Clemens v. Qwest Corp. et al* [C13 1793-JPD (W.D)

## STATUTES AND RULES

Title VII of Civil Rights Act of 1964, as amended.

Title VII of Civil Rights Act of 1964 [704(a)], as amended

Federal Rules of Evidence Rule 403

Federal Rules of Civil Procedure Rule 16, 26, and 56

28 U.S. C § 1254 (1)

42 U.S. C. § 2000e-5(b)

42 U.S.C. § 2000e 5(f)(1)

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**

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is Cecelia D. Walton v. NC DHHS  
18-2343, 4/2 2019.  
[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is pacemonitor.com Cecelia Walton v. NC DHHS  
5:17-cv-00085-BR; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is  
[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is  
[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 4-18-2019.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_ A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_. A copy of that decision appears at Appendix \_\_\_\_\_.

A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_ A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## STATEMENT OF THE CASE

Petitioner seeks review and reversal of the summary affirmance in her employment discrimination case brought under Title VII of the Civil Rights Act of 1964, as amended. Petitioner worked for Respondent on 2 occasions from 2013-2016 as a lead training analyst and as a disability determination trainee respectively. In her initial role, Petitioner was laid off by Respondent in June, 2014. Petitioner was rehired by Respondent on May 26, 2015 as a disability determination trainee and fired on January 29, 2016 while in Phase 2 training. Petitioner filed two charges of employment discrimination with EEOC in 2015 and following her termination in January 2016. Plaintiff/Petitioner successfully completed classroom training in August 2015 and was assigned to unit 27 under Shannon Goodson (manager), Tim Wilson (unit supervisor) and Rob Englander (assistant supervisor/trainer). She was harassed daily and subjected to Englander's unwelcomed comments regarding his genitals, balls and prowess during her one-on-one training sessions. Plaintiff/Petitioner complained of the unequal treatment, race and age discrimination to Goodson and her HR representative, Antonio Cruz, by way of email on January 19, 2016. She was recommended to be fired on January 26, 2016 and fired by Goodson on January 29, 2016. These actions followed a raise for satisfactory performance in training progression in or around December 2015. It is also noted that on the review for her raise, Defendant NC DHHS did not mark "needs improvement or improvement plan needed" although there was a bullet for that. Later, Defendant cited that the raise was only an incentive and Plaintiff actually was not performing satisfactorily.

Pursuant to the EEOC nearly year long investigation of Plaintiff's termination and failed training, the EEOC issued a "Reasonable Cause Determination" on or about December 12, 2016. A right to sue notice was issued pursuant to Petitioner's initial charge against Respondent in or around October, 2015 with a 90 day window to file suit. Following a failed EEOC Conciliation efforts with EEOC in January 2017, Petitioner filed this action on February 17, 2017 and requested in forma pauperis proceeding. During the conciliation proceedings with EEOC in January of 2017, it was the first time Petitioner discovered that she had been reinstated by Respondent in February, 2016 without notice or an offer of employment. Moreover, conciliation failed with EEOC because Respondent requested Petitioner to "resign" her job, which she had no idea that she was still employed. To date, Petitioner has not been given notice that she has been terminated from Respondent nor has she worked for Respondent since January 29, 2016.

The district court found that Respondent proffered a "valid nondiscriminatory" reason for termination and that the stated "genuineness of those proffered reasons" should not be questioned. Petitioner questions what is meant or what evidence is needed to prove a "valid" reason for termination and is such

evidence subject to review by the fact finders, jury, or in a trial setting where evidence can be presented to contradict the validity of the evidence proffered. Moreover, is the questioning of the genuineness of evidence submitted by a Defendant in an employment discrimination litigation suit subject to review for material evidence? Plaintiff petitioner submitted a memorandum in opposition to Respondent's motion for summary judgment, opposing statements with a declaration to the motion for summary judgment and yet her evidence, including the EEOC letter of reasonable cause determination" were not given credence and excluded. Only Respondent's evidence was considered and given relevant weight. Partly because Defendant/Respondent unfairly raised alleged bald assertions regarding Plaintiff/Petitioner's declaration and threatened Plaintiff with criminal prosecution purportedly in order to gain a civil proceeding advantage at the lower level and appellate level. Moreover, Plaintiff believes Defendant Respondent engaged in opposing party harassment of Plaintiff, in ex parte communications and involved intervening parties not put on the record as required by civil procedure rules and professional responsibility rules of procedure. Despite these threats, Plaintiff still appeals to this court for review and relief.

Respondent was granted motion for summary judgment dismissal and dismissal for failure to state a claim previously (September 2017) over Plaintiff/Petitioner's oppositions and objections.

At the appeal stage, Plaintiff/Appellant submitted an informal brief with at least 14 issues, an appendix and a reply to the Defendant/Appellee's response but yet, the Fourth Circuit only reviewed the record and yielded to the lower court's decision; Plaintiff/Appellant was issued a summary affirmance only without any "de novo" review, hearing or legal representation requested. At the appeal stage, none of Appellant's issues were addressed by the panel of appeal judges.

Petitioner states that had she been in the third, fifth or ninth circuits, she would have likely survived summary judgment and seeks review of the district court's dismissal of her claims on retaliation.

## REASONS FOR GRANTING THE WRIT

As in the Ninth and Fifth circuits, reasonable cause determinations are considered automatically admissible or admissible in general. In the Ninth circuit, those with a "Reasonable Cause Determinations" are able to survive motions for summary judgment. Petitioner feels this is a just way of handling such evidence and fair to plaintiffs of employment discrimination. Particularly, pro se plaintiffs who are not afforded court appointed attorneys.

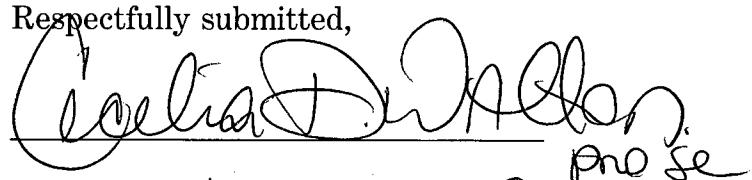
In the Third Circuit, the standard of "Likely Reason" is used at the summary judgment phase as opposed to "But for". This standard is a more relaxed standard than that used in the Fourth circuit.

In general, all citizens who face workplace discrimination, file EEOC charges, go through the lengthy process of the EEOC investigation and are issued a just, valid Reasonable Cause determination following said investigation by EEOC, should not then face dismissal of their lawsuits at summary judgment. All citizens should be afforded the opportunity to survive summary judgment and be heard in open court where they can question witnesses and provide evidence of impeachment with respect to so called "valid non-discriminatory" reasons for termination or retaliation involving adverse employment actions. Petitioner was not given any consideration, afforded an attorney or offered mediation because she was pro se, even though she had a "Reasonable cause determination".

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

  
Cecilia D. Miller pro se

Date: 4-22-2019