

18-9449 ORIGINAL

No. _____

Supreme Court, U.S.
18-9449

MAY 28 2013

OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

Nicole R. McCrea
Petitioner

v.

D.C. POLICE AND FIREFIGHTERS' RETIREMENT AND RELIEF
BOARD

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT OF
COLUMBIA COURT OF APPEALS

Nicole R. McCrea

(Name)

5205 East Capitol St, SE

(Address)

Washington, DC 20019

(City, State, Zip Code)

202-491-9656

(Phone Number)

QUESTION(S) PRESENTED

Does the provisions of the Americans with Disabilities Act (“ADA”), a federal statute, supersede a Workman’s Compensation Act (“WCA”), such as the Police and Firefighters Retirement and Disability Act (“PFRDA”), a state law governing disability and disability provisions of the District of Columbia Police, Firefighters and Capitol Police, as articulated by the United States Equal Employment Opportunity Commissions guidelines addressing WCA, ADA and Family Medical Leave Act (“FMLA”)?

LIST OF PARTIES

[X] 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:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	2-3
STATEMENT OF THE CASE.....	4-6
REASONS FOR GRANTING THE WRIT.....	7-15
CONCLUSION.....	16

INDEX TO APPENDICES

APPENDIX A – January 03, 2019, JUDGMENT of the District of Columbia Court of Appeals

APPENDIX B – April 30, 2015, Order and Decision of the D.C. Police and Firefighters' Retirement and Relief Board

APPENDIX C – February 25, 2019, ORDER of the District of Columbia Court of Appeals for DENYING PETITIONER'S PETITION FOR REHEARING and PETITIONER'S PETITION FOR REHEARING En Banc.

APPENDIX D – May 27, 2016, PETITIONER'S MOTION FOR SUMMARY REVERSAL, in lieu of an opening brief.

APPENDIX E – September 15, 2016, ORDER of the District of Columbia Court of Appeals DENYING PETITIONER'S MOTION FOR SUMMARY REVERSAL and sua sponte Order to Respondent.

APPENDIX F – March 22, 2017, PETITIONER'S MOTION TO SUPPLEMENT THE RECORD.

APPENDIX G – April 04, 2017, ORDER of the District of Columbia Court of Appeals DENYING PETITIONER'S MOTION TO SUPPLEMENT THE RECORD.

APPENDIX H – August 17, 2017, PETITIONER'S MOTION FOR JUDICIAL NOTICE.

APPENDIX I – January 26, 2018, ORDER of the District of Columbia Court of Appeals DENYING PETITIONER'S MOTION FOR JUDICIAL NOTICE.

APPENDIX J – January 17, 2019, PETITIONER'S PETITION FOR REHEARING and PETITIONER'S PETITION FOR REHEARING En Banc.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>Wallace v. Eckert, Seamans, Cherin</u> , 57 A. 3d 943 at 953- DC: Court of Appeals 2012	page 7
<u>Howard Univ. v. Green</u> , 652 A.2d 41, 45 (D.C.1994)	page 7
<u>Arthur Young & Co. v. Sutherland</u> , 631 A.2d 354, 367-68 (D.C.1993)	page 7
<u>Lyles v. District of Columbia Dep't of Emp't Servs.</u> , 572 A.2d 81, 82-83 (D.C.1990))	page 7
<u>Featherson v. EDI</u> , 933 A. 2d 335 - DC: Court of Appeals 2007	page 8
<u>White v. Washington Metro. Area Transit Auth.</u> , 432 A.2d 726 (D.C. 1981).	page 8
<u>Richards v. Mileski</u> , 662 F. 2d 65 - Court of Appeals, Dist. of Columbia Circuit 1981	page 10
<u>Christopher v. Aguigui</u> , 841 A.2d 310, 312 (D.C.2003)	page 10
<u>Renard v. District of Columbia Dep't of Employment Servs.</u> , 673 A.2d 1274, 1276 (D.C.1996)	
page 10	
<u>Robert Siegel, Inc. v. District of Columbia</u> , 892 A. 2d 387 at 395-396 - DC: Court of Appeals 2006	page 10
<u>Fletcher v. Evening Star Newspaper Co.</u> , 77 U.S.App.D.C. 99, 133 F.2d 395 (1942) (per curiam)	
page 10	

<u>Wise v. Glickman</u> , 257 F.Supp.2d 123, 130 n. 5 (D.D.C.2003)	page 10
<u>Morgan v. United States</u> , 298 US 468 - Supreme Court 1936	page 10
<u>US v. Public Utilities Comm'n</u> , 345 US 295 - Supreme Court 1953	page 10
<u>Bridges v. California</u> , 314 U.S. 252, 282, 62 S.Ct. 190, 86 L.Ed. 192 (1941) (Frankfurter, J., dissenting)	page 11
<u>United States v. Olano</u> , 507 U.S. 725, 734, 113 S.Ct. 1770, 123 L.Ed.2d 508 (1993)	page 11

STATUTES AND RULES

<i>United States Constitution, Article VI Supremacy Clause</i>
<i>United States Constitution, Amendment 5, Due Process Clause</i>
<i>United States Constitution, Amendment 14, Equal Protection Clause</i>
<i>The Americans with Disabilities Act, Title I (Employment)</i>
<i>Police and Firefighters' Retirement and Disability Act</i>
<i>DC Municipal Regulation ("DCMR"), 7 DCMR 2503.3</i>
Federal Rules of Evidence: Rule 201

Petitioner respectfully prays that a Writ of Certiorari issue to review the Judgment below.

Petitioner respectfully prays that a Writ of Certiorari issue to review the Judgment below.

OPINIONS BELOW

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is
[X] reported at Atlantic and Maryland Reports, 199 A.3d 208 (2019); or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the D.C. Police and Firefighters' Retirement and Relief Board appears at Appendix B to the petition and is
[] reported at _____ or,
[] has been designated for publication but is not yet reported; or,
[X] is unpublished.

JURISDICTION

For cases from **state courts**:

The date on which the highest state court decided my case was 01-03-2019.
A copy of that decision appears at Appendix A

[X] A timely petition for rehearing was thereafter denied on the following date 02-25-2019 and a copy of order denying rehearing appears at Appendix C

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Article VI Supremacy Clause provides, in relevant part:

“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 in the Constitution or laws of any State to the contrary notwithstanding.”

United States Constitution, Amendment 5, Due Process Clause provides, in relevant part:

No person shall ... be deprived of life, liberty, or property, without due process of law

United States Constitution, Amendment 14, Equal Protection Clause provides, in relevant part:

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

The Americans with Disabilities Act (“ADA”), Title I (Employment) provides, in relevant part:

“Employers with 15 or more employees must comply with this law. The regulations for Title I define disability, establish guidelines for the reasonable accommodation process, address medical examinations and inquiries, and define “direct threat” when there is significant risk of substantial harm to the health or safety of the individual employee with a disability or others.”

“Employers must provide reasonable accommodations to qualified applicants or employees. A reasonable accommodation is any modification or adjustment to a job or the work environment that will enable an applicant or employee with a disability to participate in the application process or to perform essential job functions.”

Police and Firefighters' Retirement and Disability Act (“PFRDA”), D.C. Code §§ 5-701 to -

724(2017 Supp.), provides, in relevant part:

"[t]he terms 'disabled' and 'disability' mean disabled for useful and efficient service in the grade or class of position last occupied by the member by reason of disease or injury, not due to ... willful misconduct on his part." § 5-701 (2).

DC Municipal Regulation ("DCMR"), 7 DCMR 2503.3 states:

"The Board shall, in any case in which an applicant represents himself or herself, or is represented by a non-legal representative, take such action as may reasonably be necessary to insure that all information material to the case be developed to the fullest extent possible, commensurate with the Board's function of sitting as an impartial body."

Federal Rules of Evidence, Rule 201 provides, in relevant part:

(b) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it:

- (1) is generally known within the trial court's territorial jurisdiction; or
- (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

(c) Taking Notice. The court:

- (1) may take judicial notice on its own; or

(d) Timing. The court may take judicial notice at any stage of the proceeding.

STATEMENT OF THE CASE

The Petitioner is a former Firefighter/EMT of the District of Columbia Fire and Emergency Medical Services Department (“DCFEMS”). While at work and asleep in her bed, around midnight, May 30/31, 2013, the Petitioner was the victim of a sexual harassment incident involving three other members of the DCFEMS. The Petitioner immediately reported the incident to her immediate supervisor, twice that night/early morning; he refused to do anything about it. The Petitioner reported the incident to the next-line supervisor later in the morning of May 31, 2013; he told her he would handle it in house, expressly admonishing her not to tell anyone else about it. On June 01, 2013, due to the Petitioner’s perseverance in continuing to report the incident to DCFEMS officers of higher rank and authority, the Petitioner was ordered to call 911. The investigating police officers, Detectives of the Special Victims Unit of the Metropolitan Police Department (“MPD SVU”) classified the sexual harassment incident as a misdemeanor sexual abuse. The MPD SVU initiated a full investigation, which included the convening of a Grand Jury. Plaintiff- Appellant was subpoenaed and she testified before a Grand Jury about the May 30-31, 2013 assault. Within one month of the sexual assault the Plaintiff- Appellant began to experience a variance of stress related somatic dysfunctions. Within one month, while at work, the Plaintiff- Appellant woke up screaming, having had a nightmare about the events that occurred during the sexual assault. The DCFEMS EEOC and Diversity Manager, advised the Petitioner to immediately report to the Police and Firefighter’s Clinic (“PFC”). The Petitioner was immediately placed on leave due to a variance of physical and psychological symptoms.

The DCFEMS, in concert with the PFC, then began to take defensive actions to deny the Petitioner’s request for workman’s compensation in the form of Performance of Duty (“P.O.D.”)

injury; abort the MPD and Grand Jury investigations; and corrupt the DCFEMS internal investigations in the form of Trial Boards. The DCFEMS, in concert with the PFC then Ordered the Petitioner to submit to a comprehensive forensic sexual harassment psychological assessment, under the color of state law, in the guise of determining Petitioner's Fitness for Duty. The Petitioner immediately voiced her opposition as the DCFEMS, in concert with the PFC, had been Ordering her to report to forced monitoring every week and then every other week since the assault, therefore knew her Fitness-for-Duty. Petitioner's opposition was dismissed and she was Ordered to submit to six(6) extensive and comprehensive psychological exams: the Minnesota Multiphasic Personality Inventory- 2 ("MMPI-2") and/or the Minnesota Multiphasic Personality Inventory- 2 Restructured Form ("MMPI-2 RF"); The Personality Assessment Inventory ("PAI"); the Trauma Symptom Inventory- II ("TSI-2"); the Beck Hopelessness Scale ("BHS"); the Beck Depression Inventory-II ("BDI-II"); the Beck Anxiety Inventory ("BAI") and a detailed forensic psychological interview. Forensic Sexual Harassment Assessment was designed to document and assess complete psychological history and beliefs, religious history and beliefs, complete sexual harassment history, gender identity, sexuality, complete sexual history and complete history of trauma, sexual and non-sexual. Using the illegally obtained information the DCFEMS, in concert with the PFC, under color of state law, recommended the Plaintiff-Appellant for Involuntary Non-POD Disability Retirement, citing her as permanently disabled. The psychologist used to conduct the assessment has since asserted repeatedly in writing and testimony that she was NOT assessing disability, the goal of her assessment was to diagnosis the Petitioner for emotional issues and personality disorders. The psychologist made several written and oral assessments of the Petitioner's cognitive abilities; her vocational skills; communication skills and ability to follow orders. However, the psychologist refused to produce and/or

substantiate her reports and testimony with the scientific data from the six psychological assessments performed on the Petitioner. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 US 579 - Supreme Court 1993. Under color of the Police and Firefighters' Disability Act ("PFRDA"), a state law that is a form of Workman's Compensation for D.C. Police and Firefighters, the psychologist issued unsubstantiated reports to the DCFEMS; PFC and DC Police and Firefighters' Retirement and Relief Board ("Board") that the Petitioner was PERMANENTLY DISABLED and recommended the Petitioner for Involuntary Non- POD Disability Retirement; citing issues borne out of the Petitioner's Sexual Harassment complaints of the May 30/31, 2013 Misdemeanor Sexual Abuse. The Petitioner was then subjected to three disability hearings before the Board, where she repeatedly verbally expressed her opposition to the invasive and prejudicial actions of the District of Columbia and PFC, as being a violation of her rights under the Americans with Disabilities Act ("ADA"). On May 15, 2015, The Petitioner was forced into Involuntary Non-POD Disability Retirement, with the District of Columbia citing the Petitioner, without objective data, as a danger to herself and others. Yet stating that she could have possibly kept her job if she had not resisted their efforts to inquire further into her medical and psychological history through her private psychologists. On May 28, 2015, the Petitioner sought Judicial Review of the Board's Order and Decision before the District of Columbia Court of Appeals ("DCCA") (**Appendix B**). On January 03, 2019, the DCCA **AFFRIMED** the Board's Order and Decision (**Appendix A**).

REASONS FOR GRANTING THE PETITION

The PFRDA is as, the DCCA has explained is comparable to the Workman's Compensation Act ("WCA") (**Appendix A**). The Petitioner asserted before the Board and the DCCA, that because she is being regarded as disabled, she is protected the provisions of the ADA and not the PFRDA. The Petitioner repeatedly asserted before the Board and the DCCA that the ADA expressly prohibited the Board and PFC's actions and or questions as articulated in the EEOC Guidance: Workers' Compensation and the ADA. The Petitioner repeatedly supported her assertions with copies of the *EEOC Guidance: Workers' Compensation and the ADA* in her numerous attempts to supplement the record. (**Appendix D**); (**Appendix F**); (**Appendix H**). The DCCA has considered decisions under the ADA and EEOC guidelines as persuasive in interpreting comparable provisions. *Wallace v. Eckert, Seamans, Cherin*, 57 A. 3d 943 at 953- DC: Court of Appeals 2012 (citing *Grant, supra*, 786 A.2d at 583(citing e.g., *Howard Univ. v. Green*, 652 A.2d 41, 45 (D.C.1994); *Arthur Young & Co. v. Sutherland*, 631 A.2d 354, 367-68 (D.C.1993); and *Lyles v. District of Columbia Dep't of Emp't Servs.*, 572 A.2d 81, 82-83 (D.C.1990)). The EEOC Guidance: Workers' Compensation and the ADA details the supremacy of the ADA over any form of WCA and gives detailed guidance as pertains to disability determinations; questions and exams that are allowed; questions and exams that are prohibited; confidentiality of medical information; return to work decisions; objective evidence; reasonable accommodation requests; and light duty. The Petitioner's assertions before the Board and the DCCA were all repeatedly argued based on the EEOC's determination that provisions of the ADA supersedes the PFRDA. (**Appendix D**); (**Appendix F**); (**Appendix H**)

The Division Panel of the DCCA disregarded this argument to make its judgment AFFIRMING the Board's Order and Decision. (**Appendix A**). On January 17, 2019, the

Petitioner filed a Petition for Rehearing and Rehearing En Banc. (Appendix J). On February 25, 2019, the DCCA DENIED the Petitioner's Petition for Rehearing and Rehearing En Banc. (Appendix C).

A. The DCCA's January 03, 2019 published Opinion with analysis of substantial evidence conflicts with this Court's precedence on substantial evidence in light of the whole record, with supplementation by the Petitioner were warranted is in material conflict with a decision and/or reported opinion of the District of Columbia Court of Appeals. Supplement the Record and Judicial Notice

On May 28, 2015 the Petitioner filed her Petition for Review with the Court. On August 19, 2015, the Petitioner gave express notice to the Respondents that she was going to perfect the record. On September 23, 2015 and September 25, 2015, citing the need to perfect the record, the Petitioner filed with the Court her first Motion to Extend Time. The Petitioner noted several agency regulations that the DCPFRRB had a statutory duty to perform; asserting that the DCPFRRB's willful refusal to do so, then making fraudulent representations to cover up the fact that it did not, demonstrated a mental intent to abuse that the Court's controlling precedence and was prejudicial to the Petitioner. Feathers v. EDI, 933 A. 2d 335 - DC: Court of Appeals 2007 (citing White v. Washington Metro. Area Transit Auth., 432 A.2d 726 (D.C. 1981)). On March 10, 2016, the Petitioner received notice of the Court's March 08, 2016 Order; sua sponte dismissal of her Petition for Review. On March 29, 2016, the Petitioner filed Petitioner's Motion to Stay the Mandate, with supporting attachments A1-N19. On April 27, 2016, the Court issued an Order, holding in abeyance its decision re: Petitioner's Motion to Stay the Mandate until the submission of the Petitioner's Motion for Summary Reversal. On May 27, 2016, the Petitioner filed the Petitioner's Motion for Summary Reversal with supporting attachments A1-

S12. On **September 15, 2016**, the Court issued its Order for the Petitioner's Motion to Stay the Mandate and the Petitioner's Motion for Summary Reversal. On **September 15, 2016**, the Court GRANTED the Petitioner's Motion to Stay the Mandate. On **September 15, 2016**, the Court DENIED the Petitioner's Motion for Summary Reversal. On **September 15, 2016**, the Court, *sua sponte*, Ordered the Clerk to strike the attachments to the Petitioner's Motion for Summary Reversal. On **September 15, 2016**, the *Court's version*, of the Petitioner's Motion to Stay the Mandate with supporting attachments A1-N19, originally filed by the Petitioner on March 29, 2016, was re-filed by the Court. On **September 15, 2016**, the *Court's version*, of the Petitioner's Motion for Summary Reversal with supporting attachments A1- S12 originally filed by the Petitioner on May 27, 2016, was filed by the Court.

On **March 14, 2017**, the Petitioner filed Petitioner's Motion to Recall the Mandate, demonstrating "good cause" and articulating with particularity the "exceptional circumstances" of the Court's *sua sponte* Order to strike probative, direct, clear and convincing evidence, admissible and exculpatory of a genuine and material fact of the Petitioner's allegations of fraud on the court perpetual in this action.

On **March 22, 2017**, the Petitioner filed Petitioner's Motion to Supplement the Record; once again demonstrating "good cause" and articulating with particularity the "exceptional circumstances" of the Court's *sua sponte* Order to strike probative, direct, clear and convincing evidence, admissible and exculpatory of a genuine and material fact of the Petitioner's allegations of fraud on the court perpetual in this action and expressly citing the Respondent's varied and prevalent fraudulent and prejudicial acts in compiling and presenting a skewed record of the proceedings before the Agency.

On August 17, 2017 the Petitioner filed Petitioner's Motion for Judicial Notice; once again demonstrating "good cause" and articulating with particularity the "exceptional circumstances", and in violation of the Due Process clause of the Fifth Amendment, with direct and probative evidence, that Andrea Comantale_fraudulently concealed her involvement in the three trial boards; and *knowingly* and *maliciously* used false information to enforce the constructive discharge of the Petitioner in the guise of Involuntary Non-P.O.D. Disability Retirement, for complaining about sexual harassment. Richards v. Mileski, 662 F. 2d 65 - Court of Appeals, Dist. of Columbia Circuit 1981; Christopher v. Aguigui, 841 A.2d 310, 312 (D.C.2003) (quoting FED. R. EVID. 201(b)); *see also Renard v. District of Columbia Dep't of Employment Servs.*, 673 A.2d 1274, 1276 (D.C.1996). Robert Siegel, Inc. v. District of Columbia, 892 A. 2d 387 at 395-396 - DC: Court of Appeals 2006 (quoting United States v. Burch, 169 F.3d 666, 671 (10th Cir.1999)). *See Fletcher v. Evening Star Newspaper Co.*, 77 U.S.App.D.C. 99, 133 F.2d 395 (1942) (per curiam) (court may take judicial notice of its own records and "of other cases including the same subject matter or questions of a related nature between the same parties"), *cert. denied*, 319 U.S. 755, 63 S.Ct. 1163, 87 L.Ed. 1708 (1943). *see Wise v. Glickman*, 257 F.Supp.2d 123, 130 n. 5 (D.D.C.2003) (court is "allowed to take judicial notice of matters in the general public record, including records and reports of administrative bodies and records of prior litigation). The Petitioner's Motion for Judicial Notice contained probative direct evidence, admissible and demonstrative of a genuine and material fact(s): allegations of Fraudulent Concealment, in violation of the 5th Amendment of the U.S. Constitution; Fraud on the Court. Morgan v. United States, 298 US 468 - Supreme Court 1936.; US v. Public Utilities Comm'n., 345 US 295 - Supreme Court 1953

B. The DCCA's January 03, 2019 published Opinion affirming the judgment of the Board is in material conflict with a decision of the Supreme Court of the United States.

The appearance of partiality cuts at the heart of the judicial system. *See Bridges v. California*, 314 U.S. 252, 282, 62 S.Ct. 190, 86 L.Ed. 192 (1941) (Frankfurter, J., dissenting) ("The administration of justice by an impartial judiciary has been basic to our conception of freedom ever since Magna Carta."). To warrant reversal, an error of the trial court must "affect substantial rights"—i.e., it must be prejudicial, having an effect on the outcome of district court proceedings. *United States v. Olano*, 507 U.S. 725, 734, 113 S.Ct. 1770, 123 L.Ed.2d 508 (1993) (quoting FED. R. CRIM. P. 52(b)) **The verdict [...] will not ordinarily be set aside for error not brought to the attention of the trial court. This practice is founded upon considerations of fairness to the court and to the parties and of the public interest in bringing litigation to an end after fair opportunity has been afforded to present all issues of law and fact.** *Beaver v. Taylor*, 93 U.S. 46; *Allis v. United States*, 155 U.S. 117, 122, 123; *United States v. United States Fidelity & Guaranty Co.*, 236 U.S. 512, 529; *Guerini Stone Co. v. Carlin Construction Co.*, 248 U.S. 334, 348; *Pennsylvania R. Co. v. Minds*, 250 U.S. 368, 375; *Burns v. United States*, 274 U.S. 328, 336; *see Shannon v. Shaffer Oil & Refining Co.*, 51 F. (2d) 878, 880.

With actual bias, ordinary appellate review is insufficient because it is too difficult to detect all of the ways that bias can influence a proceeding. *See id.* ("[I]f prejudice exist[ed], it has worked its evil and a judgment of it in a reviewing tribunal is precarious. It goes there fortified by presumptions, and nothing can be more elusive of estimate or decision than a disposition of a

mind in which there is a personal ingredient.") (quoting *Berger v. United States*, 255 U.S. 22, 36, 41 S.Ct. 230, 65 L.Ed. 481 (1921)). With apparent bias, ordinary appellate review fails to restore "public confidence in the integrity of the judicial process," *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 860, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1988)—confidence that is irreparably dampened once "a case is allowed to proceed before a judge who appears to be tainted."

In re Sch. Asbestos Litig., 977 F.2d 764, 776 (3d Cir. 1992); accord *In re United States*, 666 F.2d 690, 694 (1st Cir. 1981) ("Public confidence in the courts requires that [bias] question[s] be disposed of at the earliest possible opportunity." (alterations omitted)).

The DCCA's rulings affected the Petitioner's substantial rights, *see Olano*, 507 U.S. at 734-35, 113 S.Ct. 1770, the rulings obviously changed the outcome of several important issues before the DCCA. Specifically, Petitioner contends that the DCCA's evidentiary rulings allowed the Board to maintain a "contrived" and fraudulent Order and Decision affirming that the Board's actions were permissible and supported by substantial evidence while denying her the ability to refute it.

C. The DCCA's January 03, 2019 published Opinion disregarded resolution of its Sua Sponte Order to the Respondents as pertains to 7 DCMR 2503.3 regulation, an extension of the Due Process Clause of the 5th Amendment of the United States Constitution.

On March 29, 2016, the Petitioner filed Petitioner's Motion to Stay the Mandate, with supporting attachments A1-N19. On May 27, 2016, the Petitioner filed the Petitioner's Motion for Summary Reversal with supporting attachments A1- S12. In both Motions, the Petitioner asserted that the lack of Due Process in the Board's refusal to follow 7 DCMR 2503.3 created prejudice throughout the proceedings before the Board in addition to the Judicial Review. On September 15, 2016, the Division Panel took notice of the Petitioner's assertions of the Board's suppression

of evidence; reliance on fabricated documents; and refusal to develop facts material and relevant to the case and Ordered briefing as to the Respondents obligations to assist the pro se Petitioner in obtaining records; 7 DCMR 2503.3. The Division Panel refused to analyze the briefing presented for 7 DCMR 2503.3.

The Court Order issued on **September 15, 2016**, directed the Respondents to address what obligations it had to assist the pro se Petitioner in obtaining records. The case will govern all future cases involving members of the DC Police and Fire Departments, unrepresented and represented, before the DC Police and Firefighters Relief and Retirement Board (“Board”). The decision in this case will also determine whether the *7 DCMR 2503.3* regulation, a state statute within the Board’s municipal regulations supplementing the Due Process Clause the Fifth Amendment of the United States Constitution is in fact mandatory, as its express terms unambiguously command, or whether the regulations may be disregarded and ignored, without regard for their substantive standards or the US Constitution.

D. The DCCA’s January 03, 2019 published Opinion affirming the judgment of the Board disregarded, ignored, mischaracterized and/or simply did not address the material factual and/or legal matter of the interplay of the PFRDA with the ADA repeatedly raised by the Petitioner before the Board and the DCCA.

The EEOC Guidance: Workers’ Compensation and the ADA details the supremacy of the ADA over any form of WCA and gives detailed guidance as pertains disability determinations; questions and exams that are allowed; questions and exams that are prohibited; confidentiality of medical information; return to work decisions; objective evidence; reasonable accommodation requests; and light duty. The Petitioner’s assertions before the Board and this Court were all

repeatedly argued based on the EEOC's determination that provisions of the ADA supersedes the PFRDA. The Division Panel disregarded this argument to make its decision affirming that the Board submitted substantial evidence.

E. The DCCA's January 03, 2019 published Opinion with analysis of substantial evidence conflicts with this Court's precedence on substantial evidence in light of the whole record, with supplementation by the Petitioner were warranted, disregarded, ignored, mischaracterized and/or simply did not address the material and dispositive assertions of fraud repeatedly raised by the Petitioner before the Board and the DCCA.

Judicial Review of an Administrative Order based on a fraudulently constructed and prejudicially skewed administrative record is not based on substantial evidence. United States v. Carlo Bianchi & Co., 373 US 709 - Supreme Court 1963; Ambler v. Whipple, 90 US 278 - Supreme Court (1874).

There is a substantial, genuine and material issue of perpetual **fraud**, expressly articulated to the administrative agency below; then adopted by the agency below, during the Petitioner's Involuntary Non-POD Disability Retirement hearings; and expressly articulated in the DCPFRRB's written Order and the DCPFRRB's Written Decision to constructively discharge, under the guise of Involuntary Non-POD Disability Retirement, the Petitioner for complaining of sexual harassment within the DC Fire and EMS.

The Division Panel overlooked the Petitioner's persistent and repeated arguments contesting the skewed record presented by the Board as being fraudulent Cobb v. Standard Drug Co., 453 A.2d 110 (D.C. 1982); its findings of facts supported by fabricated reports and suppressed test results and/or medical records Daubert v. Merrell Dow Pharmaceuticals, Inc.,

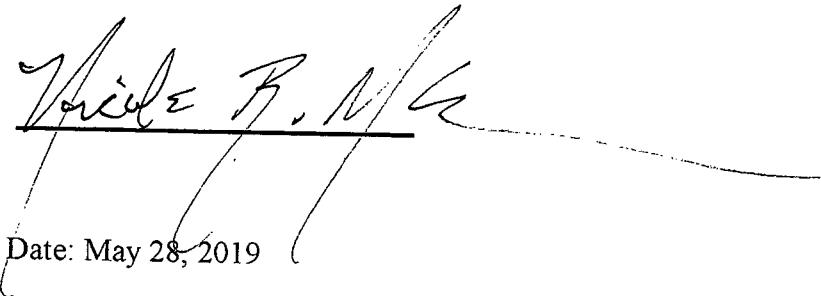
509 US 579 - Supreme Court 1993; Motorola, Inc. v. Murray, 147 A.3d 751 - DC: Court of

Appeals 2016; Dickerson v. Dist. of Columbia, 182 A. 3d 721 at 727-728- DC: Court of Appeals 2018; and Andrea Comantale's violation of the Fifth Amendment Due Process Clause, in addition to her bias and prejudice as the author of the Board's Order and Decision due to her involvement in the three shame investigations/ Trial Boards before the District of Columbia Fire and Emergency Services ("DCFEMS"); repeated assertions of Fraud on the Court. None of the Board's conclusions of law were capable of flowing rationally from the findings because all of the findings were based on evidence that is not competent and/or substantial due to being subjective and unsupported; fabricated and/or suppressed. Featherson v. EDI, 933 A. 2d 335 - DC: Court of Appeals 2007 (citing White v. Washington Metro. Area Transit Auth., 432 A.2d 726 (D.C. 1981)). (Concluding that the trial court abused its discretion in denying appellant's subpoena request for documents that were both relevant and probative to her case)) Sundberg v. TTR Realty, LLC, 109 A. 3d 1123 - DC: Court of Appeals 2015 (citing Schiff v. American Ass'n of Retired Persons, 697 A.2d 1193,1198 (D.C. 1997) citing Howard v. Riggs Nat'l Bank, 432 A.2d 701, 709 (D.C. 1981) at 706)). Under the law of the District of Columbia, fraudulent concealment requires that the defendant commit some positive act tending to conceal the cause of action from the plaintiff, although any word or act tending to suppress the truth is enough. Diamond v. Davis, 680 A. 2d 364 - DC: Court of Appeals 1996; Richards v. Mileski, 662 F. 2d 65 - Court of Appeals, Dist. of Columbia Circuit 1981, (quoting William J. Davis, Inc. v. Young, 412 A.2d 1187, 1191-92 (D.C.App.1980)); Larson v. Northrop Corp., 21 F.3d 1164, 1172 (D.C.Cir.1994) (quoting Foltz v. U.S. News & World Report, Inc., 663 F.Supp. 1494, 1537 (D.D.C.1987), aff'd, 865 F.2d 364 (D.C.Cir.), cert. denied, 490 U.S. 1108, 109 S.Ct. 3162, 104 L.Ed.2d 1024 (1989); See Riddell v. Riddell Washington Corp., 866 F.2d 1480, 1491 (D.C.Cir.1989).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Date: May 28, 2019