

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
EXTENSION REQUEST

Appeal Number: USA 11 No. 17-13719

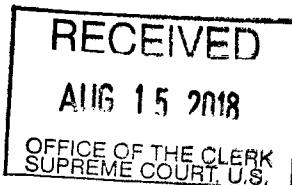
Case Style: Jerome Garrett v. Postmaster General United States District
Court Docket No: 1:17-cv-00374-MHC

RESUBMIT PETITION WITH MOTION TO DIRECT CLERK TO FILE
PETITION OUT OF TIME

My name is Belinda Garrett. I received a letter dated August 6, 2018 from your court saying my petition for a writ of certiorari was filed out of time from Mr. Scott S. Harris, Clerk. After contacting Mr. Clayton R. Higgins, Jr. I was instructed to resubmit the petition with a motion to direct the clerk to file. This is my petition request.

I am the wife of Jerome Curtis Garrett the plaintiff in this case. I am not an attorney but making every effort to the best of my ability to help my husband in this matter because we cannot afford an attorney due to the financial hardship we have been placed in due to traumatic injuries caused while on the job for the US Postal Service. Mr. Garrett cannot do so for himself because he suffers from a Traumatic Brain injury and broken neck due to the negligence of the US Postal Service that nearly cost him his life on April 19, 2009. Since that time it has been up to me to continue on his behalf.

On April 16, 2018, I believe I received a letter stating that a decision had been made in Mr. Garrett's appeal's case and a copy was enclosed. There was only the letter and no judgement. I contacted the clerk of the district court after receiving an additional letter dated April 13, 2018 once again with no decision. The point of contact on the letter was a Ms. Elora Jackson. After contacting Ms. Jackson, she informed me that she would send one out the decision. I received the decision April 29th which was dated February 14, 2018. In the event that this appeal has not been filed in a timely manner I am asking for



Jerome Garrett, USA 11 No. 17-13719

reconsideration to allow Mr. Garrett's case to move forward for review based the following reasons:

- Mr. Garrett did not receive his appeal's decision and correspondence related to his appeal in a timely manner.**
- Mr. Garrett could not file this claim on his own due to a Traumatic Brain injury suffered while on the job.**
- Mr. Garrett cannot afford council due to the financial hardship this family is in because of the negligence of the US Postal Service and the injuries they caused. As Mr. Garrett's wife, caregiver and representative it is up to me to advocate for him.**
- My knowledge of the court system is limited and I am making every effort to support my husband to the best of my ability.**
- I personally have health concerns one being congestive heart failure and diabetes. The stress and strain of these events have caused major health issues for me as Mr. Garrett's only advocate. I have been in and out of the hospital for the past seven months. I am only just now well enough to proceed on Mr. Garrett's behalf. Both our health issues as they relate to this issue have taken a toll on the both of us.**

In conclusion, Mr. Garrett is trying to reclaim his time. I have made every attempt to file documents in a timely manner as required to include all appeal's request. Please allow the extension to move forward based on the reasons previously stated in this request. All supporting documents are included in the Appeal's Notebook. Anything the court can do to assist in this matter is greatly appreciated. Mr. Garrett deserves the chance for his case to be heard.


Jerome Curtis Garrett


Belinda Garrett

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-13719
Non-Argument Calendar

D.C. Docket No. 1:17-cv-00374-MHC

JEROME CURTIS GARRETT,

Plaintiff - Appellant,

versus

POSTMASTER GENERAL UNITED STATES POSTAL SERVICES,

Defendant - Appellee,

WANDA SCOTT, MDO, et al.,

Defendants.

Appeal from the United States District Court
for the Northern District of Georgia

(February 14, 2018)

Before TJOFLAT, JORDAN and NEWSOM, Circuit Judges.

PER CURIAM:

Jerome Curtis Garrett, proceeding *pro se*, brought this employment discrimination suit under the Americans with Disabilities Act, 42 U.S.C. § 12131, and Title VII of the Civil Rights Act, 42 U.S.C. § 2000e, *et seq.* Because Mr. Garrett sought leave to proceed *in forma pauperis*, the magistrate judge conducted the required frivolity screening under 28 U.S.C. § 1915(e)(2) and issued an order requiring Mr. Garrett to re-plead, noting that the proposed complaint failed to “contain sufficient factual allegations to state a claim for relief based on disability discrimination.” D.E. 2 at 5. Mr. Garrett filed an amended complaint, which the magistrate judge recommended dismissing under 28 U.S.C. § 1915(e)(2)(B)(ii) because it failed to state a claim. After considering Mr. Garrett’s objections, the district court adopted the magistrate judge’s report and recommendation and dismissed the case without prejudice. After careful review, we affirm.

I

We review the dismissal of the complaint for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B)(ii) *de novo*, taking Mr. Garrett’s allegations in the complaint as true. *See Alba v. Montford*, 517 F.3d 1249, 1252 (11th Cir. 2008). *See also Mitchell v. Farcass*, 112 F.3d 1483, 1490 (11th Cir. 1997) (noting the Rule 12(b)(6) standard for failure to state a claim applies to dismissals under

§ 1915(e)(2)(B)(ii)). Because Mr. Garrett is proceeding *pro se*, we liberally construe his complaint but may not “rewrite an otherwise deficient pleading in order to sustain an action.” *Campbell v. Air Jamaica Ltd.*, 760 F.3d 1165, 1169 (11th Cir. 2014).

II

According to the amended complaint, Mr. Garrett was an excellent mail handler for the United States Postal Service. He was recognized as Mail Handler of the Year, never missed a day of work in his 16-year tenure, and was known to work “around the clock shifts” during the holidays. His stellar service came to an end tragically on April 19, 2009, when a flat box of mail weighing approximately 70 to 100 pounds fell from a conveyor belt system and struck him in the head. Mr. Garrett suffered severe injuries, including a broken neck and traumatic brain injury, and is permanently disabled.

Mr. Garrett’s amended complaint recounts several incidents of allegedly wrongful conduct committed by the USPS and its employees. It explains that Mr. Garrett’s supervisors failed to safely secure the area or install safety netting to prevent his accident and failed to code Mr. Garrett as injured on duty, causing him to be placed in leave without pay status and lose certain benefits. The amended complaint alleges that this benefit termination “was not caused by being in a leave without pay status for 365 days, but was instead cause[d] by management not

properly documenting Mr. Garrett's injuries as injured on duty." D.E. 4 at 11. According to Mr. Garrett's filings, these benefits were subsequently reinstated, including "all sick and annual leave with back pay." D.E. 8 at 7.

We agree with the district court that these allegations do not state a claim for disability discrimination. Although Mr. Garrett purports to bring his claim under the ADA, we construe his claim as one under the Rehabilitation Act because the ADA does not cover federal employees. *See* 42 U.S.C. § 12111(5)(B)(i) (excluding the United States from the definition of "employer"); *Sutton v. Lader*, 185 F.3d 1203, 1207 n.5 (11th Cir. 1999) (recognizing that the ADA and Rehabilitation Act share the same standard for liability).¹

To properly plead his claim, Mr. Garrett must show that "(1) he has a disability; (2) he is otherwise qualified for the position; and (3) he was subjected to unlawful discrimination as the result of his disability." *Boyle v. City of Pell City*, 866 F.3d 1280, 1288 (11th Cir. 2017). *See also Ellis v. England*, 432 F.3d 1321, 1326 (11th Cir. 2005) ("[U]nder the Rehabilitation Act, a plaintiff must prove that he suffered an adverse employment action 'solely by reason of' his handicap.") (quoting 29 § U.S.C. 794(a)). Mr. Garrett's allegations of wrongful conduct do not show that the termination of his benefits was by reason of his disability. Instead,

¹ Mr. Garrett also indicated on his amended complaint that he was asserting a Title VII claim. Title VII, however, proscribes discrimination based upon "race, color, religion, sex, or national origin," not disability. *See* 42 U.S.C. § 2000e-2.

he pleads that his supervisors used an incorrect code which caused him to be put on leave without pay status. Despite being permitted to amend by the magistrate judge, Mr. Garrett has failed to plead facts showing that that decision was “solely by reason of” his disability, as opposed to other reasons. *See Ellis*, 432 F.3d at 1326..

Likewise, Mr. Garrett’s allegations that the USPS created unsafe work conditions and failed to properly provide emergency response treatment after the accident do not provide the required link to show that he was discriminated against as a result of his disability. First, alleged negligence before Mr. Garrett’s injury cannot support his case for disability discrimination because such conduct occurred before he had a disability. *See Garrett v. Univ. of Ala. at Birmingham Bd. of Trustees*, 507 F.3d 1306, 1315 (11th Cir. 2007) (plaintiff who could not show she was disabled at time of alleged demotion did not establish prima facie case of disability discrimination). Second, his employer’s failure to call EMS to assist him after the injury was not the type of “adverse employment action” required to state a discrimination claim. *See Davis v. Town of Lake Park*, 245 F.3d 1232, 1239 (11th Cir. 2001) (requiring “a serious and material change in the terms, conditions, or privileges of employment”).

III

We are sympathetic to Mr. Garrett's situation, but our sympathies do not allow us to overlook that—even construed liberally—he has failed to allege facts to show a causal connection between his disability and the termination of his benefits. Given this deficiency, the district court correctly concluded that Mr. Garrett failed to state a disability discrimination claim.

AFFIRMED.

**Additional material
from this filing is
available in the
Clerk's Office.**