No. 19-1238

IN THE

SUPREME COURT of the UNITED STATES

Lisa L. Watson, Petitioner

v.

Mark Esper, Secretary of the US Army

On Petition for Writ of Certiorari
To The United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Where is the initial performance upon which grounds the agency fired me for this employer's adverse action after my alleged failure of the so called initial, the 90 day, the PIP?
2. Why were my concerns about the conflict of the scores from the 90 day plan not addressed?
3. Why didn't the court of appeals address the change of my responsibility after which the district court indicated the change is not considered adverse unless there is a change in my responsibility?
4. Why didn't the court of appeals require the agency to provide the proof that one comparant was allowed to work overtime/comp time without meeting productivity and why didn't either the USCA or the USDC answer as to why both comparants named were able to receive preferential treatment by being able to work on the first day of hire using paper audits without the HIPAA clearance requirement as well as entitled to an exemption from working the 90 day plan?
5. Why did the court of appeals dismiss my prima facie facts for the nonselection, denial of comp time, and termination and not question why the district court cited one comparant only and not the other comparant that was treated more favorable than me?
6. Why didn't the court of appeals question why the district court didn't require of the agency to have punished all auditors with a PIP after the physician workstation errors were common to all auditors?
7. Why was ICD-10 training never based on my meeting productivity? It was punitive because I was already placed in an illegal 90 day plan after failing the so called initial.
8. Why did both USDC and USCA discredit my partial recordings agreeing with the Agency that they won't prove anything, even the discriminatory reasons for the adverse action of wrongful termination, except favor the agency's defense without considering ALL of the recordings?

LIST OF ALL PARTIES TO THE PROCEEDING

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT-Lisa L. Watson, Plaintiff-Appellant v. Mak Esper, Secretary, Department of the Army, Defendant-Appellee

UNITED STATES DISTRICT COURT for the Western District of Texas-Lisa L. Watson, Plaintiff v. Mark Esper, Defendant, Civil Action No. 5:17-cv-1280-OLG

UNITED STATES EQUAL EMPLOYMENT COMMISSION OFFICE OF FEDERAL OPERATIONS-Lisa L. Watson, aka Juli Z., Complainant v. Robert M. Speer, Acting Secretary, Department of the Army

AJ HEARING- United States of America, EEOC, San Antonio Field Office, Lisa L. Watson, Complainant vs. Department of the Army, Agency

CORPORATE DISCLOSURE STATEMENT

Appeal Case Number, USCA #19-50450/Watson's Principal Brief; the undersigned counsel of record certifies that the following listed persons and entities have an interest in the outcome of this case: Lisa Watson, (Plaintiff); Mark Esper, Secretary, Department of the Army (Defendant); James Dingivan, Attorney for Agency; Navient Department of Education Loan Servicing; Mississippi Internal Revenue Delinquent State Tax, GM Financial and Citizens Bank of Philadelphia.

Prose of record

Lisa L. Watson

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the limited circumstances set forth in 5th CIR.R. 47.5.4. December 4, 2019

B. USCA 5TH CIRCUIT OPINIONS, ORDERS, FINDING OF FACT USCA 5th Circuit Order Affirming USDC's Summary Judgment & Denying Appellant's 10/1/2019 Motion (Case: 19-50450, Document 00515223446, December 4, 2019, pp 2-5)

C. Appellant's Petition for En Banc/Rehearing (Case: 19-50450, December 17, 2019, pp 1-9)

D. USCA 5th Circuit Denied Appellant's En Banc Rehearing Petition(Case: 19-50450, Document 00515272072, January 14, 2020, pp 1-2)

E. Appellant's Response to Order/Motion for Oral Argument (Case: 19-50450, Document 00515284563, January 24, 2020, pp 1-7)

F. USDC WESTERN DISTRICT OF TEXAS OPINIONS, ORDERS, FINDING OF FACT, Order Affirming Full Adoption of Magistrate's R & R (Case: 5:17-cv-01280-OLG, Document 29, March 18, 2019, pp. 1-3)

G. Magistrate Judge Report and Recommendation (Case: 5:17-cv-01280-OLG, Document 26, February 26, 2019, pp. 4, 7, 10-16, 18-19)

H. Plaintiff's Response to Magistrate's R & R (Case: 5:17-cv-01280-OLG, Document 28, March 12, 2019, pp. 1-23)

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J. Appellant's Response to Defendant's Motion for Summary Judgment (Case:5:17-cv-01280-OLG, Document 22, October 3, 2018, pp. 1-99)

K. Appellant's Motion for Reconsideration (Case: 5:17-cv-01280-OLG, Document 31, April 1, 2019, pp. 1-115)

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O. OFO OPINIONS, ORDERS, FINDING OF FACT, US EEOC Decision (Appeal No. 0120151727, Hearing No. 451-2014-00176X, Agency No. ARFTSAM13Jan00053, 7 pp, June 2, 2017)

P. ADMINISTRATIVE JUDGE HEARING OPINIONS, ORDERS, FINDING OF FACT, ADMINISTRATIVE HEARING DECISION (EEOC Case no. 451-2014-00176X, Agency no. ARTFTSAM13JAN00053, AJ: Hon. Linda Guitierrez, 27 pp. February 11, 2015)(USDC of Western Texas Reference, Document 26, p 7 of 21, February 26, 2019)

LIST ALL PROCEEDINGS IN OTHER COURTS

Court in Question	Docket Number	Case Caption	Date of Judgment Entry
USCA 5th CIR	19-50450	USCA affirms USDC/denies 10/1/2019 Motions	2019/12/04
USCA 5th CIR	19-50450	Appellant's EnBanc Petition	2019/12/17
USCA 5th CIR	19-50450	USCA Denied Rehearing	2020/01/14
USCA 5th CIR	19-50450	Appellant's Response to Order	2020/01/24
USDC	5:17-CV-1280-OLG	USDC Order Adopting R&R	2019/03/18
USDC	5:17-CV-1280-OLG	Magistrate's R&R	2019/02/26
USDC	5:17-CV-1280-OLG	Plaintiff's Response to R&R	2019/03/12
USDC	5:17-CV-1280-OLG	Defendant's Supplemental SJ	2018/09/26
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USDC	5:17-CV-1280-OLG	Plaintiff's Motion for New Trial	2019/04/01
USDC	5:17-CV-1280-OLG	USDC Denied Motion	2019/04/22
USDC	5:17-CV-1280-OLG	Plaintiff's Motion to Alter/Amend Judgement	2019/04/30
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Shreveport, 492 F.3d 551, 556 (5th Cir. 2007)(USDC Document 21, p 4 of 10, 9/26/19): *Nasti*, 492 F.3d at 593 (USDC Document 21, p 8 of 10, 9/26/19): *Paul v. Elayn Hunt Corr. Ctr.*, 666 Fed. App'x 342, 347 (5th Cir. 2016) (citing *Watts*, 170 F.3d at 512) (USDC, Document 26 p 14-15 of 21, 02/26/2019): *Pegrum v. Honeywell, Inc.*, 361 F.3d 272,282 (5th Cir.2004) (USDC, Document 26 p 10 of 21, 02/26/2019): Roberson v. Alltel Info. Servs., 373 F.3d 647, 651 (5th Cir. 2004) (USCA 5th Circuit, Document 00515223446, p 3, 12/4/2019): *Toronka v. Cont'l Airlines, Inc*, 411 F.App'x 719, 723 (5th Cir. 2011)(USDC Document 21, p 4 of 10, 9/26/19): *Watts vs. Kroger Co.*, 170 F.3d 505, 512 (5th Cir. 1999 (USDC, Document 26 p 14-15 of 21, 02/26/2019): *Wittmer v. Phillips* 66 Co., 915 F.3d 328, 332 (5th Cir. 2019) (USCA 5th Circuit, Document 00515223446, p 3, 12/4/2019)

JURISDICTIONAL STATEMENT

Having sought clarification of my complaints of discrimination through USCA 5th circuit and US District Court of Western Texas, San Antonio, Division, I come to the United States Supreme Court to help me reach a complete resolve through the 8 questions presented following the January 14, 2020, Order from USCA 5th circuit denying my request for rehearing/en banc. Because these questions were timely and properly presented during all proceedings of this case shows that the Supreme Court has jurisdiction to review the judgment on a writ of certiorari. Thank you for this opportunity for justice.

	451-2014-00176X	Appeal & Brief of FAD	

CITATIONS OF THE OFFICIAL/UNOFFICIAL REPORTS OF OPINIONS/ORDERS BY COURTS OR ADMINISTRATIVE AGENCY

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT-Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th CIR.R. 47.5.4. December 4, 2019, p1.

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT-Judgment Issued as Mandate, January 22, 2020

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS-Judgment In a Civil Action/Order Adopting in Full Magistrate's R & R, Document 30, 2pp, Mar. 18, 2019

28 U.S.C. § 636 (b)(1)(USDC, Document 29 p 1 of 3, 03/18/2019): Anderson, 477 U.S. at 250 (citation omitted)(USDC Document 21, p 2 of 10, 9/26/19): *Auguster*, 249 F.3d at 402-403 (USDC Document 21, p 8 of 10, 9/26/19): *Celotex Corp.*, 477 U.S. at 322 (USDC Document 21, p 4 of 10, 9/26/19): Garcia v. Prof'l Contract Servs., Inc., 938 F.3d 236, 241 (5th Circ. 2019) (USCA 5th Circuit, Document 00515223446, p 4, 12/4/2019): Fed R.CivP(56a.) (USDC Document 21, p 2 of 10, 9/26/19): *Jackson, 601 Fed. App'x at 286:* McCoy v. City of Shreveport, 492 F.3d 551, 559 (5th Cir. 2007) (USCA 5th Circuit, Document 00515223446, p 4, 12/4/2019): *McCoy v. City of*

CONSTITUTIONAL PROVISIONS TREATIES STATUTES ORDINANCES REGULATIONS INVOLVED IN THIS CASE

28 U.SC. § 636(b)(1): Fed. R. Civ.P. 56(a): Fed.R.Civ.P.72(b): Title VII of the Civil Rights Act-42 U.S.C. § 2000e:

CONCISE STATEMENT OF THE CASE

The lack of the demonstrative evidence of the alleged failure of a so called initial performance question was raised during all levels of the proceedings with the sworn testimonies during the Report of Investigation, Administrative Judge Hearing, Office of Federal Operations, US District Court and lastly US Court of Appeals. In the USCA, the following facts are material to this question presented: USDC, OFO, AJ Hearing.

USCA 5th Circuit stated 'She struggled in her job from the beginning. After failing an initial quality assurance review, she was given ninety days to earn a passing score. She never did.[1]' (USCA, USCA 5th Circuit Affirms USDC summary judgment, document 00515223446, p.2, 2019/12/04)

In my petition for panel hearing/rehearing en banc, I asked for reconsideration the concise statement under item 2: 'No initial performance documentation to justify the 30-60-90, PIP provided by the agency.' (USCA 5th Circuit, APPELLANT'S PETITION FOR PANEL HEARING/REHEARING EN BANC, P 1, 2019/12/17)

USDC R&R stated, 'The counseling document indicated that based on initial coding results from Quality Assurance ("QA") Watson's performance would be rated as "Fails" had she been under performance standards during her first few months of employment.' (ROI [#10-2] at 6.) (USDC, USDC Magistrate's R & R, p. 4, 2019/02/26)

In the Defendant's Supplementary Motion for Summary Judgment Briefing, my initial performance is not addressed at all. It is stated, 'Summary Judgment is appropriate when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ.P. 56(a). (USDC, Defendant's Motion for Summary Judgment, p. 2, 2018/09/26) It is also stated, 'If Defendant shows there is no genuine dispute as to any material fact, Plaintiff "must set forth specific facts showing that there is a genuine issue for trial." Anderson, 477 U.S. at 250 (citation omitted). (USDC, Defendant's Motion for Summary Judgment, p. 3, 2018/09/26). The Defendant believes that only two of my grievances constitute adverse employment actions when he stated, 'Of the seven grievances described by Plaintiff, only two are adverse employment actions (termination and non-selection) for the purposes of a discrimination analysis. (USDC, Defendant's Motion for Summary Judgment, p. 4, 2018/09/26).

In my Appellant's Response to Defendant's Motion for Summary Judgment, I asked:

> 'What didn't happen? No proof of initial performance. Agency alleges that I failed my initial performance at 67% when in fact I never had an initial. They even indicated that I was placed on a 30-60-90 that ended sometime in December of 2012 because I failed this so called initial at 67%. The truth is that these were my personal questions from a paper

In my Response to the Defendant's Motion for Summary Judgment, I mentioned:

> 'What about the lack of the training plan SOP. Grading method was not unique to all. They used the one I created. It was used aggressively with the new hires. They worked paper audits daily before they received their clearance. It was not just me believing the grading system was based on an honor system and not a SOP for the trainers responsible for conducting the personnel audits on the auditor's performance. I had two witnesses that were prepared to testify on my behalf about this but they weren't allowed to come during the AJ stage.' (USDC, Appellant's Response to Defendant's Motion for Summary Judgment, Case: 5:17-cv-01280-OLG, Document 22, 2018/10/03, p. 3)

In my Response to the Defendant's Motion for Summary Judgment, I stated:

> 'Testimony from Ms. Shears, one of the trainers, proved that the grading system was not fair and on an honor system. She stated she chose the records containing the last 3 like 3, 13, 23 or 6, 16, 26 if she runs out. I asked Ms. Leal on several occasions if a SOP existed for the trainers to ascertain consistency and fairness when grading an auditor. She refused every single time. When I provided a response to my former counsel that I had two peers to testify about the unfair grading system, the AJ didn't allow them to come. Ms. Shears also stated in an April 9th meeting that she's usually all over the place when she selects the population of charts to audit for grading. Ms. Shear's character email of my performance on mediation is attached.' (dckt # 13, pp. 187-188 of 349) (dckt # 13, p. 180 of 349) (dckt # 13 , p. 181 of 349)(p.306 of 349). (USDC, Appellant's Response to Defendant's Motion for Summary Judgment, Case: 5:17-cv-01280-OLG, Document 22, p.15, 2018/10/03)

In my Appellant's Response to Defendant's Motion for Summary Judgment, I mentioned my direct observation of a bad grading system by another trainer, Ms. Duffy, who happens to be the same trainer who graded my one audit, not 30 audits, to derive at that bogus initial performance at 67%, 'I directly observed an obvious honor system grading method used by trainer, Ms. Duffy, when she showed me

> audit that I chose on my own training. I had written questions in the margins to ask later. When I gave Dawn, the trainer, my questions to ask her. She took it and graded it.' (USDC, Appellant's Response to Defendant's Motion for Summary Judgment, Case: 5:17-cv-1280-OLG, Document 22, p3, 2018/10/03)

In my Appellant's Response to Defendant's Motion for Summary Judgment, I asked:

> 'I took notes from the 1/28/15 hearing that I gave my former counsel for cross exam questions. I still don't understand why Ms. Leal said she didn't want to put me on the live audit. She did it because she was short staffed. I feel that she chose me because my scores were in the high 80s and 90s after the 90 day. Mind you, these scores were borderline the required accuracy of 93% without any initial training using the fast paced paper audits with a senior auditor. The initial training was never done. The agency used the 67% derived from my own questions from the paper audits I chose to train myself. Strangely enough, what a drastic improvement from 67% to high 80s-90s % within a 30 day time period. My standards were given October 2012. I was placed on a 30-60-90 in October 2012 as well. That really jabs me. Ms. Leal also testified that the dead audit has been dead for almost 2 years because she's been short staffed and no one has worked that audit since I was terminated.' (dckt # 13, pp. 186-187 of 349) (USDC, Appellant's Response to Defendant's Motion for Summary Judgment, Case: 5:17-cv-01280-OLG, Document 22, p. 14, 2018/10/03)

Concerning the 90 Day Scores Conflict Question, USCA stated in footnote 1, 'Watson underwent three performance reviews but never achieved the required accuracy standard of 93% on her assessments. She fared no better in her "live" audit; amongst the litany of errors committed, she incorrectly copy-and-pasted a generic message 140 times.' (USCA, USCA Affirms USDC summary judgment, document 00515223446, p.2, 2019/12/04)

how to prepare an auditor's report and how to select every other record on my list.' (dckt # 13, pp. 149-151 of 349). (USDC, Appellant's Response to Defendant's Motion for Summary Judgment, Case: 5:17-cv-01280-OLG, Document 22, p.16, 2018/10/03)

My question about the change in responsibility was raised at the USDC and USCA. The following facts are material to this question presented: USDC, OFO, AJ Hearing. USCA 5th Circuit stated, 'To survive summary judgment, Watson must show the alleged harassment was "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.' (USCA, USCA Affirms USDC summary judgment, document 00515223446, p.5, 2019/12/04)

In the magistrate's R & R, it is stated:

> Circuit law also forecloses any contention by Plaintiff that her subjection to a less desirable audit, i.e., an adverse change in her work assignments, constituted an adverse employment action for purposes of her retaliation claim, as she does not allege a change in her pay, benefits, or level of responsibility as a result of the employer's action. *See Watts vs. Kroger Co.*, 170 F.3d 505, 512 (5th Cir. 1999) ("We have held, along with many of our sister circuits, that employment actions are not adverse where pay, benefits, and level of responsibility remain the same."); *see also Paul v. Elayn Hunt Corr. Ctr.*, 666 Fed. App'x 342, 347 (5th Cir. 2016) (citing *Watts*, 170 F.3d at 512) (reassignments are not materially adverse unless accompanied by other change in employee status). (USDC, USDC Magistrate's R & R, p. 14, 15, 2019/02/26)

In my response to the Defendant's Motion for Summary Judgment, I stated:

> Harsh work environment, when I was forced to work the dead audit. No other auditor including the new hires

> worked this dead audit. Ms. Leal told me it was just as important as the live audit but yet I was the ONLY person to work it. When I left, I was told it was never touched again by anyone. The dead audit doesn't allow the auditor to complete mediation or reports which are key elements to the job in addition to the auditing. (USDC, Appellant's Response to Defendant's Motion for Summary Judgment, Case: 5:17-cv-01280-OLG, Document 22, p.4, 2018/10/03)

In my response to the Defendant's Motion for Summary Judgment, I stated, Supervisor never wanted me to grow and perform my job as an auditor. She stated she never wanted to put me on the live audit. 'I made a decision to place you on the live audit. I was not going to. I was going to keep you in the May audit {Dead Audit)'. (dckt #13 p. 7 of 349) (USDC, Appellant's Response to Defendant's Motion for Summary Judgment, Case: 5:17-cv-01280-OLG, Document 22, p.7, 2018/10/03)

In my response to the Defendant's Motion for Summary Judgment, I stated:

> 'Reassignment to dead audit caused a lot of stress, demoralizing feelings of alienation as I strongly felt that the reassignment was sudden and inappropriate. The reassignment was due to the physician workstation errors but these errors applied to all the auditors. The harsh expectations were unreal because I was expected to produce in a work environment that was unlike my peers. I couldn't mediate, or prepare reports on the dead audit. I too felt the reassignment was an indirect justification for Ms. Leal to deny my ICD-10 training' (dckt # 13, pp. 144-146 of 349). (USDC, Appellant's Response to Defendant's Motion for Summary Judgment, Case: 5:17-cv-01280-OLG, Document 4, p.13, 2018/10/03)

In the magistrate's R & R it is stated, 'As to Watson's allegations regarding Defendants' failure to hire her for a permanent position, the only comparator identified in the record is Mary Saenz, a Hispanic woman selected for vacancy number 027272, which was posted in November 2012 and filled in January 2013.[3]' (Announcement [#10-8] at 103.) (USDC, USDC Magistrate's R & R, p. 11, 2019/02/26)

In the magistrate's R & R it is stated, 'However, despite any difference in qualifications, it is undisputed that by January 2013-when the hiring decision was made-Watson had already received multiple performance counseling documents, all of which rated Watson's performance as failing.' (Oct. 2012 Counseling [#10-3] at 25; Nov. 2012 Counseling [#10-2] at 64; Dec 2012 Counseling [#10-2] at 72) (USDC, USDC Magistrate's R & R, p. 11, 2019/02/26)

In the magistrate's R & R it is stated:

> ' Moreover, even if Watson had identified a valid comparator and satisfied her prima facie burden, Defendant would still be entitled to summary judgment because it has proffered competent summary judgment evidence of a nondiscriminatory reason for the termination and decision not to hire or promote Watson-her documented pattern of performance issues-and Watson has failed to establish pretext.' (See Oct. 2012 Counseling [#10-3] at 25; Senior System Civilian Evaluation Rep. [#10-3] at 12; Nov. 2012 Counseling [#10-2] at 64; Dec. 2012 Counseling [#10-2] at 72; Feb.2013 Counseling [#10-2] at 494; Mar. 2013 Counseling [#10-3] at 1; PIP [#10-3] at 230-41.) (USDC, USDC Magistrate's R & R, p. 12, 2019/02/26).

In the Defendant's Motion for Summary Judgment, it is stated in footnote 3, 'Page 603 of the ROI shows that Ms. Saenz and a Ms. Maria Gomez were both selected for

My question pertaining to the one comparant who was allowed to work CT and was not meeting productivity was raised during all levels of the proceedings of my case but was never answered with the demonstrative evidence the CARA report with the sworn testimonies during the Report of Investigation, Administrative Judge Hearing, Office of Federal Operations, US District Court and lastly US Court of Appeals. I. In the USCA. The following facts are material to this question presented: USDC, OFO, AJ Hearing.

In my petition for panel hearing/rehearing en banc, I asked for reconsideration the concise statement under item 1: 'Comparant for prima facia, Ms.Saenz. No CARA productivity sheet during February 2013 provided.' (USCA 5th Circuit, APPELLANT'S PETITION FOR PANEL HEARING/REHEARING EN BANC, P 1, 2019/12/17)

In the magistrate's R & R it is stated, 'Accordingly, only Watson's termination, denial of leave, and lack of selection for permanent employment potentially constitute adverse employment actions for the purposes of her discrimination claim. See *Pegrum v. Honeywell, Inc.*, 361 F.3d 272,282 (5th Cir.2004). (USDC, USDC Magistrate's R & R, p. 10, 2019/02/26)

In the magistrate's R & R it is stated, 'Watson has not identified any specific comparator with respect to her termination and denial of leave allegations. (USDC, USDC Magistrate's R & R, p. 10, 2019/02/26)

Vacancy 027272, but the hiring record at pg. 3019 shows that Ms. Saenz was hired.'

(USDC Case: 5:17-cv-01280-OLG-ESC, Defendant's Motion for Summary Judgment, Document 21, p. 5, 2018/09/26).

In my Response to the Defendant's Motion for Summary Judgment, I stated:

> 'Before this time I was just sitting there for 3 months or so doing nothing but reading manuals basically. When I received my access, I acclimated my ideal job from the procedure manual by maneuvering the computerized programs based on the written procedure manuals and reference books. No one aggressively trained me like Nadine a senior auditor trained the Ms. Saenz and Ms. Gomez.' (USDC, Appellant's Response to Defendant's Motion for Summary Judgment, Case: 5:17-cv-1280-OLG, Document 22, p. 3, 2018/10/03)

In my Response to the Defendant's Motion for Summary Judgment, I stated:

> 'For reasons named above and specifically because the agency still has not provided the following: 1) the initial performance document, not the 67% derived from the paper audit questions, 2) the fair grading method used by the trainers or written SOP, standard operating procedure manual, and 3) how can it be explained fairly, consistently and correctly that I was excluded from the preferential treatment that was given to the two new hires when they were selected as permanent employees, were obviously exempt from the 90 day training on a dead audit, privileged to work comp time and overtime, were able to attend the ICD 10 training, and trained aggressively by a senior auditor within the first day or so of hire using paper audits (the same paper audit training I began for myself when I was waiting for almost 4 months for my HIPAA clearance)-yet they received their training without HIPAA clearance when Ms. Leal stated I couldn t train this way because the HIPAA was required for me-Plaintiff humbly prays this court will grant full relief and to be made whole without reprisal.' (USDC, Appellant's Response to Defendant's Motion for Summary Judgment, Case: 5:17-cv-1280-OLG, Document 22, p. 20, 21, 2018/10/03)

In my response to the Defendant's Motion for Summary Judgment, I

stated:

> 'Disparity is obvious during the May 15, 2013 recordings, when my supervisor told me I couldn't have trained on paper audits like the two hires because I didn't have my HIPAA clearance. The two hires were being trained from their initial hire date with paper audits while they awaited their HIPAA clearance. She humiliated me when she told me I had only coded one or two since June, July, August, September, and I that I didn't complete anymore until October. I had no access during the months she accused me of lacking in my work.' (dckt # 13 , p. 12 of 349). (USDC, Appellant's Response to Defendant's Motion for Summary Judgment, Case: 5:17-cv-1280-OLG, Document 22, p. 6, 2018/10/03)

In my response to the Defendant's Motion for Summary Judgment, I stated:

> The Monday after valentine's weekend, I recall checking Ms. Saenz' report of completed audits by user name, and learned that she had completed a total in the low 50's for that Friday just before that Saturday, February 14, 2013 the day Ms. Leal, our supervisor allowed her to work comp/over time. Ms. Leal also stated that meeting productivity is a requirement to work overtime/comp time. Ms. Saenz, had only been on the job working the live audit for two weeks. Prior to her clearance, she was able to train on paper audits unlike me. I believe the paper audits were utilized by the senior auditor because that's how I began to train myself to learn the job. My paper questions were used as failure for me when the trainer graded the questions and gave me a 67%. During the 30-60-90, I questioned the grading method because of this 67%. Neither of the two hires went through a 30-60-90. Most discriminatory, I never had an initial evaluation. The questions from my paper audit were not my initial. The burden of proof remains for the agency to produce the initial evaluation. (dckt # 13 , p. 39 of 349) (USDC, Appellant's Response to Defendant's Motion for Summary Judgment, Case: 5:17-cv-1280-OLG, Document 22, p. 9, 2018/10/03)

In my response to the Defendant's Motion for Summary Judgment, I

In the Defendant's Motion for Summary Judgment, it is stated:

> 'To state a *prima facie* case of and national origin discrimination, Plaintiff must prove that: (1) she is a member of a protected class; (2) she was qualified for her position; (3) she suffered an adverse employment action; and (4) similarly-situated employees ***outside*** her protected class received better treatment, or she was replaced by a person ***outside*** her protected class. *McCoy v. City of Shreveport*, 492 F.3d 551, 556 (5th Cir. 2007); *Toronka v. Cont'l Airlines, Inc*, 411 F.App'x 719, 723 (5th Cir. 2011). Even where Plaintiff's case concerns adverse employment actions, judgment should be entered for Defendant because Plaintiff cannot produce any evidence to support the fourth element of a *prima facie* case. *Celotex Corp.*, 477 U.S. at 322. (USDC, Defendant's Motion for Summary Judgment, Document 21, p. 4, 2018/09/26).

In the Defendant's Motion for Summary Judgment, it is stated:

> 'As to the first non-selection, Plaintiff was already performing poorly at her current job. The second and third non-selections occurred because she was not qualified for the positions for which she applied. Finally, she was terminated because of her consistently poor performance on the job. Because Plaintiff has no evidence of pretext (let alone "substantial evidence"), judgment should be entered for Defendant. *Nasti*, 492 F.3d at 593; *Auguster*, 249 F.3d at 402-403.' (USDC, Defendant's Motion for Summary Judgment, Document 21, p. 8, 2018/09/26).

My question pertaining to the PIP assignment was punitive and reprisal after my 140 physician workstation errors but all auditors marked them differently. During the AJ hearing during the Report of Investigation, Administrative Judge Hearing, Office of Federal Operations, US District Court and lastly US Court of Appeals. I. In the USCA. The following facts are material to this question presented: USDC, OFO, AJ Hearing.

stated:

> I didn't feel safe in my work environment to even directly meet with Ms. Leal. To answer my questions, I requested her written word over her spoken word. She had a tendency to be inconsistent. I told her that the two new hires shouldn't be preferred and exempt from the 90 day dead audit training. The oppressing stipulations placed on me were very unfair. (dckt # 13 , pp. 158-162 of 349). (USDC, Appellant's Response to Defendant's Motion for Summary Judgment, Case: 5:17-cv-1280-OLG, Document 22, p. 13, 14, 2018/10/03)

My question pertaining to USCA's dismissal of my prima facie facts about termination and nonselection and failure to question why the USDC cited only one comparant rather than two as raised during all levels of the proceedings of my case during the Report of Investigation, Administrative Judge Hearing, Office of Federal Operations, US District Court and lastly US Court of Appeals. I. In the USCA. The following facts are material to this question presented: USDC, OFO, AJ Hearing

USCA 5th Circuit stated:

> 'Even if this court were to accept Watson's assertions that she has established a prima facie case of discrimination, she still fails to rebut the Army's reasons as pretextual. The Army made clear to Watson that her performance was subpar, and it offered her ample opportunity to meet its required thresholds. Yet she repeatedly failed to meet preestablished accuracy standards, as evidenced by her assessments and performance on her PIP. Her shortcomings provide a nondiscriminatory explanation as to both the Army's decision to terminate her employment and its decision to hire other candidates for the various positions to which she applied. Because Watson offers no evidence to rebut the Army's reasons, summary judgment is appropriate.[11]' (USCA, USCA 5th Circuit Affirms USDC summary judgment, document 00515223446, p.4, 2019/12/04)

USCA 5th Circuit stated in footnote 11, 'Watson admits in her brief that the Army explained to her she was terminated "because [she] failed the PIP" without explaining how the reason was pretextual. (USCA, USCA 5th Circuit Affirms USDC summary judgment, document 00515223446, p.4, 2019/12/04)

USCA 5th Circuit stated in footnote 1, 'Watson underwent three performance reviews but never achieved the required accuracy standard of 93% on her assessments. She fared no better in her "live" audit; amongst the litany of errors committed, she incorrectly copy-and-pasted a generic error message 140 times.' (USCA, USCA 5th Circuit Affirms USDC summary judgment, document 00515223446, p.2, 2019/12/04)

USCA 5th Circuit stated, 'While Watson points to several incidents that she believes establish harassment, she fails to show how these incidents-such as not being able to attend a training and being placed on a PIP-were tied to her race.' (USCA, USCA 5th Circuit Affirms USDC summary judgment, document 00515223446, p.5, 2019/12/04)

In my petition for panel hearing/rehearing en banc, I asked for reconsideration of the concise statement under item 6: 'Physician Station Workstation Errors was common to all auditors. I was the only auditor punished with the PIP.' (USCA 5th Circuit , APPELLANT'S PETITION FOR PANEL HEARING/REHEARING EN BANC, P 2, 2019/12/17)

In my petition for panel hearing/rehearing en banc, I asked for reconsideration of the concise statement under item 5: 'Employee counsel representative Mr. Henry stated that an employee who feels threatened will produce little. He also agreed to testify if subpoenaed. The PIP was an adverse action while participating in a protected EEO activity.' (USCA 5th Circuit , APPELLANT'S PETITION FOR PANEL HEARING/REHEARING EN BANC, P 2, 2019/12/17)

In the magistrate's R & R, it is stated, 'Therefore, Watson's placement on a PIP bcannot constitute an adverse employment action to support her retaliation claim. *See Jackson, 601 Fed. App'x at 286.* Thus, the only two acts of which Watson complains which could constitute an adverse employment action for purposes of her retaliation claim are Watson's termination and Defendant's failure to hire her for a permanent position. (USDC, USDC Magistrate's R & R, p. 15, 2019/02/26)

In my Response to the Defendant's Motion for Summary Judgment, I stated:

> 'Ms. Leal left a note on my desk for me to come and see her while I was at a meeting with Mr. Henry, EAP director. I met with employee counsel to seek guidance about the questions concerning the reassignment on March 1, 2013. Ms. Leal was sweating bullets meaning her neck was visibly red. She was so obviously nervous. Had no idea this would be a PIP notification. I honestly and literally thought she was calling me in for the physician workstation errors of which my site had about 140 errors. Again, these physician workstation errors applied to all the auditors on my team, but I was the only person who was called out. I marked them as was advised by a senior auditor Ms. Gonzalez. Ms. Gonzalez's email on how to mark the physician workstation is documented in her email attached. Literally the 140 errors were not my fault. I marked them as was advised. (dckt # 13, pp 147-148 of 349) (dckt # 13 , p. 182

constantly compared me to the other auditors when I was the only auditor on a PIP and was subject the May audit (dead audit). She asked what does my PIP dumps & PIP blues feelings have to do with my productivity. She justified it by saying we are all auditors in the same job description, but I was the only auditor doing something totally different. {Dckt #13, p. 1 of 349 & p. 11 of 349) (USDC, Appellant's Response to Defendant's Motion for Summary Judgment, Case: 5:17-cv-1280-OLG, Document 22, p. 6, 7, 2018/10/03)

I was the only auditor removed from the live audit on March 1, 2013 after multiple physician workstation errors occurred at one of my assigned sites in California I believe. It wasn't that the occurrence of errors was unique to just me, but this particular site had so many. All of the auditors had physician workstation errors. I marked the error as Ms. Gonzalez, a senior auditor had advised. This was a common denominator to all auditors but I was the only auditor removed from the live audit. I really felt bad. The two hires weren't required to work the dead audit. Neither were they required to complete a 30-60-90) (dckt # 13 , pp. 26-28 of 349) (dckt # 13 , p. 182 of 349)

I anticipated testimony from all my peers about the Physician Workstation Errors. All of the auditors had these errors. (dckt # 13 , pp. 120-130 of 349) I felt singled out when Ms. Leal removed me from the live audit on March 1 because of this. No other auditor was removed from the live audit due to the physician workstation. I'd been asking about the physician workstation training that she promised all throughout the PIP. I literally thought that the physician workstations issue was the reason she called me in her office, but it was something serious and harsh-the PIP. I'd informed Ms. Leal via email that I'd filed a formal EEO. I knew she wasn't okay with that because she told me that I should report to her office immediately. I discussed with former counsel that my amendments pertaining to the recordings of the two May meetings were omitted and may not be considered for

of 349). (USDC, Appellant's Response to Defendant's Motion for Summary Judgment, Case: 5:17-cv-1280-OLG, Document 22, p. 15, 2018/10/03)

In my Response to the Defendant's Motion for Summary Judgment, I stated:

> 'My feelings/responses about the PIP assignment is attached. Regardless to the proximity of the PIP assignment to my formal EEO complaint filing, it happened and it's real. Why would management assign a PIP 9 days after I filed an EEO due to performance when after the 90 days, better yet - after the 67% so called initial performance failure back in October and/or December seemed the more likely and reasonable time for such a ridiculous assignment. If the PIP was so pure & not piss-in my opinion, and was intended to truly help me, why didn't the agency allow me a chance to review weeks 8 and 9 before they wrongfully terminated me causing both my daughter and me unquantifiable losses and sufferings. Please note that comments of my review of weeks 8 and 9 are clearly absent from page 278 of 349. (Dckt #13 , pp. 267-280 of 349). (USDC, Appellant's Response to Defendant's Motion for Summary Judgment, Case: 5:17-cv-1280-OLG, Document 22, p. 17,18, 2018/10/03)

In my Response to the Defendant's Motion for Summary Judgment, I stated:

> 'My supervisor expected me to produce and work in hostile work environments when she exclaimed 'regardless if it was the May audit or the live, I still wanted you to show me that you could do the audits'. During the same recording (May 15, 2013 meeting} she indicated that the PIP scores didn't tell her anything about my needs or the lack when she stated 'Because from here, I couldn't tell if you needed training on E/M, on the CPT or the ICD. It was like it fluctuated a lot.' (dckt #13 , p. 12 of 349). (USDC, Appellant's Response to Defendant's Motion for Summary Judgment, Case: 5:17-cv-1280-OLG, Document 22, p. 5, 2018/10/03)
>
> Harsh work environment & feelings of alienation surrounding the PIP existed when my supervisor

declaration. (dckt #13 pp. 35-36 of 349) (USDC, Appellant's Response to Defendant's Motion for Summary Judgment, Case: 5:17-cv-1280-OLG, Document 22, p. 6,7,8, 2018/10/03)

In my Response to the Defendant's Motion for Summary Judgment, I stated, 'The EAP (employee assistance) Director, Mr. Henry, responded to me that an employee will produce little when they feel threatened. I expressed these concerns to him after being placed on the PIP. He also agreed to testify on my behalf regarding this if needed.' (dckt # 13 , pp. 108-110 of 349) (USDC, Appellant's Response to Defendant's Motion for Summary Judgment, Case: 5:17-cv-1280-OLG, Document 22, p.11, 2018/10/03)

In my Response to the Defendant's Motion for Summary Judgment, I stated, 'Unfair working environment experienced during the PIP when Ms. Leal refused to grade me on a random sample as the PIP stated. Instead she graded me on 100% of everything I audited.' (dckt # 13, pp. 152-155 of 349) (USDC, Appellant's Response to Defendant's Motion for Summary Judgment, Case: 5:17-cv-1280-OLG, Document 22, p.13, 2018/10/03)

The ICD 10 training was never based on productivity. USCA 5th Circuit stated, 'While Watson points to several incidents that she believes establish harassment, she fails to show how these incidents-such as not being able to attend a training and being placed on a PIP-were tied to her race.' (USCA, USCA 5th Circuit Affirms USDC summary judgment, document 00515223446, p.5, 2019/12/04)

In my petition for panel hearing/rehearing en banc, I asked for reconsideration of the concise statement under item 7:

> 'ICD 10 training was not based on productivity when it was promised to me in early 2012. It was not until the nonselection of a permanent position in early 2013 while I was already under a bogus 30-60-90 that was allegedly justified after I failed a so called initial that to date still has not been substantiated by the agency.' (USCA 5th Circuit, APPELLANT'S PETITION FOR PANEL HEARING/REHEARING EN BANC, P 2, 2019/12/17)

In my response to the Defendant's Motion for Summary Judgment, I stated:

> 'As for the training, I'm glad the agency agrees that they allowed the Ms. Saenz and Ms. Maria Gomez to attend the training in Dallas. This admits their wrongdoing for the simple fact I wasn't allowed to go. This was not fair. All of the other Hispanic or Caucasian employees were allowed to go to other places, i.e. Colorado, California, etc. earlier in 2012 prior to my coming. I'd asked about going but wasn't allowed. The only other African American female in the department received her training prior to being hired at PASBA. '(USDC, Appellant's Response to Defendant's Motion for Summary Judgment, Case: 5:17-cv-1280-OLG, Document 22, p4, 2018/10/03)

In my response to the Defendant's Motion for Summary Judgment, I stated:

> Administrative judge stated that my degree was higher than the two new hires. This was not the combustion of my complaint. It was because I felt they shouldn't have been preferred over me since I was already there and had already gained knowledge of the job. It was also wrong that they were allowed to attend the ICD 10 training in Dallas. Because it happened for them and not me, prove the disparity regardless if there were funding or not. Ms. Leal indicated I couldn't go due to the lack of funding. (Dckt # 18 , p. 45 of 74) '(USDC, Appellant's Response to Defendant's Motion for Summary Judgment, Case: 5:17-cv-1280-OLG, Document 22, p. 6, 2018/10/03)

> going to terminate you Ms. Watson, but I don't plan on doing that.' Subsequently in a second May 2013 meeting, she denied she ever said that stating it's no longer in her hands.' (USCA 5th Circuit, APPELLANT'S PETITION FOR PANEL HEARING/REHEARING EN BANC, P 2, 2019/12/17)
>
> In my petition for panel hearing/rehearing en banc, I asked for reconsideration of the concise statement under item 4: 'Two Peer testimonies were never allowed after former counsel stated they could before the AJ after he sneakingly removed over 30 of my complaints that paralleled with the recordings..' (USCA 5th Circuit , APPELLANT'S PETITION FOR PANEL HEARING/REHEARING EN BANC, P 2, 2019/12/17)

USDC Order Adopting R&R stated, 'The Court has conducted an independent review of the entire record and the applicable law and a *de novo* review of the matters raised in Plaintiff's objections.' (USDC, USDC Order Adopting R&R, p.1, 2019/03/18) USDC Order Adopting R&R stated:

> The majority of Plaintiff's objections largely rehash substantive arguments that were made in the prior briefing to Judge Chestney.[1] Compare docket no. 28 pp. 4-11 with docket no. 22 pp. 3-20. Judge Chestney's R&R correctly addressed those arguments and explained in detail why Plaintiff's claims for discrimination, retaliation and hostile work environment each fail as a matter of law. See docket 26. The Court has conducted a de novo review of the record and the underlying law, and the Court has arrived at the same conclusions. Accordingly, the Court adopts Judge Chestney's findings and conclusions of law with respect to each claim. (USDC, USDC Order Adopting R&R, p.2, 2019/03/18)

USDC Order Adopting R&R stated:

> 'The Court notes that Plaintiff's objections also contain details regarding Plaintiff's difficulties over the past several years, and the Court does not wish to minimize those difficulties. See docket no. 26 pp.1-2. However, the Court's sole duty is to address the legal merits of Plaintiff's claims in light of the evidence in the record, and having done so in this case, the Court agrees that plaintiff's claims fail as a matter of law.

In my response to the Defendant's Motion for Summary Judgment, I stated:

> 'I initially asked supervisor, Mr. Allen during August 2012 about attending the ICD-10 training. I later reminded him. In January 2013, I asked Ms. Leal, she told me know. When I questioned why I was not allowed to go she stated it was due to lack of funding. Two hires were allowed to go without reservation. They never completed any kind of training on a dead audit, only the live audit. Neither were they required to complete a 30-60-90 for their initial training. I was told early December by Mr. Allen at the end of my 60 day evaluation (early December) that Ms. Leal wanted to place me on a PIP. (dckt #13, pp. 131-136 of 349)' (USDC, Appellant's Response to Defendant's Motion for Summary Judgment, Case: 5:17-cv-1280-OLG, Document 22, p. 12, 2018/10/03)

There were Nine Recordings and a partial transcript considered vs. Eleven Recordings that should have been considered. USCA 5th Circuit stated:

> 'Lastly, Watson argues the district court erred in denying her motion to reconsider "[W]hen the district court denies a motion to reconsider a grant of summary judgment, but, in doing so, considers any materials attached thereto and still grants summary judgment, our review is de novo, as those materials become part of the summary judgment record. "[18] Watson argues the district court improperly excluded recordings, which validate her claims. These recordings, however, do not support Watson. If anything, the tapes provide further evidence that the Army's reasons for her termination were not pretextual. The district court properly rejected Watson's motion to reconsider.' (USCA, USCA 5th Circuit Affirms USDC summary judgment, document 00515223446, p.6, 2019/12/04)

In my petition for panel hearing/rehearing en banc, I asked for reconsideration of the concise statement under item 3:

> ' No Recordings for the one hour plus meetings. Former supervisor, Ms. Leal, stated on one recording 'you think I'm

> According, Defendant is entitled to summary judgment.' (USDC, USDC Order Adopting R&R, p.2, 2019/03/18)

In my response to the Defendant's Motion for Summary Judgment, I stated:

> Hard copy recordings were provided to former counsel on Monday, September 8, 2014. (Dckt # 18 , p. 25 of 74) The email dated 9/5/14@ 08:45 proves that the recordings, which paralleled to almost 30 complaints and which were removed by former counsel and the agency without my consent, would be added. Former counsel stated in the email dated 9/4/14 @1:56 'send hard copy to me, 1777 NE Loop 410, Suite 600, San Antonio, TX 78217, I will forward it to them as a part of your responses.' (Dckt # 18 , p. 55 of 74) My supervisor asked me during the May 15, 2013 recording, if I think she will demote me/terminate me? She added. I don't even plan on doing that. (dckt # 13 , p.6 of 349) Supervisor contradicted her belief in my ability to do the job during the May 15, 2013, recording when she indicated I know you can do that job but you're not meeting me half way. (Dckt #13 , p. 4 of 349) On p. 5 of 349, she stated 'I don't have confidence in you that you can do it.' (USDC, Appellant's Response to Defendant's Motion for Summary Judgment, Case: 5:17-cv-1280-OLG, Document 22, p4, 5, 2018/10/03)

In my response to the Defendant's Motion for Summary Judgment, I stated, 'I felt horrible when I learned that the agency had removed 28 of my formal complaints. The 28 paralleled with the recordings from May 15, 2013 @ 3:03 pm (1 hour, 11 mins, 39 seconds) and the May 31, 2013 @ 2:35 pm (38 minutes, 13 seconds) meetings held with my supervisor Ms. Leal. The memo is dated November 8, 2013.' {dckt # 13 , pp. 17-21 of 349) (USDC, Appellant's Response to Defendant's Motion for Summary Judgment, Case: 5:17-cv-1280-OLG, Document

22, p. 7, 2018/10/03)

In my response to the Defendant's Motion for Summary Judgment, I stated:

> My 28 amendments were put back per memo dated 1/27/2014. It was not fair that I couldn't testify concerning these at the AJ hearing. Most of all, it was totally unfair for my former counsel to say that I could easily testify to those meetings without them being listed as amendments and agreed with the agency for their removal. Contrastingly enough, I was told I could testify per my former counsel's email, but when I actually tried to testify at the AJ hearing, he whispered to me that I can't testify about that. I was totally shocked and perplexed that my counsel had not presented the recordings as evidence and I didn't know of this until the day of the hearing. I went through so much as a homeless and unemployed person that it was a strain just to find media and postage to express mail these recordings and they were ignored on all levels. The agency was provided a copy as well. (dckt # 13 ,p 36 of 349 &pp. 58-60 of 349). (USDC, Appellant's Response to Defendant's Motion for Summary Judgment, Case: 5:17-cv-1280-OLG, Document 22, p. 9,10, 2018/10/03)

In my response to the Defendant's Motion for Summary Judgment, I stated:

> Ms. Leal assured me per the recordings from the May 15, 2013, meeting, that she planned to neither demote me nor terminate me. When I asked her in the May 28, 2013 meeting, she denied every saying that. She also stated that both the May audlt (dead audit) and the live audit were equally important; yet, I was the only single auditor working the dead audit throughout the 30-60-90, the March 1, 2013 reassignment, and during the PIP.' (dckt # 13 , pp. 141-143 of 349) (USDC, Appellant's Response to Defendant's Motion for Summary Judgment,

an adverse action, but the termination and nonselection could constitute for retaliation purposes. USDC said termination, denial of leave, and nonselection could constitute an employer's adverse action on a discrimination claim. The Defendant's motion for summary judgment, that was ultimately granted and affirmed by both USDC and USCA, stated that only the termination and nonselections claims were supported for discrimination analysis. This is an obvious conflict. USDC stated that a PIP is not an adverse action for retaliation claims, only the termination and nonselection. How CAN anyone not see that the PIP was purely reprisal based on my race? It didn't happen to any other auditor. All auditors made the physician workstation errors. The assignment date of the PIP and the behavior of management towards my protected activity are coincidental for a reason. Why would management punish me after I was praised by a senior auditor, Ms. Shears for my live audit participation in the mediation? Defendant also stated that Plaintiff cannot produce any evidence to support the fourth element of a prima facie case. *Celotex Corp., 477 U.S. at 322.* As I understand EEO is a protected activity, but my understanding is void as to why the Defendant believes that both Ms. Saenz, and Ms. Gomez, who received better treatment than me, (i.e. selected for permanent positions, able to work comp time during Valentine's weekend 2013 without making productivity, exempt from training on a dead audit, exempt from having HIPAA clearance before training, provided training aggressively on day 1 of hire with the paper audits, ICD 10 training, etc) **who were not under an EEO protected activity,** defeats the meaning of my proffered text

Case: 5:17-cv-1280-OLG, Document 22, p. 12, 13, 2018/10/03)

DIRECT AND CONCISE ARGUMENT AMPLIFYING THE REASONS RELIED ON FOR WRIT ALLOWANCE

The USCA stated that I failed my initial quality assessment, given 90 days, then placed on a PIP. USCA stated that Defendant's legitimate and nondiscriminatory reason for firing me was the alleged subpar performance. USCA stated that the summary judgment is appropriate because no genuine dispute of material fact exists. The USCA agreed with the USDC basis for the summary judgment due to my inability to establish a prima facie case and the failure to rebut the Defendant's nondiscriminatory reason as pretextual. USCA stated 'To survive summary judgment, Watson must show the alleged harassment was "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." USCA stated that I wrote in my brief that the Army explained that I was terminated 'because I failed the PIP' without explaining how the reason was pretextual. USCA stated that I never achieved the required accuracy standard 93%.

Per the March 18, 2019, USDC Order, The Court claimed to have conducted an independent review of the entire record. It is stated in footnote one that my transcripts of the recordings (not particularly the partial transcript of one of the hour plus meeting with supervisor) were considered.

USDC referenced my initial coding results from the Quality Assurance as the true basis for the alleged performance issues. USDC stated that a PIP cannot constitute

that the decision to terminate me based on performance is still discriminatory and based on my race. How is it lawful for the USDC to grant the Defendant a summary judgment based on performance issues and conclude that I failed to establish pretext? Discriminatory how?--Because there nondiscriminatory reason of terminating me is based on my alleged failure performance after that phony initial, after that phony 90 day plan, after that illegal PIP. There is no justice in the summary judgment when everything that has happened to me was a trickle down hot mess affect from everything that didn't happen for me as everyone in management has provided sworn statements that all new auditors are given 30 audits for a QA assessment-this is called an initial QA assessment. This applied to all auditors except me. I never had an initial. I am asking the Supreme Court to help me decipher, because I'm truly not understanding why I'm fired today, can't get a job after 7 years, was subject a bogus initial, bogus 90 day that was based on a bogus initial, placed on a bogus PIP that was based on the former-yet there is no proffered text from the agency for their 'nondiscriminatory decision-performance'. Yet, the Defendant is covered by both Courts in that they fired me 'CORRECTLY?" There is no correctness in what was done to me since the alleged failure of the so called initial QA all the way throughout and up to the wrongful termination based on this BOGUS, PHONY, ILLEGAL so called initial. This simply means there is really nothing else to talk about until the agency proffers. It's very confusing that both USCA and USDC never asked the Defendant to provide the initial since I've spent a lot of borrowed money and time to get my concerns fixed through their

courts, but USDC can take time to reference the Defendant's comments that based on Watson's initial coding results from the QA [Her performance marked as Fails had she been under standards.] Let that sink in for a minute. Sounds a bit presumptuous right? To correct this manifest error or law due to this genuine and relevant issue is sincerely appreciated. Truth 'real talk'-Everything after that so called initial, including that 90 day, the PIP, nonselections, and the termination should be considered moot. If the burden of the so called initial was correctly assumed by the obviously guilty party, then there wouldn't be a page 1 of this writ to include questions 2 through 8'. I asked for it just a few days after it happened. An obvious breakdown in communication exists within the Army concerning my initial. The record speaks for itself concerning this. Even in the Defendant's brief, they weren't certain what an 'initial' is. To cause all this pain and suffering on my life for the justification of all these adverse actions is just wrong. It's further asinine that the Agency doesn't proffer any reasons for the lack of this critical piece but feels entitled to this injustice. I have proffered that this nondiscriminatory claim is discriminatory and adverse due to my race and caused unnecessary duress on my life through hostile working environments, nonselection, disparity in the comp time and and so much more, ultimately termination-as pretext and the Agency inspite of their saying it was the nondiscriminatory performance is still discriminatory and it shouldn't have happened. Since performance is what both USCA and USDC agreed, where is the evidence upon which the failed performance is based-SO CALLED INITIAL. After almost 7 years (I'm fastly approaching 22

The USDC said I didn't allege any change in the level of responsibility. USCA didn't answer these concerns either. I was uprooted from the live audit to work the dead audit after the 140 physician workstation errors. Why would management do this except for my race? No other auditor experienced this. I wish I could understand the swift demotion from the live audit to the dead audit after the March 7, 2013 reassignment. EEO formal complaint was filed around March 19, 2013. All of a sudden a rushing mighty wind of a PIP came on or around March 28, 2013. ?????

District Court said I didn't' specify a comparator with respect to denial of leave allegations. What's hard to understand my allegation of the denial of comp time? Both Ms. Saenz and I wanted to work comp/overtime the weekend of Valentines 2013. She was allowed. I was not. This is a specification to the denial of leave. If it was totally based on required productivity, why then was Ms. Saenz, and not me, allowed to work. The CARA productivity report proves this. Why haven't the agency proffered a true nondiscriminatory reason for disallowing me to work comp time? District Court just stated the documents wouldn't be provided. Why is it that the USCA didn't require the agency to provide this? This is not new evidence that was not present at the time of the summary judgment. I don't understand. This example proves prima facie. Ms. Saenz was not better qualified than me for the selection because she and I both came from two different VA facilities. She had a two year certification, RHIT. I had a 4 year certification, RHIA. She had an outpatient coding certification, CCS-P. I have a CCS certification which is for both

years of federal service come May 1, 1998), needless to say, my family and I are grossly exasperated and almost wretched since that sad day in 2013 when I lost my job over nothing. 'Nothing' here, literally means, nothing-NO Initial QA. I'm open to settlement, and would respect the consideration of relief as listed. As before: a) Reinstatement with clean SF-50 into a promoted GS 0669 MRA- Medical Record Administrator grade 13/14) Title 6 with a minimum annual salary of $105,000 or more based on the steps within grade increases based on SAA, special advance and achievement (B.S. Health Record Administration, RHIA and CCS certifications equals a step each), recognition of years of experience (i.e., 5 years equals one step); b) With immediate option for retirement with full benefits due to this involuntary separation; c) Service year pins for 15 and 20 years of service as well as the appropriate certificate of awards for the respective years and retirement award to be mailed to the address contained; d) Sick leave accrued balances should count toward retirement years; e) Annual leave accrued balances should be a separate check of deposit to the last DFAS direct deposit payroll account on file; f) Lost/Front pay with interest from termination date to date prior the first anticipated deposit date for retirement pay; and g) Nonpecuniary damages is requested to parallel with twice the amount of Lost/Back Pay with Interest and/or the maximum for Texas nonpecuniary damages (last I researched it was $750,000) whichever is greater. I prefer direct deposit of all the above relief items as appropriate, and a paper copy along with the W2 to be mailed to the address contained.

outpatient and inpatient coding. Both Ms. Saenz and. Gomez where allowed to work the paper audits during the first day of hire without the required HIPAA clearance. The recordings from the two hour plus meetings prove Ms. Leal told me I couldn't train on paper audits without this clearance. Ms. Gomez was not researched and identified as the comparator by neither USCA nor USDC. She may not have appeared on the hiring record, but please believe she was hired over me and guess what? She had neither a bachelor's degree nor a certification similar to Ms. Saenz or me. She was a CPC, certified procedural coder, which does not require a degree at all.

USDC stated when the hiring decision was made [Watson's performance was rated as failing already.] This shouldn't have had any bearings on my being selected or not. The 90 day was unconstitutional and a direct violation of my civil rights. The agency based their decision to place me on a 90 day, PIP, termination because they said I failed my so called initial QA. I've asked this ridiculously too many times and what....ECHO!!

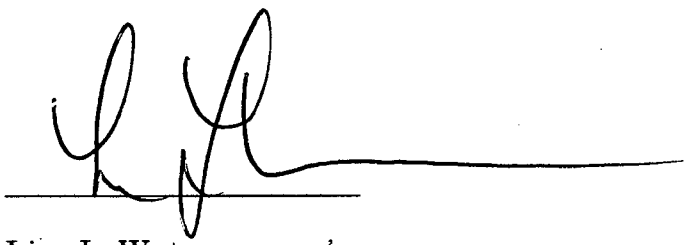
USDC stated that an independent review of the entire record was accomplished in their Court. This statement contradicts with reality. There were 11 recordings total. The two over a hour long recordings were not available to me at the time of summary judgment due to losses. However, they were available to the Defendant. There was a partial transcript of one of the over an hour meetings present. I feel that it was only right for USDC and USCA to listen to all 11 recordings. USCA requested from USDC the USB drive that contained the 9 recordings only, and

made an impartial and unfair decision to dispute all of my recordings when they in fact had not listened to all of them.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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Date: 4/13/2020