

APPENDIX G
IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Mng Wei

Petitioner

v.

**Pennsylvania State Civil Service
Commission (Department of
Health)**

Respondent

No. 1321 CD 2018

APPLICATION FOR RECONSIDERATION

Peruse Rule 2543, the Petitioner Ming Wei (“Wei”) respectfully requests that this Court grants a reconsideration of the Order Entered on May 9, 2019 affirmed the Order of the State Civil Service Commission (“Commission”), Wei requests reconsideration for the following reasons.

I. Concision statement

1. Rule 2543 (2) held “Where the court has overlooked or misapprehended a fact of record material to the outcome of the case” could be the reason for the application for the reconsideration. Wei believes the Court to overlook or misapprehended the facts and records material to the outcome of the case: A) The Court stated that the Civil Service Act and GRAPP required to file the reconsideration (or rehearing) with the knowing relevant documents for the initial Commission decision. Indeed, Wei

filed the reconsideration with some key evidences for the initial Commission's adjudication. However, the Commission denied his request after careful consideration. B). The Commonwealth Court held that PADOH didn't admit it never assigned Wei to convert HARS HIV/AIDS data yet. However, PADOH wrote "PADOH never asked Ming Wei to convert HARS data". HARS data is the abbreviation of HARS HIV/AIDS data. Indeed, PADOH never showed any record that it ordered Wei to convert the HARS HIV/AIDS data. C) The Court stated that "Wei failed to explain how the Department's business records upon which he now relies were not available to him at the time of original proceeding before the Commission", however, Wei explained the reasons in his brief.

II. Arguments

A) The Court stated that the Civil Service Act and GRAPP required to file the application of the reconsideration (or rehearing) with the knowing relevant documents for the initial Commission decision and let the Commission to consider.

Nevertheless, Wei filed an initial reconsideration in 2008 to the Commission and stated "PADOH never assigned me to convert HARS HIV/AIDS data files", the Commission stated that it reviewed all information including the attached documents and made careful consideration but denied his request (See attached Doc. EE).

As PADOH claimed, it still failed to convert HARS HIV/AIDS data when Wei was terminated. However, it was not Wei's responsibility. Now PADOH claimed that

Commission's decision.

If PADOH didn't falsify that PADOH assigned Wei to convert HARS HIV/AIDS data files as its just cause in its brief to this Court in 2008, the issue should be clear even in 2008 and the Just cause did not exist, Wei must be reinstalled at that time.

Since PADOH never assigned his converting HARS HIV/AIDS data, it should be very hard for Wei to find the evidence that PADOH did not do so. Instead, it was the responsibility of that PADOH to show the evidence to support its just cause. However, PADOH lawyers just insisted in their briefs but never showed any business record to support its just cause of removal.

B) The Commonwealth Court stated "Wei again asserts that the Department admitted in the federal case that he was never assigned the task of converting HARS HIV/AIDS data files. We specifically rejected this argument in *Wei III* and we do so again here for the reasons articulated in *Wei III*".

However, PADOH wrote "PADOH never asked Ming Wei to convert HARS data to PA NEDSS" to respond to Wei's material fact. According to the common civil law, failure to submit a responsive statement that controverts the material facts submitted by the moving party permits the Court to deem those material facts admitted. Fed. R. Civ. P. 56(e)(2).

First, as this Court considered in *Wei3*, the HARS acronym refers to the "HIV/AIDS Reporting System", since the HARS was exclusively for HIV/AIDS

data, it is undisputable that HARS data is the abbreviation of HARS HIV/AIDS data.

Second, the pathway to collect HIV/AIDS cases was: raw HIV lab reports → potential cases (pre-HARS cases) (Doc. E, p7, 2017) → Investigation by field offices → HARS data with quality control by the data management. In general, HARS data were the end products, no further conversion for HARS data is needed.

Because PADOH decided to use PA-NEDSS under Bureau of Information Technology (“BIT”) to replace HARS as its active HIV/AIDS database since 2004, to put all HARS data into PA-NEDSS became necessary. Then PADOH asked BIT to convert HARS data into its PA-NEDSS by itself for a unified database, PADOH had the business record for this task (Doc. B, p13, 2017).

In the federal court, PADOH also claimed: because Philadelphia didn’t join PA-NEDSS but continued to use HARS as its active database, PADOH ordered several staffers to convert Philadelphia 2006 HARS HIV/AIDS data into PA-NEDSS too. They worked for 4 months and brought only 362 records into PA-NEDSS. Then the work was interrupted because of consuming too many working hours, PADOH also had the business record for this assignment.

Indeed, whether PADOH admitted that it never assigned Wei to convert HARS HIV/AIDS data should not been an issue. The issue is whether PADOH assigned Wei to convert HARS HIV/AIDS data as it claimed to be the just cause of removal. PADOH bears the burden of the proof about its just cause, however,

PADOH never showed any record that it ordered Wei to converted the HARS HIV/AIDS data except that its lawyers wrote PADOH did.

Since PADOH claimed that HARS HIV/AIDS data was still failed to be converted, this was Wei's duty by 2007 and why it terminated Wei from 2008 to 2017 to this Court, this defamation made Wei a scapegoat of its failing to convert HARS HIV/AIDS data. Because of the defamation, Wei not only couldn't be reinstalled for 11 years but also couldn't get any employment for 11 years. PADOH has certainly committed the fraud.

Fraud upon the court is committed when a representative of the court – lawyers, judges, referees – fraudulently present facts to the court that interfere with a just and equitable decision making process. The outcome by fraud is not subject to any statute of limitations to reverse (See *Kenner v. C.I.R.*, 387 F.3d 689 (7th Cir, 1968; and *Bullock v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985).

C) The Court stated that “Wei failed to explain how the Department's business records upon which he now relies were not available to him at the time of original proceeding before the Commission”. However, Wei explained the reasons and even presented some records of that he was unaware of that until the discovery of the federal case.

After Aug. 24, 2007, the date when PADOH orally suspended Wei for an investigation, PADOH disallowed his accessing his PADOH's office any more.

Although PADOH falsified that it didn't receive Wei's Aug 27, 2007 email, it added several words on the top of his email to revoke his access for any PADOH's system on the same day (Doc. BB, 48a). Wei has written followings in his last Petitioner Brief:

"42. Then, PADOH sent a termination letter to Wei a week later. However, it didn't start returning Wei's belongings that contained some key emails and documents until June 2009 though Wei repeatedly requested the returning".

"44. PADOH in Nov. 2007 filed a Motion to Quash Subpoena in part and for a Protective Order in which it not only refused to release the key documents that Wei subpoenaed but also claimed Wei wasn't allowed to present these relevant documents to the hearing (Doc. A, ¶52). PADOH also refused to exchange evidence with Wei, many key documents that Wei filed in his motion to reopen could not be obtained to be presented to the 2007 Commission hearing".

"46. During the discovery in a federal case, Wei received that PADOH's admission that it never assigned HARS HIV/AIDS data to Wei, and many contemporaneous business records that contradict its key testimonies and claims in the initial state process."

"61. Wei in this motion specifically identified a sample of the documents that Wei didn't know their existence at the time of the initial hearing in his third Motion paragraphs 49-54 (a-f) [Doc. AA, 17a-18a]. Wei stated the following paragraphs in

the motion:....”

By the way, Wei noticed this Court wrote “Wei does not understand that this Court lacks access to the referenced entries on the docket in his federal case and, because he has not provided them, these statements consist merely of bald allegations lacking support” *Wei*3. Wei would explain in here, Wei originally filed the third motion before the Commission, both PADOH and the Commission were the Defendants and could access all documents of his federal case, however, they didn’t respond to these statements. Therefore, these statements deemed admitted. Wei just wanted avoiding the redundancies by unadding the real documents when he filed them to this Court.

III. Conclusion

Because the Court overlooked or misapprehended some facts of record material to the outcome of the case, the case should be reconsidered.

Respectfully Submitted:

/s/Ming Wei
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05/21/2019

COMMONWEALTH OF PENNSYLVANIA
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MARWAN KREIDIE
Chairman

JAMES W. MARTIN
Commissioner

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STATE CIVIL SERVICE COMMISSION

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April 3, 2008

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Mr. Ming Wei
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RE: Ming Wei v. Department of Health
SCSC Appeal No. 25485

Dear Mr. Wei:

The State Civil Service Commission, at a regular meeting, reviewed all information presented by you on your Request for Reconsideration and any attachments or additional documents. The Commission, after careful consideration, hereby denies your request and reaffirms its previous Order.

Sincerely,

A handwritten signature in black ink, appearing to read "Marwan Kreidie".

Marwan Kreidie
Chairman

MAILED: April 3, 2008

cc: Tanya C. Leshko, Esquire
Sheryl Cebular
Pam Yetter

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