

19-1393

No. 19-1739  
( 3:19-cv-00044-MOC-DSC )

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IN THE  
SUPREME COURT OF THE UNITED STATES

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ORIGINAL

Rachelle Davis,

Petitioner,

vs.

American Airlines , Inc. et. al,

Respondent .

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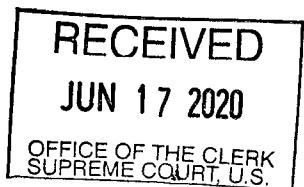
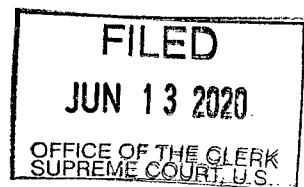
On Petition for a Writ of Certiorari to the  
the United States Court Of Appeals  
for the Fourth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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Rachelle Davis  
Pro Se Litigant / Petitioner  
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## QUESTIONS PRESENTED

- I ) Does protection against retaliation apply even if the original complaint or charge was untimely or was found to lack merit when initiated by the same actor but different retaliatory conduct ;  
Did the Appeals Court ERR , in holding that this action is timely-barred by its charge of Retaliation when originally included within the scope of the Plaintiff's right to file a Federal lawsuit determined by the charge 's content .
- II) When an employer has an ONGOING obligation to provide a reasonable accommodation and failure to provide such accommodation constitute a violation each time the employee needs it ;  
When applying the statute of limitations , when is a claim timely-barred when there remains a need for an accommodation that has yet to be provided ;  
Must a plaintiff file a second EEOC charge in order to judicially pursue a timely claim when there is already NOTICE of an employee's desire for an accommodation to remain employed in some capacity .
- III) Did the Appeals Court ERR in dismissing this Pro Se complaint as timely-barred without allowing the opportunity to present evidence of a timely discrete act and an act of retaliation that would allow proof of a set of facts that would entitle relief to this claim , when the law requires the Court to read Petitioners' pro se complaint , indulgently .
- IV) Did the Appeals Court ERR in dismissing this claim as timely-barred , when a timely charge may also challenge related incidents that occur after a charge is filed , as within this complaint .

## LIST OF PARTIES

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

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

American Airlines , Inc . - Respondent  
Mark Moscicki - Respondent  
Terry Dix - Respondent  
Michelle Magee - Respondent

Rachelle Davis. - Petitioner

## DISCLOSURE STATEMENT

Petitioner Rachelle Davis case no. 19-1739

(3:19-cv-00044-MOC-DSC makes the following Rule 29.6 Corporate disclosure statement ;

- 1) Is the party a publicly held corporation or other publicly held entity ? NO
- 2) Does the party have any parent corporations ? NO
- 3) Is 10% or more of the stock of a party owned  
by a publicly held corporation or other publicly  
held entity ? NO
- 4) Is there any other publicly held corporation or  
other publicly held entity that has a direct  
financial interest in the outcome of the  
litigation ? NO

June 12, 2020

Rachelle Davis  
*/s/ Rachelle Davis*

## LIST OF PROCEEDINGS

Petitioner Rachelle Davis , a flight attendant with American Airlines filed a civil rights action pursuant to Title VII , 42 U.S.C. 12101-12213 (2012) American Disability Act (ADA) , American Disability Employment Act (ADEA) case , claim Rachelle Davis v. American Airlines , Inc. et al , originating case number 3:19-cv-00044-MOC-DSC [ 19-1739 ] .

The District Court dismissed Petitioner's claim pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure , order granting [9] Motion to Dismiss for Failure To State A Claim ; granting [9] Motion to Dismiss for Lack Of Jurisdiction .

Petitioner , timely appealed to the Fourth Circuit Court Of Appeals July 12, 2019 . The Appeals Court sanctioned the order of the District Court to Dismiss this claim as Time-Barred .order no.19-1739 .

Petitioner timely filed a motion for Reconsideration February 6, 2020 . The Court of Appeals denied the Motion for Reconsideration . order no.19-1739 , March 17, 2020 .

Petitioner now seeks Writ Of Certiorari of this Honorable United States Supreme Court .

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## INDEX TO APPENDICES

United States District Court , Western  
District Of North Carolina, Charlotte  
Division :

Appendix A Roseboro Order, re [9] Motion to Dismiss  
For Failure To State A Claim, To Dismiss  
For Lack Of Jurisdiction : Plaintiff is  
ordered to file a Response or an  
amended complaint no later than  
March 25, 2019as stated in this order.  
Signed by Judge Max O. Cogburn, Jr.  
on 3/5/2019. ams  
no. 3:19-cv-00044-MOC-DSC

Appendix B Order Granting [9] Motion To Dismiss  
For Failure To State A Claim ; Granting  
[9] Motion To Dismiss For Lack Of  
Jurisdiction. Signed by District Judge  
Max O. Cogburn, Jr. on 6/28/2019 (mga)

United States Court Of Appeals For The  
Fourth Circuit :

Appendix C Unpublished per Curiam opinion filed  
1/31/2020.

Appendix D Judgment order filed. Decision: Affirmed  
Entered on docket date 1/31/2020

Appendix E Mandate stayed pending ruling on  
Petition for rehearing or rehearing

enbanc. 2/6/2020

Appendix. F Court order filed denying , Motion  
for rehearing and rehearing en  
banc . 3/17/2020

## TABLE OF AUTHORITIES CITED

### CASES

Mengine v. Runyon ,	114 F. 3d 415 (3rd. Cir. 1997)
Barnett v. U.S.Air, Inc.	228 F. 3d 1105 (9th Cir. 2000)
Head v. Glacier N.W. Inc.	413 F. 3d 1053,1065, (9th Cir. 2005)
U.S.EEOC v. U.P.S. Supply	620 F. 3d 1103,1110
Chain Solutions	(9th Cir. 2010)
Humphrey v. Mem'l Hosps, Assn.	239 F. 3d 1128,1137 (9th Cir. 2001)
Taylor v. Principal Fin. Group	93 F. 3d 155,165 (5th Cir. 1998)
Taylor v. Phoenixville Sch. Dist.	184 F. 3d 296, 313 (3d Cir.1999)
Hedberg v. Indiana Bell.	47 F. 3d 928, 934
Telephone Co.	(7th Cir. 1995)
Smith v. Midland Brake Inc.	180 F. 3d 1154, 1172 (10th Cir.1999)
Evans v. Techs. Application & Serv. Co.	80 F. 3d 954,963 (4th Cir. 1996)
Bryant v. Bell Atl. Md. Inc.	288 F. 3d 124, 132 (4th Cir. 2002)
Smith v. First Union Nat'l. Bank	202 F.3d 234, 247 (4th Cir. 2000)
National Railroad Passenger Corp. v. Morgan	536 U.S. 101(2002)
Ervine v. Desertview Reg'l. Med. Ctr. Holdings, LLC.	753 F. 3d 862 (9th Cir. 2014)
Price v. Little Bus. Sys.Inc.	694 F. 2d 963,965 (4th Cir. 1982)
Ledbetter v. Goodyear Tire. & Rubber Co.	550 U.S. 618,631 (2007)
U.S. EEOC v. UPS Supply Chain Solutions	620 F. 3d 1103,1110 (9th Cir. 2010)
McNely v. Ocala Star Banner Corp.	99 F. 3d 1068, 1073 (11th Cir. 1996)
Chisholm v. U.S. Postal Serv.	665 F. 2d 482,491 (4th Cir. 1981)
Carolyn Sydnor v. Fairfax. County , Virginia	11-1573 (9th Cir. 2013)
EEOC v. Nevada Restaurant Services, Inc.	2:18-cv-00954-J-CWH

**STATUTES AND RULES**

28 U.S.C §1254

29 C.F.R. 1630.9

29 C.F.R. 1630.12

42 U.S.C. §12112

29 C.F.R. 1630 (j)(l) (1999)

42 U.S.C. § 2000e-5(e)(l)

29 U.S.C. § 626(d)(l)

42 U.S.C. § 12117

42 U.S.C. § 12203

**Fourteenth Amendment Equal Protection Clause**

**Equal Employment Opportunity Commission Enforcement Guidance on the American Disability  
Act**

OPINIONS BELOW

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The decision by the Court of Appeals for the Fourth Circuit , denying the petition for rehearing and rehearing en banc is reported as Rachelle Davis vs. American Airlines Inc.; Mark Moscicki ; Terry Dix ; Michelle Magee , case no. 19-1739  
( 3:19-cv-00044-MOC-DSC ) entered at the direction of the panel : Chief Judge Gregory , Judge Thacker and Senior Judge Hamilton filed , March 17, 2020 .

## JURISDICTION

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[X] For cases from Federal Courts :

The date on which the United States Court of Appeals decided my case was  
JANUARY 31 , 2020 .

[ ] No petition for rehearing was timely filed  
in my case .

[X] A timely petition for rehearing was denied  
by the United States Court Of Appeals on  
the following date MARCH 17, 2020  
and a copy of the Order denying rehearing  
appears at Appendix\_\_\_\_.

[ ] An extension of time to file the petition for  
a Writ of Certiorari was granted to and  
including \_\_\_\_(date) on \_\_\_\_(date) in  
application no. \_\_\_\_.

The jurisdiction of this Court is invoked under  
28 U.S.C. § 1254 , having timely filed this petition for a writ of certiorari within the ninety days of  
the Court of Appeals judgment .

[ ] For cases from State Courts :

The date on which the highest State Court  
decided my case was \_\_\_\_ .  
A copy of that decision appears at appendix

[ ] A timely petition for rehearing was thereafter  
denied on the following date : \_\_\_\_ and a copy  
of the order denying rehearing appear at  
appendix\_\_\_\_ .

[ ] An extension of time to file the petition for a  
Writ of Certiorari was granted to and including  
\_\_\_\_(date) on \_\_\_\_ (date) in application  
no. \_\_\_\_.

## FOURTEENTH AMENDMENT EQUAL PROTECTION CLAUSE

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Fourteenth Amendment requires that all persons subject to legislation shall be treated alike under the circumstances and conditions , both in the privileges conferred and in the liabilities imposed when those who appear similarly situated are nevertheless treated differently , the Equal Protection Clause requires at least a rational reason for the difference , to ensure that all persons subject to legislation or regulation are indeed being treated alike , under like circumstances and conditions . Thus , when it appears that an individual is being singled out by the government , the specter of arbitrary classification is fairly raised , and the Equal Protection Clause requires a rational basis for the difference in treatment .

( Roberts , Ch. J. , join by Scalia and Thomas ,  
Breyer , and Alito Jr.

This action has been brought as an aggrieved employee who believes they have been subjected to an unlawful employment practice , that discrimination has not ended and further efforts to end the discrimination would be in vain , that now represents a case in need of the Supreme Court , barred by the statute of limitations in ERR , with legitimate claims of a failure to accommodate a disability and retaliation laws , denied .

American Airlines violated Federal Law when it refused to consider a qualified employee with a disability with an accommodation who had successfully performed the same work in the past without any safety issues . (29 C.F.R. part 1630.9)

Such alleged conduct violates the American Disability Act (ADA) which prohibits rejecting a qualified employee because of a disability that is highly qualified for the position and deserved the opportunity to be judged based on abilities instead of a discriminatory belief . (42 U.S.C. \$12112)

Congress enacted the ADA to prevent employers from refusing to accommodate qualified employees based on myths , fears or stereotypes concerning disabilities .

American Airlines did not make an adequate effort to accommodate a qualified individual with a disability , and the omission of the Interactive Process was due to their inadequate effort and lack of communication , that requires the employer to identify the precise limitations resulting from an individual's disability and potential reasonable accommodations that could overcome these limitations . (29 C.F.R. part 1630.9)

(Mengine v. Runyon 114 F. 3d 415 (3rd Cir.1997)

This case is an example of American Airlines non-existent documented accommodation efforts in response to an employee's requests for reasonable accommodation that has demonstrated non-compliance to the law and a lack of effort to engage in the Interactive Process .

(Barnett v. U.S.Air, Inc. 228 F.3d 1105 (9th Cir. 2000)

The ADA outlaws adverse decisions motivated in part by animus , based on a plaintiff's disability or a request for an accommodation as a motivating factor standard . (Head v. Glacier N.W. Inc. 413F. 3D 1053 , 1065 , (9th Cir. 2005) .

The American Disability Act (ADA) definition of disability applies to this failure to accommodate a disability claim .

A disability is defined as a (1) a physical or mental impairment that substantially limits one or more life activities (actual disability) , (2) a record of a substantially limiting impairment or (3) being regarded as having a disability .

(29 C.F.R. 1630 ( j ) (i) (1999)

The limitations of the impairment no longer have to be severe or significant for the impairment to be considered substantially limiting .

An individual can meet the definition of disability if an employment action was taken because of an actual or perceived impairment (eg) refusal to hire , demotion , PLACEMENT ON INVOLUNTARY LEAVE , termination , exclusion for failure to meet a qualification standard , harassment or DENIAL OF ANY OTHER TERM , CONDITION , OR PRIVILEGE OF EMPLOYMENT .

To maintain a claim for disability discrimination , one must plead facts that would allow the court to infer that (1) you were a member of a protected class , (2) you satisfactorily performed the duties of your position in conformity with the employer's expectations ; (3) you suffered an adverse employment action ; (4) the circumstances surrounding the adverse employment action raise a reasonable inference of discriminatory activity by showing more favorable treatment to someone outside the protected class or otherwise .

As outlined in the Notice Of Rights under the ADA Amendments Act Of 2008 (ADAA ) : (see attached)

I am a 62 year old African American female flight attendant that was diagnosed with a mental disability by American Airlines hired medical examiner .

This diagnosis according to the American Disability Act's definition , " THINKING " is a MAJOR LIFE ACTIVITY that describes an " ACTUAL " or " RECORD OF DISABILITY " therefore by definition :

(1) I AM A MEMBER OF A PROTECTED CLASS

(2) WHO SATISFACTORILY PERFORMED THE DUTIES OF MY POSITION IN

CONFORMITY OF MY EMPLOYER'S EXPECTATIONS ; by never having failed throughout a 31 year active duty career , a mandatory Federal Aviation Administration ( FAA ) annual Recurrent Training Program that is designed to test fitness for duty requirements that included the most recent completion ( proving the capability of performing the essential functions of the position ) , approximately 2 months prior to being "deemed" unable to perform the essential functions of the flight attendant position and "unfit for duty " diagnosis .

Further confirmation , of fulfilling the duties of the flight attendant position is the submitted American Airlines complimentary acknowledgement letter of the accomplishment of a 30th year employee milestone , reflective of a successful employee record that was also demonstrated by remaining complaint-free by management , coworkers , and passengers of fulfilling the duties of the flight attendant position .

(3) YOU SUFFERED AN ADVERSE EMPLOYMENT ACTION ;

by my PLACEMENT ON INVOLUNTARY LEAVE BECAUSE OF AN ACTUAL OR PERCEIVED IMPAIRMENT . The attached American Airlines letter dated September 29, 2015 , initiated the involuntary medical leave process . As of the letter 's effective date , I was currently deemed unable to perform the essential functions of the flight attendant position .

To date , American Airlines has failed to state WHICH function of the flight attendant position was I , or am I now , unable to perform , as a result of their continued denial of a return to active duty status , that includes a denial following treatment and a medical release .

American Airlines discriminatory employment decisions are assumptions based on stereotypes , myths , and fears concerning those deemed disabled and not decisions based on job performance capabilities , according to my employee records .

This employment action is in opposition of Congress enacted American Disability Act (ADA) to prevent employers from refusing to hire qualified applicants based on myths , fears and stereotypes concerning disabilities to ensure the same opportunities in the workplace as any other person .

(4) THE CIRCUMSTANCES SURROUNDING THE ADVERSE EMPLOYMENT ACTION RAISE A REASONABLE INFERENCE OF DISCRIMINATORY ACTIVITY BY SHOWING MORE FAVORABLE TREATMENT TO SOMEONE OUTSIDE THE PROTECTED CLASS OR OTHERWISE ;

American Airlines has refused to accept a MEDICAL RELEASE that enables my return to work by the treating physician following treatment , but instead , now requests a second release which is not a requirement of other employees accepting the company's recommended treatment option .

Additionally , although lacking access to other employees' medical records , it is not an expectation that American Airlines would consistently disregard ADA federal law with their entire workforce by continuing to show favorable treatment to employees outside the protected class or otherwise , by permitting their active employment based on actual job performance capabilities , that was not afforded in this case .

Similarly , by prohibiting employees outside the protected class or otherwise , active employment based on an actual lack in job performance capabilities and not as a result of an actual or record of an impairment .

Title 1 of the American Disability Act (ADA) prohibits employment discrimination on the basis of a disability and requires employers to make reasonable accommodations that will allow a qualified individual with a disability to perform the essential functions of the job .

A REASONABLE ACCOMMODATION is assistance or changes to a position or workplace that will enable an employee to do his / her job despite having a disability .

According to the ADA , you are a QUALIFIED INDIVIDUAL WITH A DISABILITY if both of the following are true : (1) You meet all of the requirements for your position , for example , you must have the necessary education licensing , language skills , job skills and experience for the job . (2) You must be able to perform the job's essential functions with or without accommodation .

ESSENTIAL FUNCTIONS are those tasks someone holding the position must absolutely be able to do .

When an employee requests a reasonable accommodation , under the ADA , the employer as well as the employee are required to engage in a timely , good-faith , flexible INTERACTIVE PROCESS to determine a reasonable accommodation .

(U.S. EEOC v. U.P.S. Supply Chain Solutions ,620 F. 3d ,1103,1110 (9th Cir. 2010)

The INTERACTIVE PROCESS is an informal dialogue between the employer and the employee / applicant in potential need of accommodation .

(Humphrey v. Mem'l Hosps. Ass'n. 239 F. 3d 1128, 1137 (9th Cir. 2001)

The interactive process has 2 primary objectives :

- 1) To IDENTIFY THE PRECISE LIMITATIONS resulting from the disability of the employee or applicant and
- 2) To IDENTIFY POTENTIAL REASONABLE ACCOMMODATIONS that could overcome these limitations .

Under ADA regulations , the interactive process is triggered by knowledge of the need for an accommodation .

(Taylor v. Principal Fin. Group, 93 F. 3d 155,165

(5th Cir. 1996)

The request can be made verbally or in writing , although the employer may have policies instructing their employees to provide written notice .

The employee does not need to use any magic language when making the request and need not reference the ADA or specifically use the term reasonable accommodations .

( Taylor v. Phoenixville Sch. Dist. , 184 F.3d 296,313

(3d Cir.1999)

( Hedberg v. Indiana Bell Telephone Co. 47 F. 3d 928, 934 (7th Cir. 1995)

( Smith v. Midland Brake Inc. 180 F. 3d 1154, 1172

(10th Cir. 1999)

According to EEOC's Enforcement Guidance on ADA Regulations , notice of an employee's desire for an accommodation can take a variety of forms , including notice that the employee wants to remain employed in some capacity and notice may also come from someone other than the employee on behalf of an individual with a disability , such as a family member , friend , health professional or other representative .

#### BACKGROUND

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Following a medical diagnosis of a mental disability by American Airlines hired medical examiner , American Airlines failed on 2 separate occasions to engage in a timely , good-faith , flexible interactive process and to provide a reasonable accommodation for a qualified individual with a disability .

American Airlines failure of the ADA requirement , that is absent of an " undue hardship " or a "direct threat " has prohibited the ability to return to work as a qualified individual with a disability .

American Airlines first failed opportunity took place at the onset of this occurrence that resulted solely in being placed on a mandatory involuntary leave of absence , although prior to being placed on an involuntary leave , I had SAFELY performed all the essential functions of my position .

The second failed opportunity by American Airlines that denied the benefit of an informal dialogue between the employer and the employee took place following the completion of treatment and the subsequent medical release by the treating physician to return to work .

The interactive process according to its primary objectives when utilized , would have addressed the "actual proven capabilities " of being able to perform the essential functions of the flight attendant position versus " a blanket stereotyped assumption " as displayed by American Airlines company decision that has denied the opportunity to return to work and the right to earn a living .

Nonetheless , If an employer fails to engage in the interactive process it might not discover a way in which the employee's disability could have been reasonably accommodated that has denied both the employee and the employer the benefits of a qualified skilled employee .

Although the ADA requires employers to provide reasonable accommodations to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability , an exception to the rule is when the employer can demonstrate that the accommodation would impose an UNDUE HARDSHIP .

An undue hardship means SIGNIFICANT difficulty or expense to the business with respect to the provision of an accommodation .

Additionally , under the ADA , an employer may also lawfully exclude an individual from employment for safety reasons , ONLY if the employer can show that employment of the individual would pose a DIRECT THREAT .

The EEOC Enforcement Guidance on ADA regulations explain that " direct threat " means a SIGNIFICANT RISK of SUBSTANTIAL HARM to the health or safety of the individual or others .

A significant risk is a high and not just a slightly increased risk that is intended to be a high standard to meet .

An individual does not pose a direct threat simply by virtue of having a history of psychiatric disability or being treated for a psychiatric disability .

The EEOC 's Interpretive Guidance states that the SUBJECTIVE BELIEF that the employee would harm himself or others is insufficient to prove a direct threat which requires OBJECTIVE EVIDENCE of imminent harm as to what the threat is that is identifiable and real .

A " reasonable belief " that the employee would be subject to a direct threat is not sufficient , but must be factual .

Whether a person poses a direct threat must be considered on an individual basis and cannot be based on fears, stereotypes or generalizations about an employee's medical condition . (ie) the employer thinks employees with mental health issues are likely to be violent .

An employer also cannot refuse to hire you because of a slightly increased risk or because of fears that there might be a significant risk sometime in the future .

An employer may not simply assume that a threat exists , instead the EEOC makes clear that there should be a high probability of substantial harm for an employer to establish a direct threat defense , a look to what did happen , not what could happen .

An employer must consider these factors in deciding whether an employee poses a direct threat to health and safety (1) the nature and severity of the potential harm (2) how likely it is that the potential harm will occur (3) the imminence of the potential harm ( how soon it will occur ) and (4) the duration of the risk .

These factors must be considered in relation to each other and under the ADA , is when the accommodation of an employee's disability is considered problematic .

#### STATEMENT OF CASE

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The Discrimination claim filed March 26, 2018 was dismissed after concluding it had failed to exhaust the administrative remedies by not filing a timely charge with the Equal Employment Opportunity Commission

( EEOC ) , I disagree .

Before a plaintiff has standing to file suit under Title VII , he / she must exhaust the administrative remedies by filing a charge with the EEOC .

(42 U.S.C. §2000e-5(e)(1)

Title VII , the American Disability Employment Act (ADEA) and the American Disability Act (ADA) , all provide that a charge must be filed within 180 days of the alleged discrimination . (42 U.S.C. §2000e-5(e)(1) ,  
(29 U.S.C. § 626(d)(1)(ADEA) ; ( 42 U.S.C. §12117 (ADA)

The scope of a federal action is limited by the contents of the EEOC charge .

The Fourth Circuit has held that only those discrimination claims stated in the initial charge , those reasonably related to the original complaint , and those developed by reasonable investigation of the original complaint may be maintained in a subsequent Title VII lawsuit .  
(Evans v. Techs. Application & Serv. Co. 80 F.3d 954,963, (4th Cir.1996 ).

(Bryant v. Bell Atl. Md. Inc. 288 F. 3d ,124,132

(4th Cir. 2002)

The Supreme Court has made clear , documents filed by an employee with the EEOC should be construed to the extent consistent with permissible rules of interpretation to protect the employee 's rights and statutory remedies .

(Smith v. First Union Nat'l Bank , 202 F. 3d, 234,247, (4th Cir. 2000)

A civil rights claim accrues when the plaintiff knows or has reason to know of the injury that is the basis of the action .

Pursuant to decisions of the Supreme Court and in the Fourth Circuit , a defendant's failure to accommodate constitutes a discrete act for purposes of the statute of limitations , and each request for and denial of an ADA accommodation constitutes a discrete discriminatory act .

(National Railroad Passenger Corp. v. Morgan , 536

U.S.101 (2002)

As the plaintiff , it became apparent that American Airlines was discriminating against me each time it failed to accommodate me .

American Airlines refusals to accommodate , each constitute a discrete act , thus independently discriminatory acts , that start a new time period for that act .

A discrete act is only independently actionable if it occurred within the filing period .

(Ervine v. Desert View Reg'l Med. Ctr. Holdings, LLC 753 F. 3d 862 (9th Cir. 2014)

A discrete act such as failure to accommodate, is independently actionable if it is the subject of a timely charge .

Such acts must be challenged within 180 / 300 days of the date that the charging party received UNEQUIVOCAL WRITTEN OR ORAL NOTIFICATION OF THE ACTION , regardless of the action's effective

date . (Price v. Little Bus. Sys. Inc. 694 F. 2d 963,965

(4th Cir.1982)

(Ledbetter v. Goodyear Tire & Rubber Co. 550 U.S.

618, 631 (2007)

Additionally , in accordance with EEOC's Enforcement Guidance on the American Disability Act (ADA) Regulations , repeated occurrences of the same discriminatory employment action can be challenged as long as one discriminatory act occurred within the Charge filing period .

Similarly , because an employer has an ONGOING OBLIGATION to provide a reasonable accommodation, failure to provide such accommodation constitutes a violation each time the employee needs it .

(U.S.EEOC v. UPS Supply Chain Solutions, 620 F. 3d  
1103,1110 (9th Cir. 2010)

A timely charge also may challenge related incidents that occur after the charge is filed .

Individual discrete acts that occurred before the filing period will generally be untimely, and therefore not actionable even if they are arguably related to acts that occurred within the filing period .

Nonetheless , these untimely discrete discriminatory acts may be considered as background evidence , if they are relevant to the determination of whether acts taken inside the filing period were discriminatory . There is no time limit on relevant evidence .

COMPANY LETTER

The (attached) American Airlines , August 14, 2018 , company letter is of relevance to this claim because it contains both evidence of documented discriminatory acts that occurred prior to the filed charge, in addition to a written notification of a timely charge that occurred after the charge was filed , that also exhaust this claims timely administrative remedies .

Title VII of the Civil Rights Act and the ADA prohibit acts of retaliation when disability discrimination is involved . (42 U.S.C. §12203)

(McNely v. Ocala Star-Banner Corp. 99 F. 3d 1068, 1073 (11th Cir. 1996)

When applying the statute of limitations to the definition of a timely discrete act and an act of retaliation , voids justification of this claims' timely-barred , denied decision .

The August 14, 2018 company letter confirms evidence of the following discriminatory acts relevant to the ERR of a timely-barred claim decision :

- 1) American Airlines confirmation of the Request to return to work on January 24, 2018 confirmed by the required medical release from the treating physician and American Airlines denial of the request to accommodate a qualified individual with a disability . (also see attached) REQUEST TO RETURN TO WORK

" On January 24 , 2018 , Dr. Arias received a note from Dr. Farber indicating that he had been treating you on a regular basis from August 2016 through June 2017 and deemed you " fully recovered " .

As required by American Airlines instructions indicating fitness to perform the essential functions of the flight attendant position within both (attached) company letters dated , September 29, 2015 and December 4, 2015 . (see) " Rachelle , it will be your responsibility to contact the company once you receive a FULL RELEASE from your treating physician indicating that you are fit to perform the essential functions of the flight attendant

position ."

This additional request to return to work was preceded by requests in May 2017 and a phone call on June 27, 2017, both documented in the (attached) June 29, 2017 company letter .

The August 14, 2018 company letter also NOW refers back to the previously by-passed appeals process option , referenced in American Airlines prior September 29, 2015 (attached) company letter (utilized when in disagreement with the company's INITIAL treatment referral) . This additional requirement by American Airlines FOLLOWED my INITIAL notification in May 2017 of a request to return to work that was not previously mentioned as evidenced in both prior company letters .

This attempt to now reject the completion of a return to work process was first initiated by a pre-determined medical decision reached 6 days prior to the scheduled medical examination by the company's hired medical examiner . (attached)

Decision date : September 10, 2015

Examination date : September 16, 2015

The addition of a harsher more scrutinized company decision , the requirement of two medical releases , which rejected a return to work , is not a requirement of other employees when accepting treatment as indicated by American Airlines previous instructions in accordance of the company's Medical Section 28 . (attached)

\* AMERICAN AIRLINES' AUGUST 14, 2018 COMPANY LETTER , IN AND OF ITSELF IS UNEQUIVOCAL WRITTEN NOTIFICATION OF THEIR ONGOING FAILURE TO ACCOMMODATE A QUALIFIED INDIVIDUAL WITH A DISABILITY , RECEIVED WITHIN THE 180 DAY STATUTE OF LIMITATIONS OF A TIMELY FILED CHARGE , THAT EXHAUST THIS CLAIM 'S TIMELY ADMINISTRATIVE REMEDIES . additionally ,

\* AMERICAN AIRLINES DECISION OF A FAILURE TO ACCOMMODATE A QUALIFIED INDIVIDUAL WITH A DISABILITY ON JANUARY 24 , 2018 , PROMPTED THE MARCH 26, 2018 , TIMELY FILED EEOC CHARGE , 61 DAYS LATER , EXHAUST THIS CLAIM'S TIMELY ADMINISTRATIVE REMEDIES.

- 2). American Airlines , August 14, 2018 company letter includes the confirmation of American Airlines , ACT OF RETALIATION , according to EEOC's " PROVING RETALIATION " criteria . (attached ) (29 C.F.R.1630.12) (Chisholm v. U.S. Postal Serv. 665 F. 2d 482, 491 (4th Cir. 1981)

PROVING RETALIATION -

To have a valid Retaliation claim , 3 things must have occurred :

- 1) PROTECTED ACTIVITY - Opposition to discrimination or participation in covered proceedings ( opposition means complaining about employment discrimination . ) Opposition need only be based on reasonable and good faith belief that EEOC enforced laws were violated . Participation means filing a charge , taking part in any investigation by the EEOC in a process related to employment discrimination .

\*PROTECTION AGAINST RETALIATION APPLIES EVEN IF THE ORIGINAL COMPLAINT OR CHARGE WAS UNTIMELY OR WAS FOUND TO LACK MERIT .

- 2) ADVERSE ACTION - Any action that may deter a reasonable person from protected activity is actionable .
- 3) CAUSAL CONNECTION - Between the protected activity and the adverse action . There must be evidence that the adverse action was taken because of protected activity . Example : evidence that the decision was made soon after the protected activity .

As outlined in this case :

PROTECTED ACTIVITY -

The EEOC Discrimination Charge was filed March 26, 2018 .

CAUSAL CONNECTION-

EEOC received American Airlines employer position statement , August 3, 2018 during the investigation process following their June 2018 Charge notification .

I received American Airlines (submitted) August 14, 2018 letter , prompted by their recent contact from EEOC .

#### ADVERSE ACTION-

American Airlines , August 14, 2018 , Letter of Demand received during EEOC's investigation

process , followed their June 2018 notification and

August 3, 2018 employer position statement , was an attempt to interrupt EEOC's investigation process by issuing an employment deadline that was to be met PRIOR to the completion of the EEOC investigation process .

The American Airlines company letter involved issues of concern within the complaint that were to be resolved upon completion of the EEOC investigation process .

American Airlines also included the potential consequence for failing to respond to their request by their designated deadline, that was to be met prior to the completion of EEOC's investigation process to resolve this complaint .

Being unaware , if the consequences of no- response would lead to termination , I opted to respond by letter , informing American Airlines of my decision to complete the EEOC investigation process .

3) Lastly , this letter also confirms American Airlines pre-conceived discriminatory belief of an unsuccessful treatment process by a requirement of two medical releases , without cause , based on fears , and stereotypes that ultimately set the stage for the decision of a failure to accommodate a qualified individual with a disability . (attached)

American Airlines required a FULL RELEASE by the treating physician , then rejected the " FULLY RECOVERED " decision by the treating physician to enable my return to work .

#### AMERICAN AIRLINES ACT OF RETALIATION EXHAUST THIS CLAIM'S ADMINISTRATIVE REMEDIES .

In sum , American Airlines has dictated a take-it-or-leave-it solution and issued an ultimatum about continued employment throughout this process , including EEOC's investigation process and have not explained why it failed to provide an accommodation that has violated these important protections that they believed they had no obligation to accommodate.

(Carolyn Sydnor v. Fairfax County , Virginia, 11-1573

(4th Cir. 2012)

#### REASON FOR GRANTING THE PETITION

Emotional and mental disorders are growing issues affecting all sectors of American society .

This case is significant because of the progressive need for focus and clarity that acknowledges our knowledge or understanding of emotional and mental disorders in the workplace with increasing numbers of those that are applicants for employment and those that are employed .

As a result of these increasing numbers , there is also the increasing need for the rights of litigants who repeatedly face this issue to be vigorously protected in accordance with the

American Disability Act ( ADA ) regulations enacted by Congress for the betterment of employer-employee relations and for the right to earn a living by those that are affected .

Of further importance , as it relates to this case , is the Federal Court Case of EEOC v. Nevada Restaurant Services Inc. case no. 2:18-cv-00954-J-CWH and their 3.5 million dollar recent victory in a campaign to target employers "Maximum Leave and 100 % percent-healed policies .

The EEOC continues to target both the formal written policy limitations on medical and disability

leave , and employer's administration of return to work requests for reasonable accommodations .

The EEOC complaint against Dotty's , alleged that the company's " well established 100-percent healed practice " discriminated against disabled employees in violation of the ADA .

Under the 100 percent-healed policy , employees returning from medical , sick or disability leave needed to be fully recovered before being permitted to return to work .

The EEOC alleged that Dotty's 100 percent-healed policy was discriminatory because it established an unlawful qualification standard that does not allow for reasonable accommodation of qualified individuals with disabilities .

Employers with such policies, frequently reject return to work notes , rather than engaging in the interactive process .

Litigation targeting employer policies regarding employees returning from medical leave have become more prevalent since the issuance of the EEOC's 2016 Guidance .

The agency's designation of this area is one of its top enforcement priorities . Public comments from the EEOC regarding the consent decree show that the agency views these policies as evidence of systematic disability discrimination .

The agency announced that it is on a quest to identify such policies and hold employers accountable ,targeting them for enforcement lawsuits to ensure that company decision makers are complying with the

ADA .

As in the above case , as it relates to this case is , American Airlines' decision to reject a return to work request rather than engaging in the interactive

process that followed the compliance to the company's requirement of a 100 % percent healed full medical release to enable a return to work , that nonetheless, has not allowed for a reasonable accommodation of a qualified individual with a disability .

This case , also as in the above case , is deserving of the same legal protections that discriminate against disabled employees in violation of the ADA , as evidenced in American Airlines company letters dated September 29, 2015 , December 4, 2015 and August 14, 2018 by their rejection of a request to return to work that is ongoing .

The company's requirement that an employee must be released to "full-duty with no restrictions" and their continued denial of an accommodation following a medical release is in violation of American Airlines ongoing obligation of their compliance to the American Disability Act (ADA ) regulations .

The United States Court Of Appeals has entered a decision to sanction the District Court's decision to Dismiss this claim , but as a time-barred claim where the Court of Appeals decision conflicts with 29 C.F.R.

1630.9 and 29 C.F.R.1630.12 , as well as conflicting with the rulings of other courts as relative to these rules .

The decision of the Court of Appeals so far departs from the accepted and usual course of the judicial proceedings as to call for an exercise of this Supreme Court's supervisory power .

Whether purposely or inadvertently , the Court of Appeals dismissal of Petitioner's claim seems to amount to an erroneous decision of a timely-barred claim that is voidable .

As a Petitioner , I contend that the Court of Appeals deprived me of equal protection of the laws as established by the Fourteenth Amendment of the United States Constitution , undermining the desired uniformity of Federal law that will persist absent of a Supreme Court review .

Random departures from the knowable law affording basic protections , whether they are effected purposely or inadvertently are patently offensive to the fundamental principle of our Constitutional scheme that stems from our American ideal of fairness .

Justifiably , within the particular circumstances of this case , judicial disparities have been effected and basic fairness has not been achieved that rest upon the Equal Protection Clause .

Petitioner is a ProSe Litigant and was so at the time of filing this claim .

The law required the Court to read Petitioner's Pro Se Complaint indulgently .

The Supreme Court held that Pro Se complaints are to be held to less stringent standards than formal pleadings , drafted by lawyers .

An arbitrary discrimination such as that suffered by Petitioner , as relative to the dismissal of this Timely -Claim , on the grounds that the Court of Appeals ERRED in dismissing this pro se complaint without allowing the presentation of evidence on this claim , would result in manifest injustice, paving the way for the deprivation of knowable laws affording basic protections under the American Disability Act regarding employment rights and where future pro se litigation is necessarily pursued .

#### Conclusion

Based upon the above , demonstrated by the Petitioner, Justice would be best served by the GRANTING of this Petition for WRIT OF CERTIORARI and the RELIEF which is appropriate .

Respectfully Submitted ,

*Rachelle Davis*

Date : June 12, 2020