

No. 19-6794

IN THE
SUPREME COURT OF THE UNITED STATES

LAKESHA SMITH- PETITIONER

vs.

ST. JOSEPH'S/ CANDLER- RESPONDENT

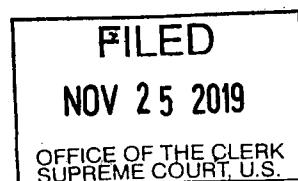
ORIGINAL

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Lakesha Smith
2609 Evergreen Avenue
Savannah, GA 31404



QUESTION(S) PRESENTED

1. If the actions of the respondent that led to my termination were “willful”, did the United States Court of Appeals Err in affirming the United States District Court’s decision of a Time Barr verdict?
2. Should the United States Supreme Court create a law that will define “willful” wrongful termination and what are the merits to clarify the law?

LIST OF PARTIES

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

RELATED CASES

- Smith v. St. Joseph's/ Candler, No. 4:17-cv-116, U. S. District Court for the Southern District of Georgia. Judgment entered April 26, 2018
- Smith v. St. Joseph's/ Candler, No. 18-12144-GG, U. S. Court of Appeals for the Eleventh Circuit. Judgment entered May 05, 2019

TABLE OF CONTENTS

OPINIONS BELOW.....	7
JURISDICTION.....	8
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED...	9
STATEMENT OF CASE.....	10-16
REASONS FOR GRANTING THE WRIT.....	17
CONCLUSION.....	18

INDEX TO APPENDICES

APPENDIX A- U. S. Court of Appeals for Eleventh Circuit Opinion

Judgment Entered May 05,2019..... A1

APPENDIX B- U. S. Court of Appeals Opinion for Rehearing

Judgment Entered July 29, 2019.....B1

APPENDIX C- U. S. Southern District Court's Opinion

Judgment Entered April 26, 2018.....C1

APPENDIX D- U. S. Southern District Court's Opinion for Reconsideration

Judgment Entered May 22,2018.....D1

TABLE OF AUTHORITIES CITED

<u>CASES</u>	<u>PAGE NUMBER</u>
Bass v. Potter, case no. 06-5149.....	12
Coleman v. Jiffy June Farms, Inc., 458 F. 2d. 1139.....	16
Trans Airlines, Inc. v. Thurston, 469 U.S. 111 (1985)	15

STATUTES AND RULES

29 C.F.R. 825.220(c).....	15
29 U.S.C. 2612 (a)(1)(D)	12
29 U.S.C. 2613(a).....	12
29 C.F.R. 825.305(b).....	12
29 C.F.R. 825. 209.....	13,14,16

OTHER

Amendment I.....	9,15
Amendment V.....	9,16

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari is issued to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit appears at Appendix A to this petition. This opinion is unpublished. Judgment Entered May 05,2019

The opinion of the United States Court of Appeals for the Eleventh Circuit for a Rehearing and Rehearing En Banc appears at Appendix B to this petition. This is opinion is unpublished. Judgment Entered July 29,2019

The opinion of the United States District Court for the Southern District of Georgia appears at Appendix C to this petition. The court's opinion is published at Smith v. St. Joseph's/ Candler (4:17-cv-00116). The opinion was Entered on April 26, 2018.

The opinion of the United States District Court for the Southern District of Georgia's Motion for Reconsideration appears at Appendix D to this petition. The court's opinion is published at Smith v. St. Joseph's/ Candler (4:17-cv-00166). This opinion was Entered on May 22,2018.

JURISDICTION

[X] For cases from **Federal Courts:**

The date on which the United States Court of Appeals decided my case was

May 05, 2019.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: July 29, 2019, and a copy of the order denying rehearing appears at Appendix B.

[X] An extension of time to file the petition for a writ of certiorari was granted to and including November 26, 2019 on October 31, 2019 in Application No. 18 A. 12144-GG.

The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U. S. Constitution Amendment I

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

U. S. Constitution Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

I have worked for St. Joseph's/ Candler from October of 1998 until July 3, 2014. During my years of service, I have worked in five different departments. I was a Patient Care Technician, Laboratory Assistant, and a Client Service Representative. Throughout this time, I have only taken a leave one time before the slip and fall on March 20, 2014. In 2004, a medical leave was needed for childbirth. The 2004 medical leave was handled appropriately. The paperwork was appropriately filed with Human Resources and there were no issues with the process. The on the job injury was completely different. A series of events have taken place that ultimately ended in me being terminated unjustly.

On March 20, 2014, I slipped in wax while performing on the job duties at St. Joseph's/ Candler. This incident was immediately reported to the charge nurse and the house supervisor. An emergency department exam was performed the night of the incident. Because I worked the 6:45 pm until 7:15 am shift, a formal incident reported was filed to the Worker's Compensation Department the very next day. Injuries were sustained in my lower back, issues with my right leg, and right hand. Surgeries were performed on my right leg and right wrist. Swelling in my right hand never subsided. Today, I have no feeling in the palm of my hand. My left leg is still experiencing tingling and numbness. Lower back pain is still present.

The U.S. Court of Appeals has reviewed this case and affirmed the District Court's decision in this matter. The U.S. Court of Appeals has also stated in the judgement on May 07, 2019 the Family Medical Leave Act does not define "willful," and neither the Supreme Court nor the Court of Appeal. However, the Supreme Court does explain the word "willful" as being considered the same as "voluntary", "deliberate", and "intentional." A series of events took place after I requested a medical leave. There are several statutes that have been violated due to the behavior of the respondent.

The initial issue in this case was not receiving a referral to see a neurologist. I was assigned two orthopedic physicians that had no knowledge of what I was experiencing. The orthopedic physician's assistant stated this matter was out of the physician's, Dr. Holtzclaw, scope of practice. Despite me informing Dr. Holtzclaw of the neurological issues, he continued to treat me for issues that were out of his scope of practice. A second orthopedic physician, Dr. Deriso, was assigned for a second opinion. Dr. Deriso did not have any knowledge of the neurological issues I faced. Dr. Holtzclaw's office asked me to contact St. Joseph's/ Candler for a referral to see a neurologist. I spoke with Human Resources and Worker's Compensation about seeing a neurologist. I was told to seek my own primary care provider for a referral to see a neurologist. It appeared that St. Joseph's/ Candler would rather send me back to work and risk injuring a

patient than to take the responsibility to make sure I was stable enough to return to work. Dealing with any injury related incident, the responsible party is supposed to be responsible for service required and rendered.

I met all requirements to take an FMLA leave and submitted a medical leave form, 29 U.S.C. 2612(a)(1)(D), 29 U.S.C. 2613(a). After Human Resources approved my leave, a series of events transpired. The respondent started retaliating because I did not return to work in an unstable condition. My primary care provider referred me to a neurologist, Dr. Schere. The neurologist completed the necessary certification form requested by St. Joseph's/ Candler within the fifteen days of request for leave, 29 C.F.R. 825.305(b). A conflict developed with the FMLA hours because the initial medical leave request form and the respondent's exhibit 1 complimented each other. They were the same. The defendant went back and began counting hours beginning with March 28, 2014. This conflicts with their exhibit 1 because as of April 3, 2014 no FMLA hours were counted.

In the case of Bass v. Potter case no. 06-5149, it is noted that the U.S. Postal Service was committed to helping and being fair to their employee. Mr. Bass repeatedly violated U.S. Postal Service's attendance and leave policies. His employer extended his attendance policy agreement when he violated the terms. Mr. Bass turned in an incomplete medical certification to his employer. His employer gave him an extension twice. Mr. Bass medical certification was

incomplete the second time and he was terminated for missing the deadline that was extended for him to present the required information. St. Joseph's/ Candler refused to extend the reenrollment period for benefits for one day for me to reenroll.

St. Joseph's/ Candler actions toward me were "intentional." Despite not providing the referral to seek treatment from a neurologist, my benefits were terminated shortly after I received, 29 C.F.R. 825.209. Maintaining medical benefits were essential concerning my return date. As the United Supreme Court explained, the word "willful" is considered the same as "voluntary," "deliberate," and "intentional." When I applied for medical leave, that paperwork was received and filed in Human Resources. It was Human Resources who mailed me the Certification of Health Care Provider for Employee's Serious Health Condition forms. It was Human Resources who approved this leave and calculated the hours of FMLA hours. Human Resources is where I delivered my portion of payment to keep my medical benefits. When Dr. Schere requested more therapy to strengthen my gait and was approved through my insurance company. Dr. Schere notified the insurance company of how providing therapy for me was a medical necessity. I could not access my benefits for reenrollment. I called the Human Resources and reported that I could not access the benefits for reenrollment. I could access everything else under the same program the benefits were. I believe the extension

should have been granted because I logged in several times to reenroll. Multiple times logging in before the deadline should have been the reason the extension would be guaranteed. I wrote a formal letter to Jan Martin in the Human Resources Department requesting an extension for benefits. Human Resources is who approved me of the medical leave for a serious health condition. The Human Resources Department is the place that I filed my certification from my neurologist every month. Human Resources is who was counting my hours for medical leave and accepting my payments for benefits. I believe Human Resources “deliberately” refused my request for an extension to reenroll for health benefits. Benefits remained unavailable from St. Joseph’s/ Candler. My supervisor, Leigh Craft, terminated me on July 3,2014 via phone, and I received an Involuntary Separation letter from Human Resources July 21, 2014.

The Human Resources Department said they denied my benefits because if benefits were extended for me, they would have to extend it for everyone else. Everyone else circumstances were not the same. My serious personal injury derived from an on the job injury. Human Resources was fully aware of my situation. A fit-for-duty certification was requested for me to return to work. The denial of benefits destroyed every intention of returning to work, 29 C.F.R. 825.209. This action led to my termination. A violation is “willful” within the meaning of 7(b) if the employer knew it’s conduct was prohibited, but not if the

employer simply knew of the potential, *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111(1985). I was scheduled to return to work at the end of June of 2014. Reenrolling in medical benefits took place in May 23, 2014. I believe retaliation took place because I chose to exercise my right to utilize the family medical leave, 29 C.F.R. 825.220(c). I remind you that the last leave taken was in August of 2004 for childbirth.

I notified my worker's compensation attorney, Christopher Daly, of my termination on July 10, 2014. My reporting of the termination was timely. My worker's compensation attorney agreed to settle the claims together. When I did not agree to settle the claims for ten thousand dollars, my attorney walked away from both claims. I represented myself in my worker's compensation claim. When I chose to represent myself, my former attorney would not disclose any information that would harm the respondent. I requested my incident report for my worker's compensation claim and the wrong information was emailed to me Attorney Daly's firm. I requested the documentation because I noticed there was not a copy in my file requested from Attorney Daly. Attorney Daly held my worker's compensation and wrongful termination claim for over two years and walked away from the claims.

The First Amendment states that I have the right to petition the government for a redress of grievances. During the process of filing petitions, I have been

retaliated against because of my choice. Pertinent information has been held back and could not be disclosed to the courts. Actions such as this prevented due process from taking place. The Fifth Amendment assures that I should not be deprived of life or liberty. St. Joseph's/ Candler retaliated in many ways because I chose to exercise my right to a medical leave. I believe St. Joseph's/ Candler and my former attorney's actions were unconstitutional. Every United States citizen has the right to due process.

In *Coleman v. Jiffy June Farms, Inc.*, 458 F. 2d 1139, the court decided that an action is “willful” if there is substantial evidence that the employer knew or suspected that his actions might violate the FLSA. In my case, St. Joseph's/ Candler's Human Resources Department knew I was on medical leave for a serious health injury. They approved this medical leave. Benefits were essential in the recovery process. They intentionally denied my benefits so I could not reach the deadline. A fit-for-duty certificate was needed in order to return to work and I was not receiving cash benefits from this institution to continue seeing the neurologist. I could not afford to see the neurologist nor continue any therapy ordered by the neurologist. Denying my benefits is prohibited under 29 C.F.R. 825.209.

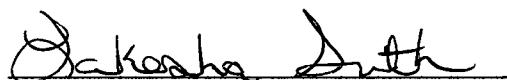
REASONS FOR GRANTING THE PETITION

Granting the petition will allow the courts to review the process in which my termination was handled. It will also ensure due process by ultimately deciding if the intentions of the respondent were “willful”. Granting the petition would allow the opportunity for the Time Barr verdict to be vacated and the case to be heard. The Supreme Court has the power to put rules and regulations in place for such cases that will face similar circumstances.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lakesha Smith". The signature is fluid and cursive, with "Lakesha" on the top line and "Smith" on the bottom line.

Lakesha Smith

Date: 11/24/2019