No. 19-83

In The

Supreme Court of the United States

VERONICA W. OGUNSULA,
Petitioner

vs.

STAFFING NOW, INC.
Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia

Petition For Rehearing

Veronica W. Ogunsula, Pro Se
9801 Apollo Drive #6334
Largo, Maryland 20792
240-486-1427
Nona.Ogunsula@gmail.com
Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

INTRODUCTION

In The

Supreme Court of the United States

VERONICA W. OGUNSULA,
Petitioner

vs.

STAFFING NOW, INC.
Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia

Petition For Rehearing

Pursuant to Rule 44 of this Court, the Petitioner, Veronica W. Ogunsula, hereby respectfully petitions for rehearing of its order dated October 7, 2019, which denied certiorari, and that the Court now grant certiorari.

This case alleges employment discrimination committed by the Respondent, Staffing Now, Inc., under Title VII of the 1964 Civil Rights Act and

Age Discrimination in Employment Act of 1991 based on race, national origin, and age.

On October 7, 2019, the U.S. Supreme Court denied a Petition for Writ of Certiorari.

The Petitioner recognizes that it is rare for this Court to grant rehearing, however in this case she believes that a grant of rehearing is warranted. The Petitioner wishes to make two points:

I. The EEOC Lacks The Resources To Fully Investigate and Pursue Every Meritorious Claim It Receives.

It is incumbent upon this honorable Court, As Congress intended, to put forth rulings that allow and enable the pro se plaintiff (private attorney general) and private lawyers to put forth their best cases.

For fiscal year 2016, individuals filed a total of 97,443 charges with the Equal Employment Opportunity Commission (EEOC). The EEOC litigated 114 (0.12%) cases that fiscal year and issued 81,129 Notices to Sue (83.3%). "For that same period, according to a Fast Company article, 7,239 (7.4%) cases went onto lawsuits—less than a tenth of the charges EEOC gave a green light to over the same time frame."[1] The EEOC does not have the human or investigative resources to

[1]Captain, Seth, "Workers Win Only 1% Of Federal Civil Rights Lawsuits At Trial", Fast Company, 7/31/17

investigate the volume of charges it receives, or to file lawsuits (in a timely manner as required by statute) for all of the violations it finds. (See Occidental Life Insurance Co. of CA vs EEOC, 432 U.S.355 at 361-66, 1977). So then it falls to private lawyers and pro se plaintiffs to seek civil remedies or redress in the Courts.

Employees are most likely to represent themselves, especially in an economic downturn. Many employees have had to forgo litigation because of the costs to procure a lawyer and the on-going legal costs for events like depositions, motions to the court, discovery, and trial, etc.

In this environment where there is an increased burden on the pro se plaintiff because of their unfamiliarity with legal procedure and case law, etc., they should not be overburdened with defendants not being non-responsive to a plaintiff regarding requests for discovery information when in fact they would be compelled to provide the same type of information to the EEOC or a plaintiff's attorney. It is a disservice to hard-working individuals when Pro Se plaintiffs are ruled against without notice because their Motions are not technically compliant. Or their Discovery Requests or Interrogatories are ignored and dismissed because the Defendant views them as a nuisance. Indeed it becomes an injustice for earnest pro se plaintiffs to be bullied by defendants who already have an enormous amount power because they hold the keys to the data the plaintiff needs. Unlike some may believe,

the majority of pro se plaintiffs do not elect to prosecute their case because of arrogance. It is usually a financial necessity.

Given the long standing history of discrimination and disparate treatment in the U.S. workforce that still persists today for especially Black Americans who continue to be plagued by hiring discrimination and an unemployment rate that is nearly double that of their white counterparts (regardless of educational attainment). And that rate that has not declined in the last 25 to 50 years. This Court is strongly encouraged to consider the burden placed on pro se plaintiffs in the prosecution of cases as well as the pleading of those cases.

To allow a defendant to ignore a Plaintiff interrogatories or respond that the simple data requests by the Plaintiff is "overly broad, unduly burdensome, and seeks information that is not relevant to Plaintiff's claims", this is a manifest injustice when this data is the very information needed to defeat a motion for summary judgement. (See Appendix 1)

II. Hiring Discrimination, especially for Temporary Staffing Applicants Is Most Akin To Hotel/Public Accommodation Discriminatory Practices

Hiring discrimination is most akin to housing/hotel discrimination or discrimination that occurs with regard to public accommodations. An applicant to temporary agency is similar to a hotel guest. The hotel guest probably does not know the demographic data of the hotel's current guests/occupants or the hotel's/employer's motives for denying a request for accommodation or a refusal to hire. The applicant can only relate their discriminatory experience with employer. Or in the case of a hotel guest, the person requesting a room at a hotel can only relate their experience of being treated in a discriminatory manner, being asked for information regarding their protected class, and not being given accommodations or being turned away when the hotel appears to have vacancies or continues to offer services to other non-minority guests.

In the case of Comcast Corporation vs National Association of African American-owned Media, et al., that was argued before the U.S. Supreme Court on November 13, 2019, Justices Kagan, Gorsuch, Sotomayor, and Breyer, all posed questions that stressed the importance of discovery in ascertaining the motives and state of mind of the opposing party.[2] Before a case/claim) can be presented regarding a mixed motive, motivating factor, and/or but for claim, the employer must provide full and clear responses to

---

[2] See Comcast Corporation vs National Association of African American-owned Media, et al., Case No. 18-1171, U.S. Supreme Court, Transcript of Oral Argument, November 13, 2019, pgs. 8, 11 ,14, 26, 46, 50, and 61)

the discovery request for hiring data (including protected class information, qualifications and skills of applicants) and positions available. This information is required at the bare minimum. As shown in excerpts from the Plaintiff's Interrogatories to the Defendant, Staffing Now, Inc., in Appendix 1, this information was requested from the Defendant. Staffing Now, Inc. refused to provide the requested information in discovery. It is presumed that acts, if otherwise unexplained, are more likely than not based on impermissible factors. (See Furnco Constr. Corp. v. Waters, 438 U.S. 567, 577, 1978)

In a September 30, 2019 decision by the U.S. District Court of Massachusetts, Students for Fair Admissions, Inc. vs. President and Fellows of Harvard College, both the plaintiff and the defendant used data provided by the defendant to present their respective cases regarding discrimination of applicants. Based on a court order, Harvard provided applicant-by-applicant admissions data for more than 150,000 domestic applicants to Harvard's classes of 2014 through 2019.[3].

Moving back to the example of discrimination in public accommodations, only the hotel owners truly know the demographic statistics of its guests because it greets all of its guests. In the same way, only the employer, or the institution is in full

[3] Students for Fair Admissions, Inc. vs. President and Fellows of Harvard College, Case 1:14-cv-14176-ADB, Docket No. 672, 9/30/19

custody of its applicant data. It would be impossible or nearly impossible for an applicant to put forth their best case without full disclosure of the requested data. The numbers matter. The data can be used as circumstantial evidence. (See Desert Palace vs Costa, 539 U.S. 90, 2003) This present case also has applicant testing data that can be used as evidence.

To say that a plaintiff is not entitled to the most common relevant demographic data regarding applicants and the workforce of the employer promotes a method of *chilling* employment discrimination suits and thereby putting aggrieved plaintiffs, especially pro se plaintiffs, at a sore disadvantage.

Additionally, the hotel/public accommodation example sheds light on the temporary staffing hiring model because in most cases a guest at a hotel makes a reservation for a room, not a certain room, but a room with certain characteristics. In the same way an applicant at a temporary staffing agency applies for a type of *temporary* position based on their skills. When you are applying for a temporary position, just like when you make a request for temporary accommodations at a hotel, you are applying for an accommodation with certain characteristics not a specific room, or for example Room 573.

If the hotel guest believes that they were discriminated against in being denied a room, and they sue, the hotel can rebut their claim of

discrimination by offering evidence of situations to the contrary. In the case of Fahim vs. Marriott Hotel Services 551 F.3d 344 Court of Appeals, 5th Circuit 2008, Marriott provided evidence (an objective report) of their reason rebutting the plaintiff's claims of discrimination. (The McDonnell Douglass burden shifting framework was used by the Court in this case.) In the present case, Staffing Now, Inc. never (in discovery or otherwise) offered objective evidence of their rebuttal of discrimination.

Lastly the District Court and Appeals Court disagreed with the plaintiff regarding a prima facie case was made under the McDonnell Douglass framework. The plaintiff contents that she did make her prima facie case and offers that if the defendant remained in business and continued to offer administrative positions for which she did everything within her power to apply for a position, then she made her prima facie case. (See Furnco Constr. Corp. v. Waters, 438 U.S. 567, 577, 1978)
It should be noted that the defendant even today continues to offer administrative temporary assignments.

It then becomes incumbent upon the defendant to offer a reason why the plaintiff was not hired for a position. Not only must they offer a reason they have a production requirement under the McDonnell Douglass framework. As shown in the Appendix, Interrogatories #18, they offered a

reason but no evidence (e.g. report, data, etc.) for said reason.

Society benefits when both the employer and employee are provided an opportunity to fulfill each other's need for resources without discriminatory regard to race, age, creed or sex. Indeed, this should be our highest aim.

CONCLUSION

For the foregoing reasons set forth in the Petition for Rehearing, as well as in the Petition for Certiorari previously filed, this Petitioner is requesting the U.S. Supreme Court grant this Petition For Rehearing and Certiorari.

Dated: November 1, 2019

Respectfully submitted,

Veronica W. Ogunsula

Veronica W. Ogunsula, Pro Se

CERTIFICATE

This Petition is being presented in good faith and not for delay and limited to the grounds specified in Rule 44.2.

Veronica W. Ogunsula

Veronica W. Ogunsula, Pro Se

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