

19-8369

No.

Supreme Court, U.S.

FILED

MAR 25 2020

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

LALANGIE HOSKINS – PETITIONER

vs.

GE AVIATION – RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

LALANGIE HOSKINS

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ORIGINAL

QUESTION(S) PRESENTED

Title I of the Americans with Disabilities Act of 1990 prohibits private employers, State and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment. The ADA covers employers with 15 or more employees, including State and local governments. It also applies to employment agencies and to labor organizations. The definition of a disability: SEC. 12102. [Section 3] As used in this chapter:

(1) Disability. - The term "disability" means, with respect to an individual-

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment (as described in paragraph

Whether the district court abused its discretion by relying on the erroneous legal premise that the Plaintiff is not part of the protected class of citizens?

How is being wrongfully terminated for the Plaintiff's disability not a violation of Title I of the ADA in comparison to similar cases?

Assuming the Court somehow erred in its judgment just a few months prior to trial, did the court deny Plaintiff due process by terminating her case that calls for a trial under Rule 38?

LIST OF PARTIES

GE Aviation

Angel Contreras

Eugene Droder, III, et al.

RELATED CASES

LaLangie Hoskins v. Eugene Droder, III, et al., No. 19-60203, U.S. Court of Appeals

Fifth Circuit. Judgment entered Feb. 07, 2020

Hoskins v. GE Aviation, No. 3:17-cv-224, U.S. District Court for the Northern District of Mississippi. Judgment entered Mar. 25, 2019

Hoskins v. GE Aviation, No. 3:18-cv-099, U.S. District Court for the Northern District of Mississippi. Judgment entered Mar. 25, 2019

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Cases:

Knapp v. General Electric

Giles v. General Electric

Mody v. General Electric

Perkl v. CEC Entertainment Inc.

Edelman v. Source Healthcare Analytics. LLC

Malta-Roman v. Hudson County

McPadden v. Wal-Mart Stores

Rascon v U.S. West Communications, Inc.

Griffith v. Wal-Mart Stores Inc.

Statutes and regulations:

Title I of the Americans with Disabilities Act of 1990

Title II of the American with Disabilities Act of 1990

42 USC § 12101, (a)(1)(3)(4)(5).

42 USC § 12102, (1)(a)(b)(c)

42 USC § 12111, (8)(9)

42 USC § 12112, (a)(5)

Rules:

FED. R. CIV. P. 59(e)

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FED. R. CIV. P. 38

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OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and has been designated for publication but is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on February 07, 2020 by Circuit Judges, ELROD, SOUTHWICK, and HAYNES, and states if you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under FED. R. APP. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title I of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12112 et seq., provides, in relevant part: *[Section 102]*

(a) General rule. - No covered entity shall discriminate against a qualified individual **on the basis of disability** in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(b) Construction. - As used in subsection (a) of this section, the term "discriminate **against a qualified individual on the basis of disability**" includes-

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this subchapter (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(3) utilizing standards, criteria, or methods of administration-

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5) (A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

(B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant.

STATEMENT OF THE CASE

This case concerns whether Title I and Title II of the Americans with Disabilities Act (ADA) prohibits the District Court of Northern Mississippi to affirm its decision of the Plaintiff not being a member of protected class citizens. Title I of the Americans with Disabilities Act of 1990 prohibits private employers, State and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment. The ADA covers employers with 15 or more employees, including State and local governments. It also applies to employment agencies and to labor organizations.

This is a wrongful termination and ADA violation case as a result of retaliation and ongoing violence and harassment in the workplace. GE Aviation's Human Resource Representative, Angel Contreras failed to properly conduct his investigation and accommodate Plaintiff according to 42 USC § 12112, (a)(5). As to context, the Title I of the ADA, prohibits discrimination of any kind, in the case of *Knapp v. General Electric*, Tami Knapp worked at GE Global Research starting in February 2013 as an inventory control specialist and continued until February 2015 when she went out on disability leave from her job at GE due to severe emotional stress and never returned to work. She filed the lawsuit in U.S. District Court in Albany, claiming discrimination, sexual harassment, retaliation, among other claims. She complained about that co-worker three times in 2013. An investigation

took months to complete and resulted in no disciplinary action, the suit reads.

Knapp also alerted security and human resources to “lewd photos of women” on machinery and to male employees viewing pornographic videos on their work computers. “The sexually inappropriate, hostile and intimidating atmosphere on the main floor was common knowledge throughout the facility,” the suit reads. She alleges that GE made such moves of at least two other women who made complaints of sexual harassment, without disciplining or transferring the male perpetrators. As usual, GE denies the allegations, saying they have zero tolerance for such behavior but found the woman’s allegations to be unsubstantiated. The suit has been settled (under undisclosed terms) following mandatory mediation.

Angel Contreras terminated Plaintiff on grounds of attendance when clearly the doctor’s order would not allow Plaintiff to return to work until released. *E.g.*, *Giles v. General Electric*, GE also rejected this accommodation, and refused to return the machinist to work. As to context, *Giles v. General Electric* (Disability Benefits), “An ADA award of [\$590,000] was... assessed against General Electric for its refusal to reasonably accommodate a machinist with a back injury. The employer rejected the restriction, sending the machinist to another doctor, who recommended his return to work with a restriction of fifty pounds. GE also rejected this accommodation, and refused to return the machinist to work. The machinist filed for long-term disability benefits, then sued under the ADA. A jury awarded \$1.2 million in damages, which the district court reduced to \$300,000 in accordance with

the statutory cap on ADA damages. The machinist was also awarded \$141,110 in front pay and \$150,837 in attorney's fees." See. 42 USC § 12111, (8)(9).

The defendants counsel considers the damages non pervasive which exemplifies why oral argument is necessary to demonstrate the physical scars of suicidal ideations, mental deterioration, remaining under constant suicide watch, PTSD, anxiety and depression as a result of bullying in the workplace, 42 USC § 12102, (1)(a)(b)(c).

GE Aviation does not take workplace violence serious nor do they care if their actions result in wrongful deaths. *E.g., Hermant Mody v. General Electric*, Mody died of a heart attack and never saw any of the 2006 jury award. Shortly after that his wife died and any money would go to the couple's two teenage children. The U.S. District Court jury awarded Mody \$591,423 in back pay and \$500,000 in compensatory damages. Jurors then added \$10 million in punitive damages against Fairfield-based GE. Moody worked in General Electric's Plainville facility, which provided products for industrial electrical installations. Mody accused GE of discriminating against him in terms of promotions, job assignments and benefits. Once he complained of the discrimination, he charged GE treated him unfairly, assigning him to menial tasks. He also was told that he was absent too often, a condition due to kidney failure, which required him to undergo dialysis daily. Mody sued GE for age and racial discrimination, retaliation, infliction of emotional distress and other violations of state and federal law.

A jury could circumstantially conclude that GE Aviation is wrong or lying about the harassment to avoid compensating damages to the Plaintiff by their previous offers and recent bribe in APPENDIX E. Medical documentation used for GE Aviation's approval of Short-Term Disability states "To qualify for STD benefits, you must be under the care of a doctor whose certification of your disability is approved by the GE Disability Benefits and Leave Center. The center reviews your doctor's certification and determines whether you are unable to perform the duties of your regular job. Ms. Hoskins's disability was approved and GE denied accommodation of that same disability in the end. See 42 USC § 12101.(a)(1)(3)(4)(5).

The episodes that occur for PTSD patients are very serious but the Defendant's counsel alleges injuries are not pervasive which a reasonable jury would find that is a harsh way to live especially as a result of being bullied and harassed in light of the recent suicide survival rates. Again as to context, *Edelman v. Source Healthcare Analytics, LLC*, because it defines an "employer" to include "any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer." The court next found the HR director acted in the interest of the employer when she terminated Plaintiff. The court reasoned that the HR director is subject to personal liability under the FMLA because she exerted control over Plaintiff's specific leave and because she terminated her. Also see *Perkl v. CEC Entertainment Inc.*, the jury found that Chuck E. Cheese violated the

employment provisions of the ADA by discriminating against Donald Perkle when they fired him due to his disability.

Moreover, in another very similar case, *MaltaRoman v. Hudson County*, Kimberle Malta-Roman was awarded \$8.45 million by a Hudson County jury who claimed Hudson County unfairly fired her because she suffered from depression. The six-person jury ruled Tuesday that Hudson County discriminated against Kimberle Malta-Roman when it refused to allow her to return to work after medical leave. GE Aviation's credibility is called into question by failing to use material audio evidence which would definitively prove Plaintiff was harassed what damages have occurred to endure the painstaking process to prove an illness legally deserving accommodation only to get fired.

The choice among possible orders should be designed to encourage proper presentation of the record. Where an issue as to a material fact cannot be resolved without observation of the demeanor of witnesses in order to evaluate their credibility summary judgment is not appropriate. Where the evidentiary matter in support of the motion does not establish the absence of a genuine issue, summary judgment must be denied even if no opposing evidentiary matter is presented. And summary judgment may be inappropriate where the Defendants opposing it cannot at the time present facts essential to justify his opposition. The District Court as previously stated Hoskins is not a part of protected class citizens although Plaintiff's medical records show otherwise that according to the law, one only has to

be treated for an illness up to a year to qualify for a disability and Plaintiff's illness has well extended beyond a year. See 42 USC § 12102, (1)(a)(b)(c).

REASONS FOR GRANTING THE PETITION

The Fifth Circuit's decision only reaffirmed the District's decision without giving the Plaintiff the proper opportunity to present facts. The reach of these courts in regards to Title I employment is in defiance of the holdings of other courts and the statutory text. The decision worsens a circuit split over whether Title I or Title II extends to qualified individuals under the law. It also furthers a divide over whether the statute applies to employment agencies and to labor organizations who covers employers with 15 or more employees, including State and local governments. These inconsistent rulings affect virtually every business in America. Companies across every industry are battling ADA lawsuits with no consistent message from the courts on whether or how to comply. The Fifth Circuit's decision is also profoundly wrong as it conflicts with Title I's clear text. This Court should intervene immediately so that Congress, not the courts, can decide whether or how to extend the statute it passed in 1990.

The life of an appeal in the Fifth Circuit Court of Appeals consists of a notice of appeal filed, docketed jurisdictional review and briefs filed by both Appellee and Appellant. Hoskins's sufficiently filed her brief along with a reply brief, however; the Fifth Circuit determined a judgment on the basis of lack of evidence without allowing the full appeal procedure. After emailing the Defendant's counsel on Feb. 03, 2020 regarding their Appellee Cross Reply, coincidentally the judgment was

entered on Feb. 07, 2020 along with the bribe see APPENDIX E. This judgment was made without Appellee and Appellant's Cross Reply Briefs and in the Fifth Circuit exact words, "Hoskins makes no clear arguments on appeal and cites the record below only sparingly and largely inaccurately. Although we must construe a pro se litigant's briefs liberally, it is not our "duty to sift through the record in search of evidence to support a party's opposition to summary judgment." We do not conclude that all of her arguments have been abandoned, but we note that we have limited our review in line with the adequate briefing. As discussed in more detail below, after reviewing the record, we agree with the thorough opinion by the district court and affirm the grant of summary judgment for GE. The decision exacerbates and deepens circuit split over whether Title I and II violates the Plaintiff. The Fifth Circuit and the district court within this region have refused to recognize a Title I Title II claim where the questions presented are recurring and important. Unless this Court steps in, the Fifth Circuit's decision will provoke endless litigation and impose immense costs on businesses. The decision squarely holds that General Electric is not subject to Title I or Title II of the ADA.

This petition will require the Court to determine whether the law serves justice to protected class citizens whose rights have been violated in the workplace and wrongfully terminated due to their disability. The district court deprived the Plaintiff of procedural due process. The district court abused its discretion by refusing to correct a judgment that is manifestly contrary to law, based on its erroneous holding that Mississippi law rejects Plaintiff's illness as part of the

protected class of American citizens and rejects the accuracy of the filing dates of the EEOC charges of sexual harassment.

Initially in APPENDIX D, the Honorable Judge Jane M. Virden stated this was a simple case and not complex although I did not have an attorney. I hired Counsel Johnson and Bennett during mediation with GE who were not prepared for trial. Pushing for time, I filed Pro se not realizing how I would get railroaded by Defendants. Relying on truth and justice has a high price I cannot afford. The firm I have found, included in the affidavit has a minimum charge of \$20,000 to fix errors and representation at the point in the case. The defendant's attorney did not cooperate in good faith to resolve this matter with a reasonable settlement offer during deposition. Also note, the Defendants Counsel initially requested an (IME) Independent Medical Exam from the Plaintiff stating "since punitive damages were viable" but rejected the exam during our conference with the Honorable Judge Jane M. Virden who had to remind them that the Court would order such an exam and not opposing Counsel.

GE Aviation is a cruel place of employment and maintains the employment of those who lie for them and fires those who exposes their corruption. GE Aviation argued that they conducted an investigation with no factual findings of harassment but the EEOC and witness Latricia Holland found several, in turn, GE Aviation only offered \$3,000 for damages during mediation including the recent bribe prior to the appeal judgment of \$19,563.72 in the form of a W2, see APPENDIX E. This bribe has added more emotional distress to the Plaintiff as her tax preparer states

she will now be penalized by the IRS for not filing the bribe. The time is suitable for this Court to intervene in light General Electric's hit from the grounded 737 Max following two fatal crashes. The jetliners, Boeing's best seller, have been grounded since mid-March after the second of two crashes within five months. Together the two crashes killed 346 people. GE said that prompted it to lower production of the Leap-1B engines on the planes it makes in a joint venture with French aerospace company Safran. This is significant to my case as I warned the (FAA) Federal Aviation Administration back on September, 8 2016 of GE Aviation's employees knowingly sending defective 1B engine parts to Boeing especially if they did not like an employee. The goal was to get that employee fired instead of following protocol and fixing the defective engine parts, see APPENDIX F.

The Fifth Circuit's rule will apply nationwide no matter what. These questions are important and recurring and the Court should resolve it in this case. If this Court fails to act, the alternative is de facto regulation by the plaintiffs' bar. Plaintiffs filed over 10,000 Title II cases since 2017 and roughly 3, 000 were Title I employment related. These suits are not just high-volume; they are costly, and the costs are rising. This case is an ideal vehicle for the Court to address whether and how Title I and Title II applies to employees who only need time off from work as requested by their doctor, and that issue need not saturate any further. There are no jurisdictional or procedural issues that would bar this Court's review. This Court should decide once and for all whether Title I and Title II applies to the Plaintiff. Otherwise, the Fifth Circuit's decision will impose mandates on the entire country.

Plaintiff has no other avenues than media outlets unless the Supreme Court intervenes. In support of the repeated violations doctrine, the plaintiff may seek damages for every day of injury caused by the nuisance reaching as far back as the statute of limitations extends, even if the nuisance commenced and harmed the plaintiff prior to the limitations period. The Fifth Circuit's barring of Ms. Hoskins's claims even though "a substantively similar but timely suit brought by a different plaintiff ... could land in this Court's lap soon thereafter. General Electric repeatedly violates the ADA each day that it fails to accommodate disabled employees. E.g., *McPadden v. Wal-Mart Stores*, Maureen McPadden, a former New Hampshire pharmacist in a gender bias case. Wal-Mart Stores Inc was ordered by a federal jury in New Hampshire to pay \$31.22 million to a pharmacist who claimed she was fired because of her gender and in retaliation for complaining about safety conditions. Angel Contreras failed as in the case of *Rascon v U.S. West Communications, Inc*, "Under the ADA, prohibited discrimination includes failure to make 'reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability.'"

Cases have been reverse for erroneous summary judgments such as the case of *Griffith v. Wal-Mart Stores Inc.*, Plaintiff appeals the district court's grant of summary judgment in favor of Defendant on Plaintiff's claim that Defendant violated the Americans With Disabilities Act, 42 USC §§ 12101, et seq. ("ADA"). Specifically, the district court held that Plaintiff was precluded from showing he was a "qualified individual with a disability" under the ADA because Plaintiff

previously made certain representations regarding his disability in an application for Social Security disability benefits. For the reasons discussed below, we REVERSE the judgment of the district court.

Although the amount of compensatory and punitive damages will be capped based on statutory limits, these amounts send a very strong message to employers that the public will not tolerate this kind of discrimination. Any different policy choice is up to Congress, not the judiciary. Plaintiff, LaLangie Hoskins ask the Supreme Court to review the Appeals and District Court's final ruling that is clearly erroneous according to The Americans with Disabilities Act (ADA) that prohibits discrimination against employees (and job applicants) who have physical or mental impairments that substantially limit "major life activities.

CONCLUSION

In the view of the United States, the petition for a writ of certiorari should be granted. The court of appeals incorrectly affirmed the district's court summary judgment and it deepens an entrenched circuit split over the proper interpretation of the ADA. The questions presented raise important and recurring issues that have significant consequences for employees with disabilities who seek to vindicate their rights under federal anti-discrimination statutes.

Respectfully submitted,

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March 25, 2020