No._____

20-7399

IN THE

Supreme Court of the United States

ORIGINAL

JENITA CLANCY

Petitioner,

v.

Lloyd James Austin III
Secretary, Department of Defense
Respondent

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

PETITION FOR A WRIT OF CERTIORARI

JENITA CLANCY
P.O. BOX 604
Saint Robert, MO 65584
Pro Se
573-855-5878

QUESTION PRESENTED

Federal law strictly prohibits **false declaration and misleading conduct** in Court against Rehabilitation Act binding in potential Agency that discharged well qualified employee with disability, and is necessary to secure and maintain uniformity of decisions in this court.

Whether the summary judgement be reverse due to it was granted adversely, improperly, and unconstitutional because Clancy was not given an opportunity to file any admissible evidence that was attached to her opposition to defendant motion for summary judgement. The evidence rejected is crucial to prove for disability discrimination, disability harassment, retaliation, and post-employment retaliation. Court ordered that defendant recover cost from petitioner Clancy. Clancy recover nothing. The case should be dismissed. Clancy right to petition & litigate is protected Under the First Amendment of the U.S. Constitution.

Whether Clancy Surreply should be granted due to defendant raised matters (evidence and declaration) for the first time in their reply (ECF No. 133-4, 133-5).

Whether an aggrieved petitioner motion to amend a complaint to add claim under (Title VII) should be granted to seek justice for the disability harassment, retaliation & post-employment retaliation Clancy suffered from her immediate supervisor Groves, under [Federal Rule 15 (a) (2)], the amendment should be freely allowed "when justice so requires." Foman v, Davis, 371 U.S. 178, 182 (1962).

Whether the numerous misleading conducts (22 items) filed by the defendant DeCA in a motion for summary judgement such as:

a) Immediate supervisor Groves false declaration that petitioner Clancy was performing poorly but personnel records showed Clancy received six year of consistent satisfactory evaluation & four promotions;

b) False declaration that Groves did not know petitioner has disability but submitted "list of employees onboard" and "list of employees earned overtime & compensatory time" that showed petitioner has disability code;

c) False declaration that Groves never see the documents before;

d) DeCA modified Clancy deposition, added the word "unfairly" and filed it in the defendant summary judgement as "uncontroverted facts;"

e) Misleading conduct that the unemployment insurance never contacted DeCA about Clancy claim for unemployment but the Unemployment Insurance Employer Handbook showed in conflict to defendant declaration, should be ignored by the court.

List of Parties and Related Cases

* Clancy v. Esper, Case No. 18-4106-HLT-JPO. U.S. District Court for Topeka Kansas. Judgement entered February 10, 2020.

* Clancy v. Miller, Case No. 20-3036 U.S. Court of Appeals for Tenth Circuit Colorado. Judgement entered December 8, 2020

TABLE OF CONTENTS

Document attached

Tenth Circuit Court of Appeals Judgement

District Court Judgement

DeCA Deposition to Clancy (page 101-242)

DeCA set of Interrogatories to Clancy

Bill of Cost filed by defendant

Clancy Objection to the bill of cost

INDEX OF APPENDICES

TABLE OF AUTHORITIES

CASES: Page

STATUTES

RULES

Opinions Below

The Opinion of the United States court of appeals appears at Appendix A to the petition and is reported at law.justia.com US Law website.

The opinion of the United States district court appears at Appendix B to the petition and is reported at Casetext.com.

Jurisdiction

The date on which the United States Court of Appeals decided my case was December 8, 2020.

BACKGROUND

Clancy was employed by the Defense Commissary Agency (DeCA) continuously from June 7, 2010, to November 3, 2016. In two different locations, Fort Leonard Wood (FLW) Missouri and Fort Riley Kansas. More than 6year of employment, she received four promotions and received consistently six satisfactory annual performance evaluation. The last satisfactory Annual Evaluation was received in July 2016, rated period from November 15, 2015 to June 30, 2016, (DeCA form 50-3). It was signed and certified by assistant director Tina Groves and approved by store director Rasco on July 23, 2016.

Clancy is a well-qualified disabled employee for her secretary position. She has years of experience. And, she has two-year Master Degree in Public Management with the U.S.A evaluated GPA of 3.66/400.

Clancy is diagnosed for Anxiety, Depression and PTSD. She is on psychotherapy since 2013, to present. She is suffering from concentration: Clancy has trouble focusing on task for extended periods, and Interaction with others: Clancy have trouble reading the subtle social cues of the workplace, problem getting along with others. These are the effect of that impairment on Clancy life every day. Clancy medical condition was recorded in the Defense Commissary Agency (DeCA) system, (ECF. 8, page 201-202, 467). And despite of the fact that Clancy has medical situation, she never asks for any accommodation. At DeCA Fort Riley Kansas her immediate supervisor was Store Assistant Director, Tina Groves.

Before Clancy transferred to DeCA Fort Riley Kansas, she filed race discrimination against DeCA management for Fort Leonard Wood (FLW) in Missouri. On January 2016, she filed her case against DeCA (FLW) to the EEOC. The defendant of the case in DeCA FLW Missouri was Tina Groves former director at Fort Riley Kansas.

On January 18, 2018, Petitioner Clancy filed this lawsuit against DeCA Fort Riley in Missouri Western District Court and submitted the whole Defense Commissary Agency (DeCA) Investigative file, marked as **(ECF No. 8).** Later this case was transferred to Topeka Kansas.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

First Amendment of the Constitution of the U.S., (the right to petition the government for a redress of grievances); Rehabilitation Act of 1973 Section 501 and 505 as amended; Title VII of the Civil Rights Act of 1964, 42 U.S.C., § 2000e.

STATEMENT OF THE CASE

This lawsuit presents a recuring question of great importance that has divided the court, court of appeals panel decision is contrary to the following decisions of the Supreme Court of the United States or the precedents of this circuit and that consideration by the full courts necessary to secure and maintain uniformity of decisions in this court, 10th Circuit Court of Appeals and other Court of Appeals. Reeve v. Sanders Plumbing Products, Inc.; Diebold v. UPS Ground Freight, Inc.; Velez v. Thermo King; Haddad v. Walmart; Hamilton v. General Electric; Tesone v. Empire Marketing Strategies, No. 19-1026 (10th Cir. 2019), Maryanne Grande v. Saint Clare's Health System, 2017 N.J. Lexis 746 (New Jersey, July 12, 2017), Foman v. Davis, 371 U.S. 178, 182 (1962);

Clancy alleging that her immediate supervisor Tina Groves at DeCA Fort Riley Kansas discriminated against her in violation of the Rehabilitation Act of 1973, Section 501 and 505 as amended, by insisted Clancy to sign resignation form (SF-52) rashly, and discharging her employment immediately after she opposed to return to a belligerent and provocative confrontation meeting about the (management did not modify News Release 62-16) for the allegedly pretextual reason of performing poorly. Clancy further claimed that the discharged was in retaliation based on opposition for the harassment and retaliation repeatedly on a series of baseless counselling two to three times a week from July 2016 to November 3, 2016, in violation of Title VII Civil Rights Act of 1964.

1. On May 14, 2019, Clancy filed motion for leave to amend to add claim under Title VII, to seek justice for the harassment, retaliation and post-employment retaliation she suffered from her immediate supervisor Groves. On the discovery period of this case, Clancy learned that she missed to check the box of the "Title VII" on her initial complaint form she submitted to the court. And, she cannot claim the disability harassment, retaliation, and post-employment retaliation to the Rehabilitation Act of 1973, of Sections 501 and 505.

2. On March 01, 2019, she informed judge O'Hara and the defendant counsel via email that she included the Title VII to her claim. On May 14, 2019, Clancy formally filed motion for leave to add claim under Title VII. The motion was denied. Reasons for denying: the motion is governed by the standards of Fed. R. Civil 16(b) (4) for "good cause." It will cause delay. And, it will cause more expenses to the Defense Commissary Agency (DeCA). Clancy never file leave to modify scheduling order. Her motion for leave to add claim under Title VII will not cause to modify scheduling order, will not cause "delay" to the litigation due to the fact that the records showed all issues in this case were already fully investigated during the discovery, (Clancy Depo. pp. 101-175), (Def. 1st set of interrogatories to Clancy and her answer pp. 4-7).

3. The decision for denying Clancy amended complaint (good cause and delay) was in contrast to DeCA filed motion for summary judgement. DeCA filed their motion for summary judgement January 2, 2020. Six months past the deadline schedule for July 1, 2019. DeCA filed their motion for summary judgement six months late, no motion for leave granted, and without reason "for good cause." The decision of denying Clancy amended complaint was in contrast to the supreme Foman v. Davis, 371 U.S. 178, 182 (1962). The language of Rule 15(a)(2) states that the amendment should be freely allowed "when justice so requires." Most courts have interpreted this language to require them to allow an amendment unless one of the following justifies denial: (a) undue delay; (b) bad faith or dilatory motive by the moving party; (c) repeated failure to cure deficiencies by previous amendments; (d) undue prejudice to the opposing party; or (e) futility. Foman v. Davis, 371 U.S. 178, 182 (1962).

4. Post-employment retaliation, on November 2016, Clancy, filed unemployment claim. The claim was denied because DeCA protested the claim, and not only DeCA Fort Riley management protested the claim, they also submitted falsified information about Clancy discharged. And, DeCA misleading declaration that the Unemployment Insurance never contacted them. DeCA misleading conduct in conflict to the information in the "Unemployment Insurance Employer Handbook," posted to the Kansas Department of Labor website stated, "when an individual file a claim for unemployment, that individual's last employer (DeCA Fort Riley) is mailed an Employee Notice form K-BEN 44/45." "If the employer protested the claim, employer will select one of the four elements". The element DeCA chose was "Left work voluntarily without good cause attributable to the work or the

employer." The element DeCA chose above was mentioned two times on Clancy denial of unemployment letter. Line 7- 8, and 10-11 below the word "DECISION." **(ECF No. 8, page 510 to 511).** Employer Protest to the Benefit Charge, third element on page 23 of Kansas Unemployment Insurance Employer Handbook, (Pltf. Ex. G-l to G-6). The United States Supreme Court, in a unanimous decision, has held that former employees may sue under Title VII of the Civil Rights Act of 1964 to challenge alleged **retaliation** by their past employers. Robinson v. Shell Oil Co. (95-1376), 519 U.S. 337 (1997).

5. On January 02, 2020, DeCA filed a motion for summary judgement, six months past the schedule order for July 01, 2019, without granted leave to file for six months late and no reason "for cause" despite of the fact that the court rejected all Clancy multiple motion for leave to file relevant documents evidence. On January 16, 2020, Clancy filed opposition to DeCA motion for summary judgement. The judge's chambers intentionally ordered the clerk of court not to file again Clancy document evidence that was attached to the opposition to DeCA motion for summary judgement, the exhibit are 209 pages. Clancy right to petition and litigate is protected under "First Amendment of the Constitution of the United States."

6. On February 10, 2020, district court adversely, improperly, and unconstitutionally granted DeCA motion for summary judgement without considering any of Clancy evidence. The court ruled that Clancy has "no expert witness," "no evidence for reference," And, the court furthered ordered and adjudged that Clancy recover nothing, the action be dismissed, and the "defendant recover cost from the petitioner, Jenita Clancy." Summary judgment is only proper if the pleadings, depositions, and affidavits show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c), Pritchard v. Southern Co. Servs., 92 F.3d 1130, 1132 (11th Cir.1996). Rejected relevant documents evidence was in violation for Kansas local Rule 56.1 Motions for Summary Judgement. This judgement is in contrast to the judgement of a federal judge in the U.S. District of Kansas Chief Judge Julie A. Robinson on the lawsuit of Thomas Diebold v. UPS Ground Freight, Inc. Civil Action No. 2:17-cv-02453.

Tenth Circuit Court of appeals

7. The 10th Circuit Court of appeal focus only to their comment about the bulky medical records, and ignored the other numerous records Clancy submitted. such as the record show 1) Clancy 6year consistent positive Annual Performance Evaluation; 2) four consecutive year records of promotions; 3) Clancy master degree and college degree evaluated transcripts; 4) Affidavits; 5) Exhibits; 6) declarations; 7) Clancy deposition; 8) doctors' certification; 9) Groves submitted falsified SF-52 of Clancy; 10) DeCA policy such as Sunday differential, Overtime Pay, and Performance Management Program. Groves 4 set list of fabricated performance issue; 11) Clancy denied unemployment claim; 12) Kansas Department of Labor Unemployment Insurance Employer Handbook (page 24). 13) Clancy Electronic Official Personnel Folder, shows Clancy has no negative records; These documents above are all crucial to prove this case.

8. To prove disability discrimination under Sections 501 and 505 of the Rehabilitation Act of 1973. This law prohibits discrimination against qualified individuals with disabilities who work in the federal government.

a) When a petitioner alleges, she was fired discriminatorily based on a disability, she must prove by a preponderance of the evidence that: (l) she is disabled within the meaning of the Rehabilitation Act of 1973, as amended **(2)** she "was performing her job at a level that met her employer's legitimate expectations"; (3) she was discharged; and (4) the employer sought someone else to perform the same work after she left.

b) The Court further explained that, with respect to the first prong, a perception of a disability is just as actionable as an actual disability. To meet the burden of the second prong, the Court stated, the petitioner need only produce evidence showing that he or she was actually performing the job prior to termination. The third prong, termination (or other adverse employment action) needed no discussion. And the fourth prong is required to show the employer's "continued need for the same services and skills."

C)The critical part of the Court's decision in applying the "modified McDonnell Douglas test" to disability claims centers around the **second step**, or the employer's defense. The Court held that, as always, if the employer claims that it has a non-discriminatory reason for the discharge, the employer has only burden of production, and not the burden of proof or persuasion. However, if the employer's defense is that the employee could not perform his or her job because

of the disability, the employer's burden is substantially changed: To carry its burden, the employer must prove "it... reasonably arrived at its opinion that the [employee] is unqualified for the job " [Citation]. The employer must produce evidence that its decision was based on "an objective standard supported by factual evidence" and not on general assumptions about the employee disability. Grande v. Saint Clare's Health Sys., 2017 N.J. LEXIS 746 July 12, 2017**).** Jansen v. Food Circus Supermarkets, Inc. 110 N.J. 363 (1988). Reeve v. Sanders Plumbing Products, Inc. No. 99-536, 530 U.S. 133.

9. Disability Harassment, and Retaliation under Title VII, When Clancy started to work for her promotion as secretary at DeCA Fort Riley Kansas, Clancy and her immediate supervisor Tina Groves are in good terms. They shared foods in the office, made jokes, and work smoothly. Until Clancy filed race discrimination complaint against DeCA Fort Leonard Missouri to the EEOC on January 6, 2016. The defendant in the race discrimination against DeCA Fort Lenard Wood is Groves former director at DeCA Fort Riley Kansas. The issue started on March 20, 2016. Groves ordered Clancy to work on Sunday and did not pay her Sunday Premium Pay. Clancy opposed that she did get paid for Sunday Premium Pay. On around March 2016, Clancy requested a sick leave to be sign for doctor appointment in Missouri that was filed three weeks prior. Groves question her why so many appointments. Clancy informed Groves about her disability in March 2016.

10. Clancy opposed three harassment and retaliation in May 2016, of Groves. a) Clancy opposed when Groves blamed her for Groves own mistake about the distro list that was submitted by Groves erroneously to the Zone manager Katrenick. b) Groves ordered Clancy to work on the secondary job in the sale floor whole day on May 13, 2016. And, on May 14, 2016, Groves sent an email to Clancy. Blamed her about late of submitting time and attendance of her and Rasco. Groves threatened Clancy on this email of "Failing to follow my instruction will result in progressive action." c) On May 31, 2016, Clancy earned overtime from her informal training. Groves did not pay Clancy for the earned overtime, these actions were in violation defendant DeCA policy; in violation of Prohibited Personnel Practice 5 U.S. Code § 2302, an abuse of authority; and in violation of Title VII.

11. On July 2016, Clancy received her 6th satisfactory Annual Performance Evaluation (DeCA form 50-3, Employee Performance and Results Form (Non-Supervisory), (DeCA policy provides that Rating of "Did Not Meet" on a performance element MUST be substantiated by a brief narrative statement in Part C of D of DeCAF 50-3, "Employee Performance and Result form." Clancy

satisfactory evaluation in July 2016, there was no any narrative that Groves have concern about Clancy performance, [ECF No. 8, pp 275, (4) para. (1)]

12. Clancy continued to opposed Groves harassment and retaliation. On July 25, 2016, Clancy received first list of fabricated memorandums of performance issue. On the second page of the list, Groves threatened Clancy for the second times of "Future issues could result in the initiation of other administrative action," (ECF No. 8. Pp. 324-325, 2nd page, 2nd para., last line).

On July 25, 2016, list fabricated of performance issue, **Groves made it clear, she wanted clancy to vacated her position as a secretary. Groves stated, "As I have discussed with you previously, if you are interested in reassignment or change to lower grade to a position better suited to your needs, please notify. I have attached the form you may use to make such a request," (ECF No. 8, pp 325, 3rd para.).**

Clancy opposed the list of baseless performance issue. She informed the director Rasco the harassment and retaliation. She made a letter requesting documents about this fabricated performance issue so she can understand the issue brought up. Groves never show any document. Rasco did not investigate the problem. Groves scrutiny, harassment, and retaliation escalated. Groves always find wrong in everything Clancy work product. Groves place Clancy on surveillance her arrival and departure in the Admin Office. Clancy was restricted to arrive at work a few minutes early of 8:00 o'clock time in and she had to go home right at exactly 5:00 p.m.

13. On September 28, 2016, Clancy received second fabricated performance issue. Once again Clancy opposed it. The more Clancy opposed the harassment and retaliation the more it was escalated. Clancy received again the third fabricated performance issue on September 30, 2016. And, on October 12, 2016, Clancy received Groves fabricated performance issue in a different format, this time Groves used the DeCA form 50-3, (ECF No. 8, pp. 356, 362-363, 320).

14. Groves adverse actions to Clancy are in conflict to the defendant DeCA policy of performance deficiencies, stated: "if employee performance below "met" in a non-critical element and critical element at any time during the appraisal period, the Rating Official (Groves) must work with Head Quarter HR as applicable to place the employee on a Performance Improvement Plan (PIP), (ECF No. 8, page 281), DeCAM-7.1 Chapter 9: 9-1 and 9-2. If in fact, Clancy was performing poorly

Groves should place Clancy on PIP. Groves violated multiple times defendant DeCA policy to harassed and retaliated Clancy.

15. Records show that Clancy suffered and was subjected to a series of closed-door counselling two to three times a week started in July 2016 to November 2016. On the unlawful counseling Groves threatened Clancy repeatedly verbally and in writing. Groves made a cruelty derogatory remarks about Clancy disability that "her position as a secretary was not good for her mental health." Groves insisted Clancy verbally and in writing to resign, reassignment or change to a cashier position that was available in the store. The disability discrimination, disability harassment and retaliation Clancy suffered from her immediate supervisor caused serious emotional injuries. The constant discrimination, harassment and retaliation caused Clancy to be more depressed and anxious, which in turn led to a worsening her medical conditions, (ECF No. 8, pp 320, 324-325, 356,362-363, 469).

Records showed Clancy was hospitalized for four days after a few months she was discharged from her job. Although disability harassment is not expressly prohibited in Title VII, the U.S. Supreme Court has recognized that harassment based on a protected status is implicitly prohibited by Title VII. According to the Supreme Court, an employer can be held vicariously liable in a Title VII hostile work environment claim if the employee accused of the harassment is empowered by the employer to take tangible employment actions against the plaintiff. EEOC v. Bob Rich Enterprises, No. 3:05-CV01928-M (N.D. Tex. Jul. 27, 2007); Navarre v. White Castle System, Inc., 2007 WL 1725382 (D. Minn. June 14, 2007), Spencer v. Wal-Mart Stores, Inc., 2005 WL 697988 (D. Del. Mar. 11, 2005),

16. The Tenth Circuit Court of Appeals inconsistent "assumption summary" on page 1 on their order and judgement filed December 08, 2020. Stated, "Pro se plaintiff Jenita Clancy started working for the Defense Commissary Agency at Fort Riley in November 2015. In the summer and fall of 2016, she received negative performance evaluation. And in November 2016, she resigned." These are inconsistent to the records.

The records show that: a) Clancy was employed by the Defense Commissary Agency (DeCA) continuously since June 2010 to November 2016. b) On November 2015, Clancy transferred to DeCA Fort Riley Kansas for a promotion. (the same agency), c) In July 2016, she received her 6th satisfactory Annual Performance Evaluation. d) On November 03, 2016, Clancy was insisted by her immediate supervisor to sign resignation form (SF-52), rashly and discharged her

immediately because she opposed to return to a belligerent and provocative confrontation meeting on November 3, 2016, organized by Groves.

17. A plaintiff's prima facie case, combined with sufficient evidence to find that the employer's asserted justification is false, may permit the trier of fact to conclude that the employer unlawfully discriminated." Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 148 (2000). Sykes v. FedEX Freight East, No. 2:17-cv-13189 (E.D. Mich. 8/3/19. Whether petitioner Clancy relies, to her detriment, on an immediate supervisor Groves mis-presentations about a workplace policy, or an employer misleading declaration about the real reason it terminated employee, such misleading conduct or statements can become evidence of discriminatory animus. **Employers are well served to ensure that they are truthful, and consistent with the records they prepare at the time they decide to take action, whenever justifying their employment decisions.** Weaknesses, implausibility, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could rationally find them unworthy of credence. Morgan v. Hilti Inc. 108 F.3d 1319 (10th Cir. 1997).

18. Submitting evidence document to the court is protected under First Amendment of the United State Constitution. The 10th Circuit Court of Appeals affirmed all of the district court Judgement without considering any of the documents evidence Clancy submitted, ignored the numerous, itemized, and fully refuted DeCA misleading conduct, and ignored the defendant modified petitioner deposition, added the word "unfairly" and filed these all on defendant motion for summary judgement on January 02, 2016. Whether these "misleading conduct" of the defendant DeCA should be ignored by the courts, 18 U.S. Code § 1515.

Clancy immediate supervisor insisted Clancy to sign SF-52, form use for formal resignation rashly, and discharged her immediately because she opposed to return to a belligerent and provocative closed-door confrontation meeting about the (management did not modify DeCA News Release 62-16). After Clancy continuously opposing her immediate supervisor disability harassment, in July 2016, Groves scrutiny increased greatly. Groves overly criticizing all of petitioner work product, made a fabricated list of performance issue, and issued a series closed-door counselling two to three times a week from July 25, 2016 to November 2016. On the first fabricated list of performance issue, Groves threatened Clancy for second time of "future issue could result in the

initiation of other administrative actions." And, Groves made it clear on that list that she wanted Clancy vacated her position as a secretary. Clancy is a well-qualified to her secretary position because of her experience and education. Petitioner Clancy requested documents to the fabricated list of performance issue, Groves never provided any, after that, the scrutiny and disability harassment escalated, ((ECF No. 8, pp. 173, 320, 324-325, 356,362-363, 469).

On Appeal, petitioner argues, (1) that the district court improperly granted defendant summary judgement on the ground that Clancy has no expert witness, and rejected all petitioner evidence. Rehabilitation Act of 1973, doesn't say that to establish petitioner Clancy disability she must hire an expert witness. (2) Clancy argues that district court abused its discretion when it ordered that the defendant recover cost from Clancy, and Clancy recover nothing. If the party submitted declaration in bad faith, the court may order the submitting party to pay the other party the reasonable expenses," Rule 56 (h) Summary Judgement. Petitioner Clancy never submits any affidavit or declaration in bad faith but the records show defendant DeCA submitted numerous bad faith declaration. This is a unique case and an excellent vehicle for resolving a circuit conflict on a well define legal issue of extraordinary importance.

REASONS FOR GRANTING THE PETITION

Federal law strictly prohibits false declaration and misleading conduct in Court against Rehabilitation Act as Amended binding in potential Agency that discharged well qualified employee with disability, and is necessary to secure and maintain uniformity of decisions in this court. Reeve v. Sanders Plumbing Products, Inc. No. 99-536, 530 U.S. 133; Velez v. Thermo King No. 08-1320 (1st Cir. 10/16/2009); Hamilton v. General Electric, No. 08-5023 (6th Cir. Feb. 12, 20199).

This lawsuit presents a recuring question of great importance that has divided the court, court of appeals panel decision is contrary to the following decisions of the Supreme Court of the United States or the precedents of this circuit and that consideration by the full courts necessary to secure and maintain uniformity of decisions in this court, 10th Circuit Court of Appeals and other Court of Appeals. Reeve v. Sanders Plumbing Products, Inc.; Diebold v. UPS Ground Freight, Inc.; Velez v. Thermo King; Haddad v. Walmart; Hamilton v. General Electric; Tesone v. Empire Marketing Strategies, No. 19-1026 (10th Cir. 2019), Maryanne Grande v. Saint Clare's Health System, 2017 N.J. Lexis 746 (New Jersey, July 12, 2017), Foman v. Davis, 371 U.S. 178, 182 (1962);

Clancy alleging that her immediate supervisor Tina Groves at DeCA Fort Riley Kansas disability discriminated against her in violation of the Rehabilitation Act of 1973, Section 501 and 505 as Amended, by insisted Clancy to sign resignation form (SF-52) rashly, and discharging her employment immediately after she opposed to return to a belligerent and provocative confrontation meeting about (management did not modify News Release 62-16, before Clancy instructed to send it out) on November 3, 2016, for the allegedly pretextual reason of performing poorly. Clancy further claimed that the discharged was in retaliation for opposition of harassment and retaliation of Groves; for filing EEOC race discrimination against DeCA Fort Leonard Wood Missouri; and after she was discharged for filing EEO compliant to DeCA Headquarter; post-employment retaliation when defendant DeCA not only protested her unemployment claim, submitted false information, and DeCA lied that the unemployment insurance never contacted defendant DeCA in violation of Title VII Civil Rights Act of 1964

THE TENTH CERUIT COURT OF APPEALS

The Tenth Circuit Court of Appeals affirmed all of the district court judgement. The district court granted defendant motion to strike petitioner Clancy

motions for leave to file relevant document evidence. On petitioner Clancy opposition to defendant motion for summary judgement, Clancy attached total 209 pages of relevant documents evidence. The judge chambers ordered the clerk of court not to file Clancy 209 pages of Exhibit, this information was confirmed by the clerk of court via email chat on March 18-19, 2020.

The rejected documents are the following: 1) Clancy 6year consistent satisfactory Annual Performance Evaluation; these documents shows that Clancy performing satisfactory before the problem started. 2) four consecutive year records of promotions; 3) Clancy master degree and college degree evaluated transcripts; 4) Dr. certification 5) Affidavits; 6) Exhibits; 7) declarations; 8) Clancy deposition; 9) supervisor submitted falsified (SF-52) of Clancy; 10) DeCA policy such as Sunday differential, Overtime Pay, and Performance Management Program. Groves 4 set list of fabricated performance issue; 11) Clancy denied unemployment claim; 12) Kansas Department of Labor Unemployment Insurance Employer Handbook (page 24); 13) Document evidence to Groves falsified declaration and misleading conduct; 14) Clancy Electronic Official Personnel Folder, shows Clancy has no negative records.

The Tenth Circuit Court of Appeals made incorrect "comment summary" of their Order and Judgement filed December 08, 2020. On page one stated, "Pro se plaintiff Jenita Clancy started working for the Defense Commissary Agency at Fort Riley in November 2015. In the summer and fall of 2016, she received negative performance evaluation. And in November 2016, she resigned."

The records show that: a) Clancy was employed by the Defense Commissary Agency (DeCA) continuously since June 2010 to November 2016. b) On November 2015, Clancy transferred to DeCA Fort Riley Kansas for her promotion, (the same agency), c) More than six year of employment, she received consistently six Satisfactory Annual Performance Evaluation. In July 2016, she received her 6th satisfactory Annual Performance Evaluation, d) On November 03, 2016, Clancy was insisted by her immediate supervisor to sign resignation form (SF-52) rashly, and discharged her immediately because she opposed to return to a belligerent and provocative closed-door confrontation meeting about "management did not modify news release 62-16, before Clancy instructed to send it out," the closed-door meeting was organized by Groves.

COURT REJECTED CLANCY EVIDENCE

Clancy has a granted motion to file exhibits conventionally, (ECF No. 107), filed on September 18, 2020. Clancy did not file the exhibit right away because she was waiting to defendant to file their summary judgment so the exhibit will be attached and other evidence document to Clancy opposition to defendant motion for summary judgement.

Records show Clancy tried to file evidence to the court (ECF No. 34), filed 11/20/2018 and (ECF No. 51) filed on January 18, 2019. Clancy attached 9 exhibits to amended answer, the court strike the pleading and the attachment.

Records show that on Clancy opposition to defendant motion for summary judgement she attached 209 pages of exhibits but the judge's chamber intentionally ordered the clerk of court not file Clancy exhibits. This information was confirmed on March 18-19, 2020 via email chat when Clancy inquired what happened to the documents evidence that Clancy attached to her opposition to defendant summary judgement. Some of these documents were also submitted to the 10th Circuit Court of Appeals.

COURT REJECTED CLANCY SURREPLY

DeCA presented matters for the first time on their reply to Clancy opposition to DeCA motion for summary judgement. Defendant DeCA attachment title "Supplemental Declaration of Tina Groves," (ECF No. 133-4, 133-5) filed on January 29, 2020. "The standard for granting to file Surreply is whether the party making the reply would be unable to contest matters presented to the court for the first time in the opposing party's reply, petitioner Clancy satisfy this standard because DeCA reply brief attached new defendant declaration and matters for the first time, petitioner Clancy have not been able to contest these falsified declarations. The court should grant to file Surreply when this standard is satisfied". The Court denied Clancy leave to file Surreply, this court judgement is in conflict to Ben-Kotel v. Howard Univ., 319 F.3d 532, 536 (D.C. Cir. 2003), and Lewis v. Rumsfeld, 154 F. Supp. 2d 56, 61 (D.D.C. 2001).

Supplemental declaration of Tina Groves (ECF No. 133-4, 133-5) filed on January 29, 2020, is the second falsified declarations and misleading conduct, on defendant reply to Clancy opposition for summary judgement. Groves referred to two documents she submitted to Agency Investigative File, Record of Investigation (ROI). These two defendant DeCA in their ROI are the "Fort Riley Commissary Employees Onboard in DCPDS as of 10/31/2016" and the other is "Fort Riley Commissary-Subordinate to Ms. Tina Groves, Employees Worked/Earned Overtime/or Compensatory time." (ECF No. 8, page 201-202, 467). Groves lied she did not know Clancy has disability. She never sees these two documents

before. Defendant redacted the two documents. Removed all of the information of petitioner Clancy, and filed it, (ECF No. 133-4). These documents mentioned above showed that Clancy has disability code and evidence that Clancy disability was recorded in the DeCA system.

SUMMARY JUDGEMENT

Section 501 of the Rehabilitation Act is a federal civil rights law that prohibits federal agencies from discriminating against job applicants and employees based on disability, and requires agencies to engage in affirmative action for individuals with disabilities. 29 U.S. Code § 791 (b)

The district court adversely, improperly, and unconstitutionally granted defendant motion for summary judgement on Clancy complaint for "disability discrimination" and dismissed the harassment, retaliation, and post-employment retaliation. The granted defendant summary judgement was adverse, improperly, and unconstitutional because Clancy was not giving an opportunity to submit evidence. Clancy right to petition government is protected under the First Amendment of the United States Constitution. Summary judgment is only proper if the pleadings, depositions, and affidavits show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Pritchard v. Southern Co. Servs., 92 F.3d 1130, 1132 (11th Cir.1996).

The granted defendant summary of judgement in conflict to Reeve v. Sanders Plumbing Products, Inc. No. 99-536, 530 U.S. 133. In Reeve Justice O'Connor delivered the opinion of the Court. "This case concerns the kind and amount of evidence necessary to sustain a jury's verdict that an employer unlawfully discriminated on the basis of age. Specifically, we must resolve whether a defendant is entitled to judgment as a matter of law when the plaintiff's case consists exclusively of a prima facie case of discrimination and sufficient evidence for the trier of fact to disbelieve the defendant's legitimate, nondiscriminatory explanation for its action. We must also decide whether the employer was entitled to judgment as a matter of law under the particular circumstances presented here.

The Tenth Circuit Court Appeals stated that Clancy needed an expert because she could not describe her symptoms. Clancy may not clearly state her symptoms to her appeal but the records showed detailed all of her symptoms on her answer to the defendant interrogatories page one and two. The district court restricted Clancy to file any of her evidence.

Clancy limitation to major life activities caused by her disability: a) Concentration, Clancy have trouble focusing on one task for extended periods. b) Handling time pressures and multi tasks: Clancy have trouble knowing how to decide which tasks should be done first and anxious that maybe, she will be unable to complete the work on suspense date. c) Interaction with others, Clancy have trouble reading the subtle social cues of the workplace, problems of getting along. d) Sleep disorder: this symptom substantially limited Clancy in her major activity of sleeping. e) Anhedonia, Clancy losing interest in any activity such as, hobbies previously enjoyable activities, my friends, sexual activity, work, and changes appetite.

To prove disability discrimination Under Rehabilitation Act of 1973 as amended. Disability Discrimination occurs when an employer covered by the Rehabilitation Act, as amended, treats qualified individual with a disability who is an employee unfavorably because she has a disability.

Disability discrimination also occurs when a covered employer treats an employee less favorable because she has a history of a disability (such as a past major depression episode) or because she is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months) and minor (even if she does not have such an impairment), 42 U.S. Code § 12112

An evidentiary framework used to analyze whether plaintiff's disability discrimination claims should survive a defendant employer's motion for summary judgement. The McDonnell Douglas Corp. v. Green, 411 U. S. 792, 802, burden-shifting analysis is applied when a plaintiff lacks direct evidence of discrimination. It takes its name from the US Supreme Court decision that created the framework: Traditional McDonnell Douglas burden-shifting operates as follows: The plaintiff makes out a prima facie case, which means demonstrating that: 1) she is a member of a protected class; 2) she was qualified for her position; 3) despite being qualified, she was discharged; 4) the position remained available after the plaintiff's rejection, and the defendant employer continued to seek applicants from persons of plaintiff's qualifications.

- The burden of production shifts to the defendant employer to articulate a legitimate, nondiscriminatory reason for the employment action.

- The plaintiff must then demonstrate that the employer's reason was pretext for discrimination. McDonnell Douglas Corporation v. Green, 411 U.S. 792, 802-05, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973). 42 U.S. Code § 12101

To establish a prima facie case of employment discrimination under Rehabilitation Act, a plaintiff must demonstrate "that (1) he has a disability, (2) he is a `qualified individual,' which is to say, able to perform the essential functions of the employment position that she holds or seeks with or without reasonable accommodation, and (3) the defendant unlawfully discriminated against her because of the disability." Reeve v. Sanders Plumbing Products, Inc. No. 99-536, 530 U.S. 133; Reed v. The Heil Co., 206 F. 3d 1055, 1061 (11the Cir. 200); D'Angelo v. Conagra Foods, 422 F.3d 1220, 1234 (11th Cir. 2005).

The district court judgement stated that, Clancy has no expert witness, no document for reference. The complaint should be dismissed. The Tenth Circuit affirmed this decision. This Judgement in conflict to the Tesone v. empire marketing strategies, no. 19-1026 (10th cir. 2019), Expert witness is not always required in the disability discrimination. The district court also ordered that petitioner Jenita Clancy recover nothing. The defendant recover cost from Jenita Clancy. Clancy objected this judgement.

The defendant DeCA granted summary of judgement was unconstitutional and in in conflict with the First Amendment of the United States Constitution, the right to petition and litigate. And, in violation to Kansas Local Rule 56.1, provides "that you may not oppose summary judgment simply by relying upon the allegations in your complaint. Rather, **you must submit evidence**.

Summary judgment is properly granted when "there is no genuine issue as to any material facts" and "the moving party is entitled to a judgement as a matter of law." Fed. R. Civ. P. 56(c). "The movant bears the burden of demonstrating the satisfaction of this standard, by presenting pleadings, depositions, answer to interrogatories, and admission on file, together with affidavits, that establish the absence of any genuine, material factual dispute." Bochese, 405 F.3d at 975 (quoting Fed. R. Civ. P. 56(c). Clark v. Coats & Clark, Inc., 929 F.2d 604, 608 (11th Cir. 1991); Pritchard v. Southern Co. Servs., 92 F.3d 1130, 1132 (11th Cir.1996).

A plaintiff's prima facie case, combined with sufficient evidence to find that defendant DeCA asserted justification is false, may permit the trier of fact to conclude that the employer unlawfully discriminated. Whether petitioner Clancy relies, to her detriment, on an immediate supervisor Groves mis-presentations about a workplace policy, or an employer lies about the real reason it terminated employee, such misleading or falsified declaration or statements can become

evidence of discriminatory animus. **Employers are well served to ensure that they are truthful, and consistent with the records they prepare at the time they decide to take action, whenever justifying their employment decisions.** Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 148 (2000). Sykes v. FedEX Freight East, No. 2:17-cv-13189 (E.D. Mich. 8/3/19.

COSTS

District ordered that defendant DeCA recover from Clancy. Clancy recover nothing. Clancy objected this to the district court when the defendant DeCA filed the bill of costs on February 12, 2021. The granted defendant DeCA motion for summary judgement was adverse, improper, unconstitutional because Clancy was not giving an opportunity to file evidence that was attached to Clancy opposition to defendant motion for summary judgement. The judge chambers ordered the clerk of court to not to file Clancy 209-page exhibit. Defendant DeCA motion for summary judgement was granted without considering any evidence of Clancy.

MOTION TO AMEND COMPLAINT

The tenth Circuit Court of Appeals stated, a party seeking leave to amend after a scheduling order deadline must satisfy both the Rule 16(b) and Rule 15(a) standards.

Fed. R. Civ. P. 16(b)(4) Modifying a Scheduling. A schedule may be modified only for "good cause" and with the judge's consent.

Petitioner Clancy was not seeking leave to modify scheduling order due to the fact that the records show the defendant counsel was informed during the discovery period of this case that Clancy added claim under Title VII, to seek justice to harassment, retaliation, and post-employment retaliation she suffered from her immediate supervisor Groves. That's the reasons why the defendant counsel included the harassment, retaliation and post-employment retaliation investigated on the discovery period of this case.

Records show that the harassment, retaliation, and post-employment-retaliation were included and fully examined on the defendant counsel interrogatories to Clancy and her answer, and the defendant production of documents. Records show on defendant deposition to Clancy, the issue of harassment, retaliation, and post-employment retaliation were also fully examined. And, defendant counsel never mention they needed expert testimony during the discovery for harassment, retaliation, and post-employment retaliation. Clancy required by the defendant DeCA to have Physical and Mental Examination. Clancy

cannot claim the harassment, retaliation, and post-employment retaliation to the Rehabilitation Act of 1973, of Sections 501 and 505 as amended, **(Clancy Depo. pp. 101-175), (Def. 1st set of interrogatories to Clancy and her answer pp. 4-7).**

The decision of denying Clancy leave to file amended complaint was in conflict to the supreme Foman v. Davis, 371 U.S. 178, 182 (1962). The language of Rule 15(a)(2) states that the amendment should be freely allowed "when justice so requires." Most courts have interpreted this language to require them to allow an amendment unless one of the following justifies denial: (a) undue delay; (b) bad faith or dilatory motive by the moving party; (c) repeated failure to cure deficiencies by previous amendments; (d) undue prejudice to the opposing party; or (e) futility. Foman v. Davis, 371 U.S. 178, 182 (1962).

HARASSMENT BASED ON DISABILITY

Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors. The Supreme Court made clear that employers are subject to vicarious liability for unlawful harassment by supervisors. The standard of liability set forth in these decisions is premised on two principles: 1) an employer is responsible for the acts of its supervisors, and 2) employers should be encouraged to prevent harassment and employees should be encouraged to avoid or limit the harm from harassment. In order to accommodate these principles, the Court held that an employer is always liable for a supervisor's harassment if it culminates in a tangible employment action. However, if it does not, the employer may be able to avoid liability or limit damages by establishing an affirmative defense that includes two necessary elements: a) the employer exercised reasonable care to prevent and correct promptly any harassing behavior, and b) the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.

The Supreme Court, reasoned that vicarious liability for supervisor harassment is appropriate because supervisors are aided in such misconduct by the authority that the employers delegated to them. Therefore, that authority must be of a sufficient magnitude so as to assist the harasser explicitly or implicitly in carrying out the harassment. . In Burlington Industries, Inc. v. Ellerth, 118 S. Ct. 2257 (1998), and Faragher v. City of Boca Raton, 118 S. Ct. 2275 (1998).

POST-EMPLOYMENT RETALIATION

Clancy suffered and was subjected to harassment, retaliation, and post-employment retaliation from her immediate supervisor Groves. Groves violated defendant DeCA policy to did not pay Clancy Sunday Premium Pay on March 20, 2016, and Groves did not pay Clancy Earned Overtime Pay on May 31, 2016. These were an abuse of authority, in violation of 5 U.S. Code § 2302 - Prohibited Personnel Practice (PPP), in violation of Title VII. On the series of closed-door counseling from July 2016 to November 2016. And, after Clancy discharged, she filed unemployment insurance claim. It was denied due to not only DeCA protested Clancy unemployment claim, DeCA submitted falsified statement, DeCA also lied that unemployment insurance never contacted them about Clancy claim. These misleading conducts are **in conflict** to the "Unemployment Insurance Employer Handbook information," posted to the Kansas Department of Labor website stated, "when an individual file a claim for unemployment, that individual's last employer (DeCA Fort Riley) is mailed an Employee Notice form K-BEN 44/45." "If the employer protested the claim, employer will select one of the four elements". The element DeCA chose was **"Left work voluntarily without good cause attributable to the work or the employer."** The element DeCA chose above was mentioned two times on Clancy denial of unemployment letter. Line 7- 8, and 10-11 below the word "DECISION." **(EFC No.8, pp.78-79, 100, 109, 176-178, 510-511).** Employer Protest to the Benefit Charge, third element on (page 23) of Kansas Unemployment Insurance Employer Handbook, (Pltf. Ex. G-2).

The district court denied aggrieved motion for leave to add claim under Title VII, to seek justice for the harassment, retaliation, and post-employment-retaliation Clancy suffered from her immediate supervisor Groves. And, the 10th Cir. court of appeals affirmed the decision. This judgement is in conflict to the Supreme Court decision Foman v. Davis. Under [Federal Rule 15 (a) (2)] The amendment should be freely allowed "when justice so requires." Foman v. Davis, 371 U.S. 178, 182 (1962).

Post-Employment retaliation, the United States Supreme Court, in a unanimous decision, has held that former employees may sue under Title VII of the Civil Rights Act of 1964 to challenge alleged retaliation by their past employers. *Robinson v. Shell Oil* Co. (95-1376), 519 U.S. 337 (1997).

RETALIATION BASED ON OPPOSITION & FILING CHARGE

It shall be an unlawful employment practice for an employer to retaliate against any of his employee because she has opposed any practice made an unlawful employment practice or because she has made a charged

Title VII also prohibits employers from retaliating against employees based on an employee's opposition to employment discrimination or complaint of discrimination. *See* 42 U.S.C. § 2000e-3(a).

DEFENDANT SUBMITTED NUMEROUS MISLEADING DECLARATION

The Tenth Circuit Court of Appeals ignored all the misleading conduct [18 USC 1515(A)(3)] by the defendant DeCA on DeCA motion for summary judgement. The refuted immediate supervisor Groves misleading conduct that was filed on defendant summary judgement **(ECF NO. 125-6)** are the following below:

1) #6. Groves said, "Ms. Clancy struggled with the basic duties of her position and had difficulty remembering her training. I had to retrain Ms. Clancy on many of her duties".

Misleading conduct because records show Clancy was not struggling to her job, **(ECF No.8, pp 172, 486-494) (Pltf. Ex. C-1, C-2).**

2) #7. Groves said, "Ms. Clancy's poor job performance continued. She repeated the same mistakes, was disorganized, and **could not maintain focus on her tasks**. She routinely missed suspenses, which are deadlines to complete certain tasks or submit certain reports. She missed deadlines to submit timesheets, which put at risk employees' timely pay and leave. She struggled with computer skills like creating folders, copying and pasting, using the commissary webpage, and working in Microsoft Excel, among others, all after being trained on all of these."

Misleading conduct because Clancy personnel records showed she received satisfactory Annual Performance Evaluation on July 2016, rated date November 15, 2015.to June 30, 2016, signed and certified by Groves and approved by Mr. Rasco, **(ECF No. 8, page 486-494, 172)** and (Pltf. Ex. C-2, C-1)

3) #8. Groves said, "I considered Ms. Clancy to be failing the elements of her performance plan, but DeCA policy prevents an annual performance rating of less than "fully successful" unless an employee is on an official performance improvement plan ("PIP"). Ms. Clancy was not yet on a PIP)." **Misleading conduct, because inconsistent to her previous declaration, and in conflict with DeCA Policy**. Groves inconsistent to her previous answer on DeCA (ROI) Groves said, "I was too late in placing Ms. Clancy on a Performance Improvement Plan, **(ECF No.8, pp 93, para. 3).** And, there was **NO** DeCA policy that prevents an annual performance rating of less than "fully successful" unless an employee is on PIP. **The DeCA policy specified**, "If an appraisal cannot be prepared at the end of the appraisal period, the appraisal period will be extended until the conditions necessary to meet the minimum period of performance have been met and thereafter, a rating of record will be prepared," (DeCAM 50-7.1, Chapter 3, Performance Appraisal Program, 3-4), **(ECF No.8, pp 265).**

4) #11 Groves said, "The first meeting was on July 25, 2016. During that meeting, I gave Ms. Clancy her rating, a memorandum identifying her ongoing performance issues since March 2016, and her performance plan for the next rating period. Ms. Stapler assisted me in drafting the July 25, 2016 memorandum." **Misleading conduct because in conflict to DeCA policy and inconsistent**. **DeCA policy** provides that "ratings of (did not meet) on a performance element must be substantiated by a brief narrative statement in Part C or D of DeCAF 50-3, "Employee Performance and Results Form," **(ECF No. 8, pp. 275, para. 1). Inconsistent** because if in fact, Groves have issues with Clancy performance since March of 2016, Groves should not be late in placing Clancy on PIP. And, Groves should not certified Clancy as **"Satisfactory"** on her Annual Performance Evaluation in July 2016, **(ECF No. 8, pp. 486-494).** And, on her July 25, 2016, fabricated performance issues, Groves threatened Clancy for the second time, "Further issue could result in the initiation of other administrative actions." Groves insisted Clancy multiple times to resign. Groves said, "As I have discussed with you previously, if you are interested in a reassignment or change to lower grade to a position betted suited to you needs please notify me, I have attached the form you may use to make such a request." **(ECF No. 8, pp. 325, para. 2, line 5 and para. 3.)** Clancy requested documents for this fabricated performance issues so she can understand what mistakes Groves brought up. Groves never show Clancy any document for issues brought up, **(ECF No. 8, pp. 173).**

5) #12 Groves said, "Ms. Clancy became defensive and was concerned that she was going to be terminated. I assured her that the counseling meeting was meant to address repeated performance problems and that she would have the opportunity to improve during the next rating period with the help of the monthly counseling." **Misleading conduct because her answer is inconsistent** to her declaration to DeCA ROI, Groves said, "The first counselling she really did not say much" and "The second counselling she pretty much did not say anything," **(ECF No. 8, pp. 95, para. 3, line 4, 7),** And, **inconsistent** because the counseling was not monthly. It was two to three times a week, after she went through all of her fabricated performance issues, Groves insisted Clancy to resign numerous times, reassignment or change to cashier position, **(ECF No.8, page 171, 3nd para.).** And counseled Clancy repeatedly that her secretary position was not good for her mental health. If in fact Clancy was performing poorly Groves should place Clancy on Performance Improvement Plan (PIP) as DeCA policy stated.

6) #13 Groves said, "Ms. Clancy was resistant to monthly counseling meetings. It appeared to me that she did not want to hear what she was doing wrong or take ownership of her mistakes. However, she never communicated to me that she

believed what I was doing was because of a disability." **Misleading conduct**, because inconsistent, records show Clancy was not resistant to counselling, **(ECF No. 8, pp. 95, para. 3, line 4, 7).** Records show management was the one who did not take ownership of their mistakes and blamed Clancy. In May 2016, Groves submitted a distro list report to Katrenick zone manager, when Katrenick complaint because the report was double the quantity with the previous month. Groves lied, and told Katrenick that Clancy was the one who submitted to her the report, then harassed and retaliated Clancy for telling the truth. On October 2016, management instructed Clancy to send out the "News Release 62-16, that management did not modify" to DeCA customer, when Katrenick complaint because the News Release 62-16, wasn't modify by Groves or Rasco, Clancy told Katrenick that Rasco was the one who instructed to send out. Groves became belligerent and provocative because Clancy told Katrenick the truth, **(ECF No.8, page 477, 481). Inconsistent to DeCA Director's Policy for Anti-Harassment stated, (#3)** "Employees are not required to complain first to their supervisors about alleged harassment when the supervisor is the harasser. However, they are encouraged to follow their chain of command before contacting DeCA EEO Office," **(ECF No. 8, 227, #3).**

7) #14 Groves said, "On October 28, 2016, Ms. Clancy asked for a meeting with William Rasco, the commissary officer. He was out of town, so the meeting did not happen until November 3, 2016."
Misleading conduct, record show Clancy never ask for any meeting. Groves organized the closed-door confrontation meeting after she found out that Clancy told Katrenick the truth about who instructed her to send out the DeCA News Release 62-16. Clancy has notes about Groves organized the closed-door confrontation meeting submitted to the defendant counsel on her answer to defendant production of documents, **(ECF No. 8, pp. 68, para. 4th and 5th).**

8) #15 Groves said, "During the November 3, 2016 meeting, Mr. Rasco and I discussed with Ms. Clancy her continued performance problems and informed Ms. Clancy that we intended to place her on an official PIP. Ms. Clancy became enraged and said, "Just fire me then," or words to that effect. I told her that was not what we wanted and that we were there to talk about working on improving her job performance. Ms. Clancy said she quit and left Mr. Rasco's office. I followed her and asked her to return to the office to continue the conversation. She refused and said she did not want to talk to me or Mr. Rasco. I told her that if she was resigning, she would need to complete a Form SF-52 Request for Personnel Action, which is the standardized form used to request resignation, among other things. I tried to get into the system to generate an SF-52 for her but

had difficulty doing so. In the meantime, Ms. Clancy prepared a resignation letter addressed to Mr. Rasco." **Misleading conduct,** because Clancy never say anything about quitting. And, the only topic on that belligerent and provocative closed-door confrontation meeting was the "management did not modify News Released 62-16, before Rasco instructed Clancy to send it out" Groves was belligerent and provocative on that meeting because Clancy told Katrenick the truth about management mistakes. Groves insisted Clancy to submit written resignation rashly and discharged her immediately on that day November 3, 2016, right after Clancy opposed to return to a belligerent closed-door confrontation meeting. "If in fact, Clancy was performing poorly" **DeCA Policy for performance deficiencies is crystal clear:** "9-3. "If an employee's performance in one or more critical performance element becomes less than "Met" at any time during the performance appraisal period, the Rating Official must work with HQ Human Resources or the HR servicing provider EMR Specialist, as applicable, to place the employee on a performance improvement plan (PIP)," **(ECF No. 8, pp. 281, 9-3).** Groves said, (#11) declaration that Clancy has performance issue since March 2016. Clancy received her 6th "satisfactory" Annual Performance Evaluation on July 2016. The belligerent and provocative confrontation meeting organized by Groves was November 3, 2016; eight months past. Clancy still was not on PIP, if in fact, Clancy was performing poorly.

9) #16 Groves said, "I did not threaten Ms. Clancy with insubordination or disciplinary action during the meeting." **Misleading conduct** because Groves was belligerent & provocative during the meeting. Groves threatened Clancy with insubordination & progressive disciplinary actions verbally, **(ECF No. 8, para. 5th).**

10) #18 Grove said, "As Ms. Clancy's direct supervisor, I was aware that she had occasional doctor appointments in Missouri, but I did not know why." **Misleading conduct** because Groves was informed verbally on March 2016, and Clancy disability was recorded in the DeCA system, **(ECF No.8, page 201-202, 468).**

11) #19 Groves said, "As Assistant Commissary Officer, I am required by DeCA policy to notify employees of Employee Assistance Programs ("EAP") as necessary. I notified Ms. Clancy of these resources because she appeared to me to be under a great deal of stress that was adversely impacting her job performance. **Misleading conduct** because as a secretary, Clancy continuously updated DeCA Fort Riley policy, there was NO DeCA Policy about this. Groves scrutiny, harassment and retaliation caused stressed to Clancy not her job as a secretary.

12) #20 Groves said, "I did not threaten to fire or demote Ms. Clancy, nor did I say anything derogatory about a disability." **Misleading conduct** because records showed Clancy was threatened on May 14, 2016, email of "failing to follow my instruction will result in progressive actions." And, on list fabricated performance issues July 25, 2016, on the 2nd page, 2nd para. last line of the document Clancy was threatened in writing for the second time of "Future issues could result in the initiation of other administrative actions." Clancy was threatened numerous times verbally on a series of closed-door baseless counselling, **(ECF No.8, 170-171).** Clancy was counseled numerous times about her secretary position was not good for her mental health, when Groves insisted Clancy to resign on a series of baseless counseling to vacated her position as a secretary.

13) #21 Groves said, "I was not personally aware that Ms. Clancy claimed to be disabled, nor did I regard her as disabled." **Misleading conduct** because Groves was informed personally about Clancy medical condition on March 2016. Also, Clancy disability was recorded in the DeCA system. And, Groves submitted two documents "Fort Riley employees onboard" and Employees earned overtime and compensatory time" on the Agency ROI that Clancy name has disability code on both documents. These are the documents that Groves was denying, she said she never see this document before, **(ECF No. 8, page 201-202, 467).**

14) #22 Groves said, "I did not discriminate against Ms. Clancy on the basis of a disability." **Misleading conduct** because Groves repeatedly told Clancy that her position as a secretary was stressing her out and was not good for her mental health on the series of baseless harassment counselling about the fabricated list of performance issue, **(ECF No. 8, pp. 66, last para.).**

15) #23 Groves said, "I never harassed Ms. Clancy on the basis of a disability." **Falsified declaration and misleading conduct** because Groves made numerous derogatory words about Clancy secretary position was stressing her out and was not good for her mental health. And, Groves threatened Clancy numerous times verbally and in writing, "failing to follow my instruction will result in progressive actions." And, "Future issues could result in the initiation of other administrative actions," **(ECF No.8, page 469, para. last para. line 5-6, page 325, 2nd para. 5th line).**

16) #24 Groves said, "I was never contacted by the Kansas Department of Labor ("KDOL") or any of its representatives about any unemployment application filed by Ms. Clancy. I never provided the KDOL with any information or documentation about Ms. Clancy." **Falsified declaration and misleading**

conduct because according to "Unemployment Insurance Employer Handbook," posted to the Kansas Department of Labor website, when an individual file a claim for unemployment, that individual's last employer (Fort Riley Commissary) is mailed an Employee Notice form K-BEN 44/45. If the employer protested the claim, employer will select one of the four elements. The element DeCA chose was "Left work voluntarily without good cause attributable to the work or the employer" (Pltf. Ex. G-2). The element DeCA chose above was mentioned two times on petitioner Clancy denial of unemployment letter. Line 7- 8, and 10-11 below the word "DECISION," **(EFC No.8, pp.78-79, 100, 109, 176-178, 510-511).** Employer Protest to the Benefit Charge, third element on (page 23) of Kansas Unemployment Insurance Employer Handbook, (Pltf. Ex. G-2).

Supplemental declaration of Tina Groves (ECF No. 133-5) Filed 01/29/20.
17) #5 Groves said, "I reviewed the documents attached as Declaration Exhibit 1 on January 22, 2020, **Misleading Conduct.**
18) #6 Groves said, "I had never seen Declaration Ex. 1 before January 22, 2020, nor was I personally aware that a disability code was associated with Ms. Clancy claimed to be disabled, nor did I regard her as disabled, **Misleading Conduct.**
19) #7 Groves said, Again, "I was not personally aware that Ms. Clancy claimed to be disabled, nor did I regard her as disabled," **Misleading Conduct.**
On these three items above, Groves referred to the two documents, she submitted to the DeCA Record of Investigative file, defendant redacted these two documents, "removed Clancy name and disability code and submitted the documents to their reply as new issue and evidence. These are all **falsified declaration and misleading conduct**. These documents are the **(ECF No.8, page 201-202, and 467)** submitted by Groves in the DeCA Records of Investigation (ROI). In the Index of the DeCA Investigative file marked as "Organizational listing" page 201-202. And, the second document was not mark, but included in the investigative file as page 467. The entire whole DeCA investigative file was filed in the court by Clancy and the court marked it as **(ECF No. 8), (ECF No.8 page 201-202, and 467).** In Clancy exhibit, it was marked as (Pltf. Ex. F-5, and F-6). Groves denying these two documents because these are Clancy direct evidence that her disability was recorded in the DeCA system.

<u>Defendant DeCA modified petitioner Clancy Deposition (ECF No.125)</u>
On DeCA summary judgement allege uncontroverted facts, No.: 88, 90, 91, the defendant DeCA modified petitioner Clancy deposition, and added a word "unfairly."

20) modified uncontroverted facts No. **88.** "Plaintiff believes that Groves' May 14, 2016 email was discriminatory because it "unfairly" blamed Plaintiff for not timely completing her other tasks after she had to work the customer game on the sales floor." (Ex. D. Pltf. Depo., at 77:22-80:8).
21) modified uncontroverted facts No. **90**. Plaintiff claims that Groves "unfairly" blamed her for a mistake in a list that Groves submitted to Katrenick because she believed the mistake was Groves' fault (Ex. D, Pltf. Depo., at 106:16-24; 120:1-21).
22) modified uncontroverted facts No **91** "Plaintiff alleges that Rasco and Groves "unfairly" blamed her for sending a newsletter to the wrong distribution list because she believed Rasco directed her to do so." (Ex. D, Pltf. Depo., at 171:1-25).
These are falsified defendant DeCA added the word "unfairly" and they also modified the statement about the DeCA News Release 62-16. Petitioner Clancy genuine deposition, for:

No. **88** (Pltf. Ex. L-3, Petitioner Depo. pp 77:22-80:8),
No. **90** (Pltf. Ex. L-4, Petitioner Depo. at 106:16-24; 120:1-21),
No. **91** (Pltf. Ex. L-5, Petitioner Depo. at 171:1-25).

Defendant DeCA misleading conduct, inconsistencies or contradictions in their proffered reasons legitimate reasons for its action that a reasonable factfinder could rationally find them unworthy or credence. Morgan v. Hilti, Inc., 108 F.3d 1319, 1323 (10th Cir. 1997). Supreme Court States Unanimously: Discrimination can be proved the employer's false explanations for firing, even absent "direct" Discriminatory Statements, Reeve v. Sanders Plumbing Products, Inc. No. 99-536, 530 U.S. 133; Haynes v. Waste Connections, Inc., No. 17-2431, 2019 U.S. App. LEXIS 11854 (4th Cir. Apr. 23, 2019).

CONCLUSION

Clancy respectfully requesting that the petition for a writ certiorari should be granted. This case is matter to Clancy. She was working for her retirement, she lost almost everything after she was discharged immediately by her immediate supervisor on November 3, 2016, including her health insurance. She lost peace of mind. She lost her ability to earn an income that support herself and her defendant family.

Respectfully submitted,

Jenita Clancy

March 4, 2021

Jenita Clancy
P.O. Box 604
Saint Robert Missouri 65584