

No. 22-35
IN THE
SUPREME COURT OF THE UNITED STATES

YUFAN ZHANG

Petitioner

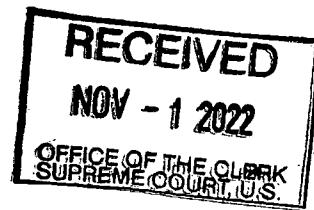
v.

UNITEDHEALTH GROUP,
SUJATHA DURAIMANICKAM,
Respondents

On Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Eighth Circuit

PETITION FOR REHEARING

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QUESTIONS PRESENTED

This case presents the findings of fact that UnitedHealth Group (“UnitedHealth”) took away and destroyed the evidence that Zhang used to have for supporting his alleging Age Discrimination against him. UnitedHealth described the age discrimination as a problem with Zhang’s job performance and refused to disclose any relevant evidence to support their comment. UnitedHealth terminated Zhang’s job based on Duraimanickam’s defamatory statements, but refused to affirm that Duraimanickam’s statements of fact are accurate and completely true. Therefore, the evidence is the key to knowing the truth, or for judging which party told lies.

Although Zhang’s evidence was destroyed by UnitedHealth, the original evidence is still available in UnitedHealth. Both the arbitrator and the lower courts hold that the statements of fact presented by UnitedHealth are all true unless Zhang can disprove them by presenting clear and convincing evidence.

The question presented:

- 1. Whether an employee has the burden of proving what evidence he used to have, but was taken away and destroyed by his employer.**
- 2. Whether an employer could fire employees through defaming their job performance intentionally, recklessly, or with malice, hatred, spite, ill will or resentment.**

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PREAMBLE

Pursuant to Rule 44.2 of this Court, non-attorney Petitioner Yufan Zhang respectfully petitions for a rehearing of the denial of a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

"EQUAL JUSTICE UNDER LAW" - These words express the ultimate responsibility of the Supreme Court of the United States. "Equal Justice" includes at least two meanings: (1) Punishing violators of the law, (2) Protecting individual rights granted by the Constitution. Truth finding is the only important function of trial court procedures and the rules of evidence. To guarantee Equal Justice, judgments should be made only based on the whole truth, not the half-truth or "illusion of truth".

The major issues for this case are related to evidence which includes FRCP 26(a), FRCP 37(e)(2), FRCP 52(a), FRCP 106, FRE 301, FRE 801, FRE 802, and FRE 1007.

The Respondent UnitedHealth Group ("UnitedHealth") took over and then destroyed the evidence that Zhang used to have for supporting his rebuttal against Duraimanickam's statements of fact. But in later litigation proceedings, UnitedHealth refused to disclose the original or relevant evidence although they testified they had such evidence when they were requested to disclose for supporting their claims or for supporting Zhang's rebuttals against Duraimanickam's statements of fact.

Without considering the fact that UnitedHealth Group had taken over and destroyed the evidence which Zhang used to have for supporting his findings, the Arbitrator Keyes made the arbitration award mostly based on Duraimanickam's statements of facts. The arbitrator and the district court hold that Zhang has no clear and convincing evidence to support

PETITION FOR WRIT OF CERTIORARI

Undisputed Allegations

1. Zhang had filed a dispute appeal to UnitedHealth HR and claimed that Duraimanickam told lies and intentionally omitted or concealed the crucial facts for misdirection (*App.p.10-42*). During the meeting with UnitedHealth HR, Zhang also told HR that his complaints can be supported by the evidence stored in UnitedHealth (*App.p.43-44*). Duraimanickam and their witnesses testified that they knew the evidence and acknowledged UnitedHealth had its original evidence. UnitedHealth also acknowledged they took over the evidence that Zhang used to have for supporting his claims, but UnitedHealth refused to disclose any relevant or original evidence no matter that is for supporting their claims about Zhang's job performance or for supporting Zhang rebuttals against Duraimanickam's statements of fact.

2. UnitedHealth testified that they believed all of Duraimanickam's statements of fact were true merely because Duraimanickam said they were true,

regardless of whether she had evidence to support her comments or not. But when Zhang requested UnitedHealth to disclose evidence to support Duraimanickam's statements of fact, UnitedHealth rejected the request. UnitedHealth just ignored Zhang's claims and continued using Duraimanickam's statements with defamatory statements as evidence for their defense, even though Zhang had claimed Duraimanickam was lying and told UnitedHealth which systems in UnitedHealth Group could use to confirm that Duraimanickam did indeed make defamatory statements. However, UnitedHealth then presented Duraimanickam's defamatory statements to arbitration to receive an award in favor of UnitedHealth.

3. UnitedHealth took Zhang's evidence and destroyed it. Then, in their respondents' briefs filed to the lower courts in objection of Zhang's claims that "the award was procured by fraud", UnitedHealth claimed that Zhang had no evidence to support his claims, such that, it led to the lower courts denying Zhang's order for vacating the arbitration award. Zhang claims such actions violate his rights of the equal protection of the laws under Amendment XIV.

REASONS FOR REHEARING

This Court's Rule 44.2 authorizes a petition for rehearing based on "intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented".

Arbitration award was made by Keyes mostly based on the statements of fact from the "Corrective

Action Form" presented by Duraimanickam. However, UnitedHealth refused to disclose any original evidence, like job logs, service records, etc. to support Duraimanickam's statements of fact. Because the arbitrator did not arrange a conversation between Zhang and Duraimanickam, and the statements of fact were involved in many technical question, so Duraimanickam's statements had not been well tested in arbitration hearing meetings. Therefore, many factual issues were remained unresolved.

Zhang had presented a job note (see. *App, p.45-82*) to arbitration. And this job note had been tested during cross-examination. No one had objection to the contents of this job note because its contents can be verified by the data stored in UnitedHealth. But, merely because the arbitrator had a concerning on when this job note was created, the arbitrator discarded all the evidence Zhang presented (see the seven documents in appendix).

Since UnitedHealth refused to disclose relevant or original evidence, Zhang file a motion for oral argument between Zhang and Duraimanickam, but both the circuit court and UnitedHealth objected. Then Zhang filed another motion for requesting UnitedHealth to declare that Duraomanickam's statements of fact are accurate and complete true, but UnitedHealth also denied.

(1). Zhang self-prepared job logs are not accepted, and (2). The team's job logs, which are the evidence Zhang used to have, was destroyed by UnitedHealth Group, and (3). UnitedHealth Group refused to disclose original daily job logs, and (4). UnitedHealth Group refused to declare their evidence

is accurate and complete true, and (5). UnitedHealth refused to verify Zhang self-prepared job logs, (6). UnitedHealth Group refused to have an oral argument between Zhang and Duraimanickam. The arbitrator and the district court only trusted Duraimanickam's statements of fact, even though they found some lying, even though they did not see any material evidence, or direct testimony, to support Duraimanickam's statements with no doubt, but the arbitrator and the district court still trust Duraimanickam's statements. In fact, based on the preponderance of the evidence, Zhang's rebuttals have higher rate to be true, when comparing to Duraimanickam's statements.

Duraiminickam had told Zhang that "*In UnitedHealth Group, when I say you're wrong, then you must be wrong. Not argue, not explain, but accept. Any explanation will not be accepted*".

I. Zhang's case is very common. Therefore, it worth of rehearing

It is very common for an employer suddenly to terminate employees' job with or without appropriate reason. Among these employees, some their jobs were terminated wrongfully. How to protest those employees who lose jobs wrongfully is this court duty. EEOC had told Zhang that they know many people lost jobs due to discrimination, but they can do nothing due to employers taking over evidence once they were fired. Therefore, rehearing Zhang, this court would see many scenarios about how the employer conceal its wrong behaviors.

II. Many true facts were not taken into consideration by lower courts

If only reading the lower courts' opinions or orders, it is hard to find out the lower courts erred in overlooking the finding of fact which were discarded and not mentioned in the lower courts order or memo. Therefore, it is necessary to bring those missing facts to this court so that the justices could see the whole truth for this case.

In Zhang's petition for writ of certiorari, Zhang had not provided this court with the briefs and motions in which Zhang presented the findings of fact to support the grounds of his petition for writ of certiorari. In lower courts' opinions or decisions, all Zhang's findings of fact were discarded or not mentioned. FRCP 52(a)(6) "Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility".

The district court discard Zhang's findings of fact because the district court holds Zhang had burden of proving his claims by clear and convincing evidence. The district court overlooked the fact that Zhang's evidence was destroyed by UnitedHealth and UnitedHealth also refused to disclose the original evidence. How Zhang could produce new evidence. Pursuance to FRCP 26(a)(1)(B), UnitedHealth cannot refuse disclose evidence, no matter it is to support their claims or to prove Zhang's rebuttals to UnitedHealth's claims.

III. The Circuit court should return the case back to the district court for a new trial due to the conflict in both parties findings

The Arbitrator only cited Duraimanickam's statements of fact in his arbitration decision memo as the fact-findings to support his decision. When the district court reviewed the case, the district cited arbitrator's findings as evidence to support their opinions.

When this case filed to the circuit court, Zhang had tried all the ways to make the 8th circuit court aware that the arbitrator's findings are erroneous because those findings are from Duraimanickam's defamatory statements. Zhang claimed his statements can be supported by the original evidence stored in UnitedHealth. Zhang also declared that UnitedHealth had taken away and destroyed the evidence he used to have for supporting his rebuttals to Duraimanickam's statements of fact. The Respondents and their witnesses testified UnitedHealth has the relevant evidence, but UnitedHealth refused to disclose any original or relevant evidence. UnitedHealth refused to declare Duraimanickam's statements of fact are accurate and completely true.

Zhang's evidence was taken over and destroyed by UnitedHealth Group for the sole reason that the evidence was the company's intellectual property. *Federal Rules of Civil Procedure 37(a)(1)* and *The Federal Rules of Evidence 301* require the Respondents to disclose relevant evidence, but the respondents refused to do so by citing the self-incrimination clause under the Fifth Amendment.

The respondents also refused to declare that the facts they presented are accurate and complete without missing any facts which would raise conflict with the arbitration decision.

Since UnitedHealth refused to disclose evidence, pursuance to FRCP 37(c), Duraimanickam's statements of fact should be excluded as evidence due to failed to disclose evidence, or the court should impose some sanctions. The arbitration decision was made mostly based on Durimanickam's statements. Without it, the ground for award would have no basis. Therefore, this case should be returned to the district court to resolve the conflict issues on finding-fact. Based on this, On December 17, 2021, Zhang had filed a Motion for resolving factual issues, but the circuit court denied it without any reason.

IV.The Eighth Circuit Court discarded or overlooked the findings of fact

The Eighth Circuit holds there is no basis for reversing the district court's denial of the motion to vacate an arbitration award by citing the case of "*Ploetz v. Morgan Stanley Smith Barney LLC (8th Cir. 2018)*" to support their decision.

In Ploetz case, the Eighth Circuit Court holds "*Ploetz does not contend that Goldman/Arbitrator ever treated her or her case in a biased or improper manner: Her claims of "evident partiality" and "misbehavior" rest entirely on Goldman's failure to disclose that he once mediated the Strunk case, ... We see nothing in Goldman's undisclosed mediation of a*

years-old, unrelated case that could create an appearance of bias."

Therefore, above citing case and this case have the different scenarios. In this case, Zhang's claims of "evident partiality" and "misbehavior" under 9 U.S.C. §10(a) (2)&(3) rest on the below Argument V. And Zhang's claims of "fraud" under 9 U.S.C. §10(a)(1) most rest on the other Arguments.

V. Arbitrator's "Evident Partiality" and "Misbehavior"

1. Arbitrator Keyes holds the reason for UnitedHealth Group to terminate Zhang's job is true, merely based on his findings from Duraimanickam's statements which have no material evidence to support. The email from UnitedHealth Group HR to Zhang clearly states that Zhang was fired because Duraimanickam told HR in the "Corrective Action Form" she filed to HR that Zhang's job performance was not good in his last three weeks in UnitedHealth Group. But in fact, in Zhang's last three weeks in the company, only Zhang finished his assigned jobs, while none of the other teammates could complete their assigned works. So, according to the company's performance assessment standard, Zhang's performance is better than all of his teammates. Team's daily job logs can prove that, and Duraimanickam and UnitedHealth Group did not contend this fact. But Arbitrator Keyes discarded these facts, and still held that the statements of facts presented by Duraimanickam could be considered as the reasons for Zhang's job termination. Therefore,

“the reason for Zhang’s job termination is true” is Arbitrator Keyes’ presumption, not the truth.

2. Arbitrator Keyes’s findings are all from the statements of fact presented by Duraimanickam in her “Corrective Action Form”. Arbitrator Keyes did not think Duraimanickam had the burden of proof, but held Zhang having the burden of proof for the facts used to support his refuting Duraimanickam’s statements of fact.

3. Arbitrator Keyes did not take any facts presented by Zhang into his consideration when making arbitration award, and that is merely because he had concerning on when Zhang documented his “Meeting Notes and Job Logs” (see *appendix 6, App.p.43-44*), even though UnitedHealth Group and Duraimanickam did not contend on the contents of the “Meeting Notes and Work Logs” during the cross-examining in arbitration hearing.

4. Arbitrator Keyes thinks Duraimanickam lying on Zhang’s job performance can be protected by qualified privilege in laws. However, since Duraimanickam acted intentionally with the purpose to persuade HR to terminate Zhang’s job, the qualified privilege cannot apply for Duraimanickam’s defamatory statements.

5. In arbitration, Arbitrator Keyes held: (1) Duraimanickam’s statements of fact are all true because he found one or two of the facts were true, (2) Duraimanickam’s statements of fact are all true unless Zhang could disprove them by material evidence, (3) even there are fact conflicts with each other in Duraimanickam statements, Arbitrator still

6. Arbitrator Keyes holds that Duraimanickam's comments about Zhang's job performance is part of performance review, and the statement on performance review, even though it is a defamatory statement, is subject to qualified privilege. Arbitrator Keyes made a logical fallacy error here. If his opinion is accepted by law, then an employer can fire any employees for job performance reasons no matter how well they work.

7. In fact, during Zhang's last three weeks in UnitedHealth Group, Zhang had the best job performance in his team because only he completed the assigned jobs in time, while none of the other teammates could complete their jobs before the deadline. UnitedHealth Group had no objection to this fact.

VI.Respondent Duraimanickam intentional made defamation

In September 2016, Duraimanickam requested Zhang to tell a lie to UnitedHealth service-now management department in order to conceal a deployment end-time delayed issue caused by Duraimanickam. Zhang had rejected her requests several times. Then Duraimanickam thought Zhang was damaging her reputation, and filed the first "Corrective Action Form" to UnitedHealth Group HR in order to persuade HR fire Zhang.

"Corrective Action Form" is a document created by the manager and is used by the HR department to assess an employee's job performance based on manager's comments on the form and determine

whether to fire the employee or to give the employee some days to improve. This form is also called “Corrective Action Plan (“CAP”).

Duraimanickam had filed two CAPs to UnitedHealth Group HR. These two CAPs are full of lying (*see App.p.10-82*). Duraimanickam also told HR that Zhang had no necessary knowledge to work on team’s frameworks, regardless of the fact that all the team’s frameworks were created by Zhang from scratch, which let Zhang win the company’s 2015 “MAKE IT HAPPEN” award (*see App.p.9*) to recognize Zhang’s outstanding contribution and excellent job performance. Only less than 0.1% of the employees could receive this award each year.

Zhang had told UnitedHealth HR that his statements about what he and Duraimanickam did, *see Appendix 4~7 (pages App.p.10-82)*, can be confirmed by the system records described on *Appendix 6 (pages App.p.43-44)*.

Zhang had written a letter to the district court, *see Appendix 1 (pages App.p.1-5)*, and a letter the Arbitrator Jeffrey Keyes, *see Appendix 2 (pages App.p.6-8)*, indicating that Duraimanickam refused making any correction on the untrue statements she made on her CAPs, instead, Duraimanickam just kept using her self-written CAPs as the statement evidence to defame Zhang’s reputation. Zhang had argued with Duraimanickam about her untrue statements many times until Zhang was fired.

CONCLUSION

For the reasons set forth in this Petition, and those stated in the petition for a writ of certiorari, Yufan Zhang respectfully requests this Honorable Court grant rehearing and his Petition for a Writ of Certiorari. Alternatively, this Court should remand this case to the district court since there are factual issues unresolved.

Dated October 28, 2022

Respectfully submitted,

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**CERTIFICATE OF PARTY UNREPRESENTED
BY COUNSEL**

I hereby certify that this PETITION FOR REHEARING an order denying petition for writ of certiorari is presented in good faith, and not for delay, and is also limited to “intervening circumstances of a substantial or controlling effect” or to “other substantial grounds not previously presented” as required by Rule 44.2 of the Supreme Court of the United States.

Dated October 28, 2022

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