

22-6056

No. \_\_\_\_\_

FILED
JUL 25 2022
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE  
SUPREME COURT OF THE UNITED STATES

Susan Kay Slivicki — PETITIONER  
(Your Name)

vs.

(SVA) Denis McDonough — RESPONDENT(S)  
Secretary of Veterans Affairs

ON PETITION FOR A WRIT OF CERTIORARI TO

Eighth Circuit Court of Appeals  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Susan Kay Slivicki  
(Your Name)

11621 76th St NE  
(Address)

Fairdale ND 58229  
(City, State, Zip Code)

(701) 966-2539  
(Phone Number)

RECEIVED
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SUPREME COURT, U.S.

**Question (s) Presented:**

1. **Contract Law:** Was this a valid contract/breached (not communicated/  
geographical restriction)? *Refusal to speak of federally required employment  
rehire (contempt of court)*

***Contract breached through non-communication and geographic exclusion***

2. Were Susan Kay Slivicki's civil and constitutional right repeatedly violated by these government agencies Federal employees , ADA disabled , veterans employment preference? From 2007-2015 applied almost 50 times.

Fargo VAMC continued disparate treatment, disregard for federal employee & contract law requirements. & ability to remedy federal employment requirements?

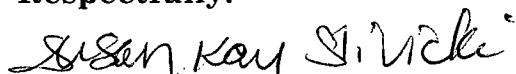
Violated HI PPA rights disclosing employee had OWCP injury (Defamation of Character/Slander) cost me a position with MN Workforce government job starting at \$42,500 in 1999.

OWCP permanent injury CA-7/Schedule Awards numerous times (Dec 99) wrongful termination/disparate treatment. Slivicki vs Principi 3:04 cv 000147 (60%) permanent injury(60%) 9/14/2006

EEOC refused to look at EEOC Retaliation 25AUG16 Section Eight

The Federal agencies VA/ EEOC/OWCP need significant improvements stronger repercussions for criminal actions. First Alert (Mental Health) Checks & Balances help federal employees/OWCP injuries/disabled/veterans, prevent the huge backlog of ignored civil/constitutional rights or counseling services. Thank you for your consideration.

Respectfully,



Susan Kay Slivicki (Pro Se)  
11621 76<sup>th</sup> ST NE  
Fairdale, ND 58229  
(701)966-2539 home  
(701)360-0766 cell

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## Table of Authorities Cited

### Cases

09/14/06 Slivicki vs Principi; SVA Case 3:04-cv-000147

10/26/21 Susan Kay Slivicki vs. Denis McDonough; SVA 3:20-cv-00070-ARS

### Statutes/Rules:

#### Page 4

**Federal Employees' Act (FECA)** is administered by OWCP, employees are provided compensation benefits for disability due to permanent medical condition accepted by OWCP of personal injury sustained while performance of duty or due to employment related injury which medical/ monetary benefits are payable from Employee Compensation Fund.

**Agency Failure to Perform its obligations 5 CFR 353.301(0) Physically Disqualified** An individual who is physically disqualified for the former position or equivalent because of a compensable injury is, entitled to be placed in another position for which qualified that will provide the employee with the same status and pay, or nearest approximation thereof, consistent with the circumstances in each case. After one year, the individual is entitled to rights of individuals of fully recovered or partially recover as applicable.

**"When an employee is disabled by work-related injury and losses pay for more than three calendar days for or has a permanent impairment or serious impairment or serious disfigurement as described in 5 U.S.C. 8107 the EMPLOYER shall furnish the employee with a Form CA-7/OWCP Awards Schedule."**

**In order to warrant an OWCP Schedule Award, (CA-7)the person must be rated by a physician, December 1999 Dr. Lee Hofsommer FVAMC specialist podiatrist using American Medical Association(AMA)guide to the evaluation of permanent impairment, prior to receiving rating (60%), the person must have reached maximum medical impairment."**

### HIPAA Privacy Violation:

Health Insurance Portability and Accountability Act the Privacy Rule states that: In general, "(a) covered health care provider [with direct treatment relationship] must obtain the individual's consent,... prior to using or disclosing protected health information to carryout treatment, payment, or health care operation (Section 164.506, 65 Federal Register [F.R.] p. 82810, for complete requirements.

**FEC USC 8101 et seq**

Establishes compensate program which pays compensation for the disability or death of federal employee resulting from personnel injury.

**Page 5**

**“Benefits are 72% higher federal employer than their private – sector counterparts”**

“Any Breach, Total, or Partial, which causes measurable injured a right to compensatory damages. (Brawley v. JC Interiors, Inc. (2008)161 Cal. App. 4<sup>th</sup> 1126”

The purpose of restitution as a remedy for a Breach of Contract is the restoration of the injured party to a good position as was occupied by her before contract was made, without attempting to compensate her for consequential harm. (*Ajax Inc. E\*Trade Group Inc. (2005)35 Cal. App.4th 121*)

Merit System Protection Board and/or Policy, Data, Oversight (Pay & Leave) requesting as back-pay, Title 5 , USC and 5 CFR subpart H, for additional back-pay/interest/retirement/attorney fees/damages. Purpose of making employee whole MSPB can demand the defendant agency 4 types of Damage :

- A. Compensatory Damages (\$300,000) more in special cases
- B. Legal Costs and Fees
- C. Legal Costs/Fees
- D. Equitable Relief

VA Title 38 USC 1151 Form : Claim if veteran suffered an added disability or your injury claims if you suffered an added disability or your injury got worse while you were getting medical care or taking part in a VA program to help you get/keep/job. Veteran is able to get compensation for any reason below, Gross Negligence/OSHA violation extreme staff shortages.

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**Federal Employees Compensation Act (FECA)**

“A supervisor who knowingly certifies any false statement, misrepresentation, concealment of fact, etc. in respect to such a claim may also be subject to the appropriate felony criminal prosecution. Any management official who knowingly files a false statement particularly to an injured claim or does anything to prohibit the claim from receiving any benefits to which the employee is entitled to, is punishable by prison, fine or both.”

The Department of Labor will reimburse you at 66.66% of wages (GS-7 & 30% benefits)if you do not have a dependent., 75% if you have a dependent . Remember that if you do have spouse who is dependent these wages are tax free which reduces employee yearly tax. (Remedies)

ADA 504:

Prohibits discrimination on the basis of disability in programs or activities conducted by federal agencies.

Section 501 of the Rehabilitation of Act of 1973, as amended , also prohibits employment discrimination on the basis of a disability by Federal Executive agencies. The substantive standard applied to enforce the Rehabilitation Act prohibitions on employment discrimination is the Equal Employment Opportunity Commission's (EEOC) regulation implementing title I of the Americans with Disabilities Act 29 C.F.R. pt 1630. The procedures applied are those established by EEOC in 29C.F.R. pt 1614.

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**Office of Personnel Management (POM) guidelines:**

" In applying the restrictions in 300.604 of this part, prior service under temporary appointment at level above that of a subsequent non-temporary competitive appointment is credited, as if the service had been performed at the level of the non-temporary appointment. This provision applies until the employee has served in pay status for 52 weeks under non-temporary competitive appointment: thereafter, the service is credited at the actual grade level (or equivalent).

**"8 out of 10 VA employees have witnessed discrimination against veterans at the VA "**  
Washington Post.

**Retaliation for whistle-blowing activity 5 U.S.C 2302(b)(8) and (b)(9)(A)(i), (B), (C) or (D)**  
A claim that the agency action was taken in retaliation for the disclosure of information the individual reasonably believes demonstrates a violation of law, rule, or regulation, gross mismanagement, gross waste of funds, abuse of authority, or specific, danger to public health or safety or in retaliation for exercise of right to appeal , complain, or grieve an alleged violation of subsection (b)(8) for testifying or otherwise lawfully assisting another's right to appeal , complain, or grieve such an alleged violation; for cooperating with or disclosing information to the Inspector General.

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**29 C.F.R 1614.203 October 31, 1992**

**Reassignment:** When a non-probationary employee becomes unable to perform the essential functions of his or her position even with a reasonable accommodation due to a handicap, an agency shall offer to reassign the individual to a funded vacant position located in the same commuting area and serviced by the same appointing authority, and at the same grade or level (GS-7), the essential functions of which the individual would be able to perform with reasonable accommodation if necessary unless the agency can show hardship on the operation of its program. In the absence of the position at the same grade level to a vacant the highest-level available grade or level below the employee's current grade **shall be required.**

"Plaintiff has successfully made a *prima facie* showing as to the essential elements of each of her claims. The Court, in viewing the facts in the light most favorable to Plaintiff, finds that the

Defendant (Veterans Affairs) is unable to articulate a legitimate, non-discriminatory rationale for the adverse employment actions. FVAMC's motion is therefore denied in its entirety.

*Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct 2548, 91L.Ed.2d 265 (1986).:

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"An apparent consent is not real or free when obtained through mistake. *Civ Code SS 1567(5)*. Mistakes can be Mistake of fact or Mistake of Law *Civ Code SS 1576-1578*.

I have the right to counsel with an attorney and trial by jury. EEOC has repeatedly failed in its obligations to myself & all veterans. EEOC should be responsible for this trial against the FVAMC for these crimes.

"More and more EEOC workplace discrimination cases are being closed before they're even investigated. Since 2008, the EEOC has doubled the share of complaints involving government agencies that it places on the lowest priority track, effectively guaranteeing no probes, mediation, or other substantive efforts of those workers. About 30% of cases were shunted to that category last year, according to internal data obtained by the Center for Public records request."

Communication of an Offer: Basic Law 101

An offer is made when it is communicated to offeree. It plain that without communication of the offer therefore; cannot be no consensus, and therefore no contract. Thus, in the case of an offer of a promise for an act, if the offeree does the act, if the offeree does the act in ignorance of the offer, he is not entitled to the promise.

"An Apparent Consent is not real or free when obtained through mistake." Civ. Code SS 1576-1578

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**Unlawful Discrimination** A claim that the agency action was the result of prohibited discrimination based on race, color, religion, sex, national origin, disability, age, marital status, political affiliation, genetic information and retaliation for prior EEO activity. See 5 U.S.C. S 2302(b)(1) and 7702; 5

C.F.R. Part

Page 11

### **The Veterans Employment Opportunities Act (VEOA)**

Makes a willful violation of veterans' preference a Prohibited Personnel Practices (PPP). If you are preference eligible and you believe an agency any of your rights under the veterans' preference law regulations, you may file a formal Complaint with the Department of Labor's Employment and Training Service (VETS)

### **Violating Veterans Preference (PPP) Practice 11**

Any employee who has to take, direct, recommend or approve of any personnel action, shall not, with respect to such authority:

- A) Knowledge to take, recommend, or approve of any if the taking of such would violate a veterans preference
- B) Knowledge fail to act, to take, recommend or approve any personnel action if the failure would violate that preference.

### **Subsection 2302 (b)(11) of Title 5 of USC**

Reinforces/added to the Subsection 2302(b) by the Veterans Employment Opportunities Act of 1998.

### **(VEOA) Public Law 105-339 6:**

The VEOA permits individual preference rights have been violated failure to comply with veterans' preference requirements will be treated as (PPP) to knowingly take , recommend or approve of any personnel action would violate veterans' preference requirements to fail to take, recommend or approve any personnel action if failure to take such action would violate veterans' preference requirements is a (PPP).

**Violation of a Law or Regulation relation to Veterans' Preference pursuant to Veterans Employment Opportunities Act (VEOA):** A claim that the agency action violated rights related to veterans' preference under any statute or regulation. 5 C.F.R. 1208, Subpart C. 5 U.S.C. 3330(a)

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**"The Breach of Contract can be a result of (1) the defendants specific acts or conduct (2) Defendants specific negligent performance (3)Defendants failure to act or perform (*Nasrami v. Buck Consultants LLC (2014) 231 Cal.*, that it caused substantial harm or prejudiced to his or her rights, C.F.R. S 1201.56 (c)(3).)**

### **Civil Service Reform Act (CSRA) of 1978:**

CSRA as amended, also protect federal government applicants & employees from discrimination in personnel action.

Prohibited Personnel Practices based on race, color, sex, religion, national origin, marital status, political or conduct which does not affect performance of the employee or

applicant.

**Prohibited Personnel Practices:** A claim that the agency action or decision you are challenging was the personnel practices prohibited by 5 U.S.C. s 2302(b) Among the prohibited personnel practices most likely to be relevant as an affirmative defense in MSPB proceeding are: unlawful discrimination under subsection (b)(1) retaliation for protected whistle-blowing under subsection (b)(8) and retaliation for other protected activity under subsection (b)(9).

**Page 13 Other:**

**PG 4. HIPAA violation disclosure of medical OWCP injury without authorization.**

Health Insurance Portability and Accountability Act the Privacy Rule states that:

In general, “(a) covered health care provider [with a direct treatment relationship] must obtain the individual’s consent ,.... prior to using or disclosing protected health information to carry out treatment, payment, or health care operation(Section 164.506, 65 Federal Register [F.R.] p.82810, for complete requirements.

West law Slip Copy, 2006 WL 2780113 (D.N.D) Case

Referrals:

**Constitutional and Statutory Provisions Involved 7<sup>th</sup>**

**Amendment Right to Trial by Jury & Counsel**

**ADA Section 504 of the Rehabilitation Act of 1973**, as amended , prohibits discrimination of disability in programs or activities conducted by Federal Agencies. Department of the VA has the responsibilities to ensure its own programs and activities, including employment comply with section 504. The Rehab Act prohibits employment discrimination is EEOC reg ADA 29 C.F.R.pt 1630.

**Civil Rights Violation:**

**Page 13**

(D) On the basis of handicapping condition, as prohibited under section 501 Rehabilitation Act of 1973 (29 U.S.C. 791)

The Office of Special Counsel (OSC) and the Merit System Protection Board (MSPB) enforce the prohibition against federal employment discrimination.

Coded in CSRA:

Prohibitive Personnel Practices (PPP) are employment related activities that are banned from federal workforce because they violate the Merit System through some form of

employee discrimination, retaliation improper hiring process or failure to adhere to laws, rules, or regulations that directly concern the (MSPB).

OSC has the authority to investigate & prosecute 14

PPP. Discrimination

Obstructing

Competition Whistle-

blower Retaliation

Retaliation EEOC Section Eight 25AUG16

Veterans Preference

Violating rules that implement (MSPB)

1) Employee applies to MSPB under chapter 77 (formal appeal of a removal, demotion, suspension greater than 14 days & other significant personnel actions.)

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**HIP AA Privacy Violation:**

Fargo VAMC disclosed to employer I had OWCP injury without prior authorization.

**HIPAA Breach Notification Rule, 45 CFR 164.400-414 requires HIPAA**

A breach is generally, an impermissible use or disclosure under the Privacy Rule that compromises the security or privacy of the protected health information. Breach violations of personal health information implemented and enforced by Federal Trade Commission(FTC) apply to personnel health records and their third party service providers, pursuant to section 13407 of the HITECH Act.

“A HIPAA violation can result in criminal penalties. According to the US Department of Health and Human Services Office for Civil Rights(OCR)A person who knowingly obtains or disclosing individually identifiable health information in violation of the Privacy Rule may face up to \$50,000-250,000 and 1-10 yr. imprisonment.

If wrongful content involved the intent to sell, transfer or use identifiable health information for commercial advantage, personal gain or malicious harm.

**Hate Crime:**

Hate crimes include acts of physical harm and threats based on race, color, religion, national origins, gender, sexual orientation, disability. “The UCR Program defines hate crime as a committed criminal offense which is motivated, in whole or in part, by the offender’s bias(es) or multiple bias(es).

**Page 15**

**Not in accordance with the law:** A claim that the agency’s action was unlawful in its

entirety, that is, there is no legal authority for the action.

Employment Attachments (jobs/restriction/letter referral)  
breached contract  
75 mile restriction.

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

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

**OPINIONS BELOW**

For cases from **federal courts**: State Supreme Eighth Court (p 68-69)

The opinion of the United States court of appeals appears at Appendix B&C to the petition and is Slivicki vs McDonough VA 3:20-cv-70 ARS

- [ ] reported at 03/04/22 Denying; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

Dismissed exceeds \$10,000 / Failed to make statement of claim p 15-17

The opinion of the United States district court appears at Appendix B&C to the petition and is

- [ ] reported at Denying Rehearing 04/26/22; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

\* Prior 4/26/22 Fargo VAMC filed federally required (1999) # Permanent injury OWCP CWA / Schedule of Awards - Admissio

For cases from **state courts**: 23 years late

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is Slivicki vs Principi case 3:04cv0011

- [ ] reported at 09/14/06 (P 35-45) (46-51) Judge Erickson met prima facie ; required rehire  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished. Westlaw Slip Copy 2006 278 0113 (D.N.D.) denied summary judgment

The opinion of the US Supreme Court Fargo court

appears at Appendix A to the petition and is Slivicki vs McDonough 3:20-cv-70 ARS

- [ ] reported at 4/26/22 Schedule 10/26/22 Denied / dismissed; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

Dismissed exceeds \$10,000 . Failed to make statement of case p 15-17. Motion 1. refusing counsel & Jury by trial

## JURISDICTION

### [ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 04-26-22 Rehearing Denied

Denis Mc Donough v/a 3:20-cv-00070 ARS

[ ] No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: P 68 03/04/22, and a copy of the order denying rehearing appears at Appendix P 68-69  
(B) (C)

[] An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on July 25, 22 (date) in Application No. A P 18-32.

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

Dismissed exceeded \$10,000, failed to make statement of case P 15-1

\* 04/26/22 Fargo v amc filed CA-7 / Schedule Awards \*  
After 23 years negligence, After court denial

### [ ] For cases from **state courts**:

The date on which the highest state court decided my case was 9-14-06, 10-26-21

A copy of that decision appears at Appendix P 35-45(A)  
Slivicki v/s Principi 3:04-cv-00147

[ ] A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix 46-51. Denial summary Judgment  
(A) Fargo v amc required to rehire

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A

WESTLAW SLIP 2006 WL 2730113 (D.N.D)

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

10/26/22 Denied court limited to \$10,000 ; motion request counsel & jury by trial.

**Statement of Claim: (Expaned Explanation of Claim Writ of Certiorari)**

**Slivicki vs Principi Case 3:04 – cv- 00147 (Attachment) 09/14/2006**

FVAMC is found guilty of wrongful termination( Ronnie Miller/Dave Kirk)/non-accommodation of work-related injury(60% RIGHT FOOT /RIGHT SIDE)(/disparate treatment(disability & veteran) unfair hiring practices/defamation of character/slander (cost MN Workforce start \$42,500 Jodi Larson stated I changed my work-schedule and disrupted the office ( work-study at the time contract academics were priority/ I worked wknds/holidays/nights no one to disrupt)Bob Crawford (stated I had OWCP injury HIP PA), EEOC retaliation : Debra Montpelier, my sister & FVAMC Agent Cashier, hostile work environment & non-promotion Lavonne Liver sage/Dave Kirk .

**“8 out of 10 VA employees have witnessed discrimination against veterans at the VA “**  
Washington Post.

**Hate Crimes** when a disabled veteran is repeatedly discriminated against for disability & being a veteran called disparate treatment from Retaliation by all **non-veteran** management.

FVAMC **REFUSED** to speak of employment GS-7/8 and state the contract covers all damages (\$75,000 check & my legal fees are now \$84,475). The Judge Erickson ends the court case with the regulation:

**FAILURE TO STATE A CLAIM/Fargo VAMC Contract Law/Retaliation/ Disparate Treatment**

My claim is that the FVAMC continuation of disparate treatment (disability/veteran), retaliation, breach of contract( Refused to communicate federally required rehire (50 applications) , non-compliance/ contempt of court of Slivicki vs. Principi 3:04 -cv- 000147 rehire employment not met, unfair hiring continued. And repeatedly the failure compensation OWCP **permanent** injury 60% (CA-7/Award Schedule) all of which the FVAMC could have remedied numerous times.

**Retaliation for whistle-blowing activity 5 U.S.C 2302(b)(8) and (b)(9)(A)(i), (B), (C) or (D)**  
A claim that the agency action was taken in retaliation for the disclosure of information the individual reasonably believes demonstrates a violation of law, rule, or regulation, gross mismanagement, gross waste of funds, abuse of authority, or specific, danger to public health or safety or in retaliation for exercise of right to appeal , complain, or grieve an alleged violation of subsection (b)(8) for testifying or otherwise lawfully assisting another's right to appeal , complain, or grieve such an alleged violation; for cooperating with or disclosing information to the Inspector General.

29 C.F.R. 1613.704

(g) ***Reassignment***:When a probationary employee becomes unable to perform the essential functions of his or her position even with reasonable accommodation due to a

handicap, an agency shall offer to reassign the individual to a funded vacant position located in the same appointing authority, and at the same grade or level located in the same commuting area and serviced by the same appointing authority, and the same grade or level, the essential functions of which the individual would be able to perform with reasonable accommodation if necessary unless the agency can demonstrate that the reassignment would pose an undue hardship on the operation of its program. In the absence of a position at the same grade or level, an offer to the highest available below the employees current grade or level **shall be required.** This is federal law; Invalid Contract (GS-8 \$42,500)

People do not get terminated for injuries occurring at the workplace, my case made West law Slip Copy 2006 WL, 2780113 (D.N.D) setting precedence. Public record the Fargo VAMC has broken these federal laws. "Invalid contract as mistakes were in the contract that effect whether one party or both parties can carry out their obligations."

These are the last words of Judge Erickson on the case. **FVAMC** appealed this decision, it was denied in entirety. This shows the FVAMC is aware of federal employment responsibilities to rehire me per federal law and OWCP CA-7 Schedule Award/ Job Aggravated Conditions.

"Plaintiff has successfully made a prima facie showing as to the essential elements of each of her claims. The Court, in viewing the facts in the light most favorable to Plaintiff, finds that the Defendant (Veterans Affairs) is unable to articulate a legitimate, non-discriminatory rationale for the adverse employment actions. FVAMC's motion is therefore denied in its entirety.

*Celotex Corp, v. Catrett, 477 U.S. 317,322,106 S.Ct 2548, 91L.Ed.2d 265 (1986).;*

The Fargo VAMC also knew my attorney, Todd Foss **DIED** shortly after the hearing., and ignored the **federal and court hearing.** The FVAMC used this to their advantage, Unfortunately for the VA all of the actions/ are again all in writing and against the law.

There has to be a **valid** contract. I have already explained to the Assistant State's Attorney **PER contract law my case I now have spent \$84,475** FVAMC refused to discuss **Required** rehiring employment per federal law during trial or negotiations. No rehire per federal law is present in Court Transcript, answers this issue failed to Communicate Employment Rehire.

In fact Alan Duppler, the FVAMC attorney was extremely unprofessional visibly hostile witness/representative, he huffed and puffed with a very red face, almost throwing papers on the desk, speedily read the contract what I was signing for damages settlement. He quickly pulled the contract away from my attorney, Todd Foss or his firm never receive a customary and requested copy of the contract. I finally received the contract 2021 from ND Assistant States Attorney in 2021.

In order to be included in the contract settlement it (employment rehiring) must be **communicated** the FVAMC's to discuss reemployment does not just allow them to add any issues not discussed: when in fact it had not been discussed. Inclusion of (any

employment) would therefore be an **invalid contract**. The Fargo VAMC is required by federal law to rehire her (Slivicki) per federal law.

**"An apparent consent is not real or free when obtained through mistake. *Civ Code SS 1567(5)*.**

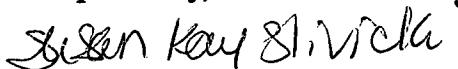
**Mistakes can be Mistake of fact or Mistake of Law *Civ Code SS 1576-1578*.**

**All easily verifiable and no one bothered, where is my justice?**

**Slivicki vs Denis McDonoughh SVA 3:20-cv-0070 ARS**

Invalid contract makes my request to appeal the following dismissal., the FVAMC was in fact required to rehire me for my OWCP injury. Motion for Discovery from FVAMC/USA Federal Jobs of almost 50 applications will confirm: A continued pattern of retaliation, blatant unfair hiring practice, non compliant, contempt of courts and disparate treatment of a disabled veteran has an illegal continued and unmistakable pattern.

**Respectfully,**



**Susan Kay Slivicki**

UNITED STATES OF AMERICA  
US Supreme Court

SUSAN K. SLIVICKI,  
Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS  
Defendant,

CASE NUMBER  
3:20-cv-00070-ARS

Date: July 25, 2022

**PETITION WRIT OF CERTIORARI for APPEAL EIGHTH CIRCUIT COURT**

I Susan Kay Slivicki, ("Appellant"), hereby responds to EIGHTH CIRCUIT COURT 04/26/22. Respectfully requesting Petition for a Writ of Certiorari for case.

Respectfully request Motion for appointed counsel for EEOC and /Dan Goodkin; Brown & Goodkin for OWCP and jury by trial.

Respectfully request Motion for Trial by Jury per Bill of Rights/Seventh Amendment

Respectfully Request for Motion of Discovery. FVAMC my job applications/selection breakdown 2007-2015 Note Geographically excluded applications limitations.

**Statement of Claim:** FVAMC Disparate Treatment(veterans/disabled)/Breach Contract (failed communicate rehiring & 75 miles radius(geographically excluded application/ Contempt Court applied almost 50 times to FVAMC /Unfair Hiring/Non-compliance/failure to meet agency obligations/ADA/OWCP/ Veterans Preference and numerous federal regulations & laws EEOC Personal Prohibitive Practice of repeated retaliation through gross & malicious negligence.

I did not fail to make a statement, the FVAMC states that they have met all laws when they did not. Contract Law was ignored, federal employment regulations were ignored. CA-7/Schedule of Awards non-compliance and failure to meet the minimum agency requirements until 23 years later on 04/26/22.

I was contacted to come in on my day off to help very short staffed EMS cover 3 staff (19,000 sq·ft) VA/Regional office. Permanently injured my right foot/side 10/06/98.

12/29/1999 Informed by FVAMC office personnel I was on OWCP (File #A1209214) benefits, no longer working due to a **permanent** OWCP injury. I was told my foot was not going to improve by the FVAMC; I was unwillingly placed on OWCP when I was able and

could perform all light duty tasks. (Dr. Lee Hofsommer, FVAMC specialist, Podiatry Dec 1999) No counseling on benefits, length of OWCP benefits. The Employer never filed the **federally required CA-7/ Schedule of Awards** for all permanent injuries required by federal law.

**FEC USC 8101 et seq**

Establishes compensation program which pays compensation for the disability or death of a federal employee resulting from personnel injury.

**OWCP MISSION:**

The Federal Employees' Act (FECA) is administered by OWCP, Employees are provided compensation benefits for disability due to permanent medical condition accepted by OWCP of personal injury sustained while performance of duty or due to employment related injury which medical /monetary benefits are payable from Employees Compensation Fund.”

**Agency Failure to Perform its obligations 5 CFR 353.301(0)**

On July 08,2020 I, Susan K Slivicki contacted OWCP regarding my case regarding **(Compensation)** the **EMPLOYER Required CA-7/ AWARD Schedule Compensation** for my 10/06/1998 #A12079214 **PERMANENT** injury to my right foot/side (60%).

Job Aggravated Conditions:

Arthritis/Osteoarthritis, Bursitis, Degenerative Disc Disease, Depression/Anxiety/Chronic Pain/Addiction, and Fibromyalgia

**“When an employee is disabled by a by work-related injury and losses pay for more than three calendar days or has a permanent impairment or serious disfigurement as described in 5 U.S.C 8107 the EMPLOYER shall furnish the employee with a Form CA-7/OWCP Awards Schedule.”**

**“In order to warrant a OWCP Schedule Award, (CA-7), the person must be rated by a physician, December 1999 Dr. Lee Hofsommer, Podiatrist VA specialist using American Medical Association (AMA) guides to the evaluation of permanent impairment, prior to receiving rating, the person must have reached maximum medical impairment.”**

The FVAMC lost my position at MN Workforce, starting at \$42,500 in 1999 due to unfounded referrals from Bob Crawford, informed employers of my OWCP injury (HIP AA violation)) and Jody Larson stated I changed my schedule frequently and was disruptive in the office. I was a work-study at the time and education allowed these changes. I worked during nights PM, holidays and weekends. Office empty for my employment (slander/defamation character)

FVAMC has conducted many studies for staff on MN wages comparison, as it is several dollars per hour differences for wages from ND. The Fargo VAMC states I made \$8.00 per hour at ATTRIX(no benefits) is the defense for the required CA-7 OWCP/ Award

Schedule was not necessary. IT is federal law for this form to be completed for a **permanent** injury. I was GS-7 with federal benefits, per 52 weeks , requesting back- pay (GS-7 minus WG-3) Benefits are 72% higher federal employee than their private -sector counterparts.

“Any Breach , total or Partial, which causes a measurable injured a right to compensatory damages. (Brawley v. JC Interiors, Inc. (2008)161 Cal. App. 4<sup>Th</sup> 1126”

### **Restoration/Restitution**

The purpose of restitution as a remedy for a Breach of Contract is the restoration of the injured party to a good position as was occupied by her before contract was made, without attempting to compensate her for consequential harms. (*Ajax Inc. E\*Trade Group Inc. (2005)135 Cal.App.4th 121*)

Eligible for Remedies from permanent 10/06/98 OWCP injury/ injury.

#### **1. Federal OWCP CA-7/Schedule Awards**

- 04/26/22 FVAMC after 23 years assisted & confirmed CA-7/Schedule Awards (bodily injuries) filled out with OWCP. Confirming my claims gross negligence/non-compliance/Breach Contract

A.) The FVAMC failed to file CA-7/Schedule Award (Dec 1999) specialist Dr. Lee Hofsommer permanent injury notification.

B.) On 9/14/2006 FVAMC permanent injury 60% injury Slivicki vs Principi Department of Veterans Affairs. Court’s decision 60% permanently disabled from OWCP injury. Fargo VAMC failed to meet federal agency obligations.; failing to compensate (CA-7/Schedule Awards) permanent OWCP injury disclosure sensitive medical HIP AA violation.

C.) 06/30/20 & 07/08/20 Contacted FVAMC to assist with CA-7/Schedule Award. (ignored) Resubmitted per OWCP to Fargo VAMC completed **23 years after requirement**

**2. Merit System Protection Board and/or Policy, Data, Oversight (Pay & Leave)** requesting as back- pay, Title 5 , USC and 5 CFR subpart H, for additional back-pay/interest/retirement/attorney fees/damages. Purpose of making employee whole MSPB can demand the defendant agency 4 types of Damage :

- A. Compensatory Damages (\$300,000) more in special cases
- B. Legal Costs and Fees
- C. Legal Costs/Fees
- D. Equitable Relief

**3. VA Title 38 USC 1151 Form : Claim if veteran suffered an added disability or your injury claims if you suffered an added disability or your injury got worse while you were getting medical care or taking part in a VA program to help you get/keep/job. Veteran is able to get compensation for any reason below, Gross Negligence/OSHA violation extreme staff shortages.**

### **Federal Employees Compensation Act (FECA)**

“A supervisor who knowingly certifies any false statement, misrepresentation, concealment of fact, etc. in respect to such a claim may also be subject to the appropriate felony criminal prosecution. Any management official who knowingly files a false statement particularly to an injured claim or does anything to prohibit the claim from receiving any benefits to which the employee is entitled to, is punishable by prison, fine or both.”

-60% permanent injury no remedy required by federal law was not even attempted by the FVAMC repeatedly failed to meet minimal numerous federal regulations/compliance/contempt of court.

The Department of Labor will reimburse you at 66.66% of wages (GS-7 & 30% benefits) if you do not have a dependent., 75% if you have a dependent . Remember that if you do have spouse who is dependent these wages are tax free which reduces employee yearly tax. (Remedies)

ADA 504:

Prohibits discrimination on the basis of disability in programs or activities conducted by federal agencies.

Section 501 of the Rehabilitation of Act of 1973, as amended , also prohibits employment discrimination on the basis of a disability by Federal Executive agencies. The substantive standard applied to enforce the Rehabilitation Act prohibitions on employment discrimination is the Equal Employment Opportunity Commission's (EEOC) regulation implementing title I of the Americans with Disabilities Act 29 C.F.R. pt 1630. The procedures applied are those established by EEOC in 29C.F.R. pt 1614.

I have repeatedly reported to federal agencies: OWCP, EEOC, PPP, OSC and Farg<sup>lo</sup> Regional Office. Not one agency actually did any investigation. They had no answers & have absolutely no procedures for an easy case, as strong written evidence supports defendant's claim.

I had contacted the FVAMC Center Director to update my OWCP injuries status in 2019. Dr. Lee Hofsommer, the FVAMC's original (1999) specialist for OWCP podiatrist, unable to walk feet felt broken. Dr Hofsommer said I at minimal needed two surgeries on my right foot & left foot. I was rudely told I could help myself on the OWCP website.

I told OWCP I had **never** been counseled by the FVAMC in 1999, for a permanent OWCP work- related injury to my right foot/side, nor been reimbursed for medical bills from that injury. I was never reimbursed for \$1468 chiropractic bill. Approved and then OWCP changed their mind and said it would not be covered. I was constantly harassed by state collection agency For over \$750. **THE EMPLOYER IS RESPONSIBLE TO ASSIST/FILL OUT THESE FORMS**

OWCP stated the **EMPLOYER** is responsible for counseling/completing the permanently injured employee for the CA-7/ AWARD Schedule expenses, medical bills, legal expenses. The Fargo VAMC has denied assisting me with process for 23 years, the Courts & MSPB is requested to assist with Jurisdiction overlapping back pay/compensation .

the employer the FVAMC was notified 12/15/99 my 10/06/1998 my foot was not going to get better

**PERMANENT OWCP INJURY** this is **malicious & gross negligence** by FVAMC OWCP Dave Kirk/Ronnie Miller/Lavonne Liversage/Jodi Larson/Bob Crawford. I was placed in several positions I easily filled for light-duty schedule (Attachment) over 52 weeks highest grade GS-7. (FVAMC never paid me for this federal requirement). These individuals are criminally liable & should lose their retirement.

**Office of Personnel Management (OPM) guidelines:**

“ In applying the restrictions in 300.604 of this part, prior service under temporary appointment at level above that of a subsequent non-temporary competitive appointment is credited, as if the service had been performed at the level of the non-temporary appointment. This provision applies until the employee has served in pay status for 52 weeks under non-temporary competitive appointment: thereafter, the service is credited at the actual grade level (or equivalent).”

Susan Slivicki was assigned temporary light-duty from OWCP injury from approximately 10/98 through 12/30/99, amounting to 15 months, which exceeds the “**52 weeks requirement.**”

Dave Kirk & Ronnie Miller knew they had colluded to wrongfully terminate & not accommodate a veteran . Yet, Troy Peterson was given his old job back, my current position as Voluntary Services. with a pay raise from GS-6 to GS-7. I applied for the Voluntary Services, position I currently held for over 6 months., I did not get an interview. It also shows the FVAMC has no problem with providing any positions, the FVAMC belief is they are **above the law** will not be allowed. The FVAMC could have easily remedied this problem, by adhering to federal rules and regulations.

**Slivicki vs Principi Case 3:04 – cv- 00147 (Attachment) 09/14/2006**

FVAMC is found guilty of wrongful termination( Ronnie Miller/Dave Kirk)/non-accommodation of work-related injury(60% RIGHT FOOT /RIGHT SIDE)(/disparate treatment(disability & veteran) unfair hiring practices/defamation of character/slander (cost MN Workforce start \$42,500 Jodi Larson stated I changed my work-schedule and disrupted the office (work-study at the time contract academics were priority/ I worked wknds/holidays/nights no one to disrupt)Bob Crawford (stated I had OWCP injury HIP PA), EEOC retaliation : Debra Montpelier, my sister & FVAMC Agent Cashier, hostile work environment & non-promotion Lavonne Liver sage/Dave Kirk .

Set case precedence West Law Slip Copy, 2006 WL 2780113 (D.N.D.) cases using reference: Haziz v. Mukasey No. 5:05 – cv – 574-H(2) 2008 WL 11358172

(E.D.N.C) Feb 1, 2008) Haziz v. Gonzalez, No. 5:05 – cv – 574 – H (2) 2006 WL 8427 (E.D.N.C Nov 2006)

**“8 out of 10 VA employees have witnessed discrimination against veterans at the VA “**  
Washington Post.

**Hate Crimes** when a disabled veteran is repeatedly discriminated against for disability & being a veteran called disparate treatment from Retaliation by all **non-veteran** management.

FVAMC **REFUSED** to speak of employment GS-7/8 and state the contract covers all damages (\$75,000 check & my legal fees are now \$84,975). The Judge Erickson ends the court case with the regulation :

**Retaliation for whistle-blowing activity 5 U.S.C 2302(b)(8) and (b)(9)(A)(i), (B), (C) or (D)**  
A claim that the agency action was taken in retaliation for the disclosure of information the individual reasonably believes demonstrates a violation of law, rule, or regulation, gross mismanagement, gross waste of funds, abuse of authority, or specific, danger to public health or safety or in retaliation for exercise of right to appeal , complain, or grieve an alleged violation of subsection (b)(8) for testifying or otherwise lawfully assisting another's right to appeal , complain, or grieve such an alleged violation; for cooperating with or disclosing information to the Inspector General.

29 C.F.R. 1613.704

(g) **Reassignment**:When a probationary employee becomes unable to perform the essential functions of his or her position even with reasonable accommodation due to a handicap, an agency shall offer to reassign the individual to a funded vacant position located in the same appointing authority, and at the same grade or level located in the same commuting area and serviced by the same appointing authority, and the same grade or level, the essential functions of which the individual would be able to perform with reasonable accommodation if necessary unless the agency can demonstrate that the reassignment would pose an undue hardship on the operation of its program. In the absence of a position at the same grade or level , an offer to the highest available below the employees current grade or level **shall be required.” This is federal law; Invalid Contract (GS-8 \$42,500)**

**People do not get terminated for injuries occurring at the workplace, my case made West law Slip Copy 2006 WL, 2780113 (D.N.D) setting precedence. Public record the Fargo VAMC has broken these federal laws. “Invalid contract as mistakes were in the contract that effect whether one party or both parties can carry out their obligations.”**

These are the last words of Judge Erickson on the case. **FVAMC** appealed this decision, it was **denied in entirety**. This shows in 2006 the FVAMC again is aware of federal employment responsibilities per court to rehire me per federal law and OWCP CA-7/ Schedule Award/ Job Aggravated Conditions. 60% right foot/side. FVAMC ignored the

court findings, federal laws and regulations per federal employment.

**"Plaintiff has successfully made a prima facie showing as to the essential elements of each of her claims. The Court , in viewing the facts in the light most favorable to Plaintiff, finds that the Defendant (Veterans Affairs) is unable to articulate a legitimate, non-discriminatory rationale for the adverse employment actions. FVAMC's motion is therefore denied in its entirety.**

*Celotex Corp, v. Catrett, 477 U.S. 317,322,106 S.Ct 2548, 91L.Ed.2d 265 (1986).;*

The Fargo VAMC also knew my attorney, Todd Foss DIED shortly after the hearing., and ignored the **federal and court hearing**. The FVAMC used this to their advantage, Unfortunately for the VA all of the actions/ are again all in writing and against the law.

There has to be a **valid** contract. I have already explained to the Assistant States Attorney **PER contract law my case I now have spent \$84,975** FVAMC refused to discuss **Required** rehiring employment per federal law during trial or negotiations. No rehire per federal law is present in Court Transcript, answers this issue failed to Communicate Employment Rehire.

In fact Alan Duppler, the FVAMC attorney was extremely unprofessional visibly hostile witness/representative , he huffed and puffed with a very red face, almost throwing papers on the desk, speedily read the contract what I was signing for damages settlement. He quickly pulled the contract away from my attorney, Todd Foss or his firm never received a customary and requested copy of the contract. I finally received the contract 2021 from ND Assistant States Attorney in 2021.

In order to be included in the contract settlement it (employment rehiring) must be **communicated** the FVAMC's to discuss reemployment does not just allow them to add any issues not discussed: when in fact it had not been discussed. Inclusion of (any employment) would therefore be an **invalid contract**. The FVAMC is required by federal law to rehire her (Slivicki) per federal law.

FVAMC has notified US Federal court determined my injury was permanent & 60% disabling

**"An apparent consent is not real or free when obtained through mistake. Civ Code SS 1567(5). Mistakes can be Mistake of fact or Mistake of Law Civ Code SS 1576-1578.**

I have the right to counsel with an attorney and trial by jury. EEOC has repeatedly failed in its obligations to myself & all veterans. EEOC should be responsible for this trial against the FVAMC for these crimes.

The significance of this case impacts all disabled veterans. It also impacts the American Workforce. Our country is in dire need of leadership. What America needs now more than anything is for our leaders to set the example; not the bad example. The government federal workers tops EEOC discrimination claims with the lowest remedies. Accountability, checks and balances is failing – the law must pertain to both sides.

Veterans are especially high risk suicides as VAs impact on our pay, benefits, medical appointments, and numerous veterans programs on a daily basis.

EEOC should be prosecuting this case against the FVAMC. All my claims against the FVAMC are clearly in writing and **unmistakable**. EEOC wasted years submitting to the **wrong** lower courts (exceed \$10,000 damages) I had to request change of venue to federal trial vs, district court and obtain counsel for US Supreme Court . Ignored & repeatedly 25AUG16 EEOC Retaliation Section Eight. Gross Negligence.

**"More and more EEOC workplace discrimination cases are being closed before they're even investigated. Since 2008, the EEOC has doubled the share of complaints involving government agencies that it places on the lowest priority track, effectively guaranteeing no probes ,mediation, or other substantive efforts of those workers. About 30% of cases were shunted to that category last year, according to internal data obtained by the Center for Public records request."**

#### **Communication of an Offer: Basic Law 101**

An offer is made when it is communicated to offeree. It plain that without communication of the offer therefore; cannot be no consensus, and therefore no contract. Thus, in the case of an offer of a promise for an act, if the offeree does the act, if the offeree does the act in ignorance of the offer, he is not entitled to the promise. For consideration the item must be discussed (employment). The FVAMC refused to even speak of employment during the hearing/settlement. Therefore. inclusion of **employment would not be relevant/legally binding or (is employment discussion in the case., not communicated)** Furthermore the FVAMC does not have the SCOPE TO OVERRIDE this federal law for employment.

"An Apparent Consent is not real or free when obtained through mistake." Civ. Code SS 1576-1578

Supporting my claim are the factual court transcripts & Judge Erickson as a witness final decision regarding my reemployment. In closing Judge Erickson reiterates federal law dismissed by the

FVAMC and it is the last comment of the hearing the FVAMC was required to rehire me, the FVAMC KNOWS these federal laws, basic laws and ignored the district court/West Law.

The court transcripts that were made by VA Dave Kirk, FVAMC

OWCP Chief: "I guess we'll have to hire her back"(1999)

"It is not our responsibility to accommodate  
her" "We do not have to promote her"

**Unlawful Discrimination** A claim that the agency action was the result of prohibited discrimination based on race, color, religion, sex, national origin, disability, age, marital status, political affiliation, genetic information and retaliation for prior EEO activity. See 5 U.S.C. S 2302(b)(1) and 7702; 5

**C.F.R. Part**

The VA states they did accommodate me with the laundry position . An offer was not made as the position never did go through the FVAMC specialist podiatrist, Dr Lee Hofsommer, the position was almost identical in physical requirements as EMS position in physical requirements and I could not perform the job. FVAMC did not bother submitting job description to specialist prior confirming medical limitations. The FVAMC is a medical center.

Dave Kirk states “she was still on the employee rooster, I had not been fired. I just did not have a position or paycheck.”

**“May voluntarily seek employment” with any VA** I did not have problems with other VAs as pointed in applications. The other VAs in the country treated me fairly & placed my qualifications substantially higher for similar positions with the exact hiring procedures.

The FVAMC proved that Susan Kay Slivicki could apply to any VA **but the FVAMC who is required to rehire per federal law is what all actions prove make this contract invalid. Breached with Geographical 75 mile limitations for 6-8 years, excluding my applications.**

I applied for 50 plus applications at the Fargo VAMC from 2007-2015. Contempt of court as the Fargo VAMC was able to remedy with employment, per Slivicki vs. Principi 3:04-cv-000147

**Retaliation for other protected activity under 5 U.S.C. S 2302(9)(A)(ii)** A claim that the agency action was taken for retaliation for the exercise of right, other than with regard to remedying an alleged violation 5 U.S.C. S 2302(b)(8) such a filing of an appeal, complaint or grievance.

**Breach of Contract/ORM resubmitted**

I contacted the Fargo EEOC office & left 3 messages that were never returned. ( After my second application in (2007) to FVAMC & I was not rehired.

I relocated to Minto, ND 87 miles away from the VA as I had little income and was almost homeless, upon my address change to the FVAMC.

The Next 7-8 (7-8 years) position at the FVAMC had added **Must live within 75 miles radius** or hiring from Fargo. Finally the requirement stopped. (prohibited geographic

limitation) Shows exclusion of my applications, FVAMC had never used this in all the prior applications requirements. The FVAMC's actions to dis-include my applications (chg. address) from any VA applications also breaches the contract.

- . One of the Applications positions was dropped as I believe I was the only applicant:
- . applied for Schedule A for ADD/ADH – ignored repeatedly.
- . (2) applications for Inventory Management denied 2 years school outside the Fargo VAMC.
- . Veterans Preference (additional 10 pts.) Voc chapter 31 Rehab, GS-7/8
- . Knowledge of the VAMC software/benefits/medical/school for veterans
- . Written endorsement from FVAMC Director.

#### **The Veterans Employment Opportunities Act (VEOA)**

Makes a willful violation of veterans' preference a Prohibited Personnel Practices (PPP). If you are preference eligible and you believe an agency any of your rights under the veterans' preference law regulations, you may file a formal Complaint with the Department of Labor's Employment and Training Service (VETS)

#### **Violating Veterans Preference (PPP) Practice 11**

Any employee who has to take, direct, recommend or approve of any personnel action, shall not, with respect to such authority:

- A) Knowledge to take, recommend, or approve of any if the taking of such would violate a veterans preference
- B) Knowledge fail to act, to take, recommend or approve any personnel action if the failure would violate that preference.

#### **Subsection 2302 (b)(11) of Title 5 of USC**

Reinforces/added to the Subsection 2302(b) by the Veterans Employment Opportunities Act of 1998.

#### **(VEOA) Public Law 105-339 6:**

The VEOA permits individual preference rights have been violated failure to comply with veterans' preference requirements will be treated as (PPP) to knowingly take , recommend or approve of any personnel action would violate veterans' preference requirements to fail to take, recommend or approve any personnel action if failure to take such action would violate veterans' preference requirements is a (PPP).

**Violation of a Law or Regulation relation to Veterans' Preference pursuant to Veterans Employment Opportunities Act (VEOA):** A claim that the agency action violated rights related to veterans' preference under any statute or regulation. 5 C.F.R. 1208, Subpart C. 5 U.S.C. 3330(a)

The actions of the FVAMC therefore are continued pattern of 23 years disparate treatment unfair hiring practices, breach of contract and non-compliance. Over half of this case has already been **admitted by FVAMC** as stated CA-7/Schedule

Award was done when it clearly was not. The other half is the 50 applications will confirm breach contract through continued disparate treatment/retaliation/unfair hiring practices.

EEOC Retaliation Section Eight 25AUG16. Retaliation includes 2 Types of Adverse Actions

- 1) Work
- 2) Non-work Related (Unemployability Benefit)

Timely Filing I filed within required time 45 days last action, 2015 last position filed with FVAMC and filed (2015 benefit- unemployability) Fargo VA Regional Office. I fully meet & have met the 45 day requirement.

EEOC responsibility to investigate both of these cases. The documentation is all in writing, repeatedly ignored. The EEOC refused filing procedures for EEOC Retaliation Section Eighth 25AUG16 court as Federal US Court Fargo, exceeds \$10,000 limit on **both** cases.

Breach of Contract Law stipulates that when one of the parties fails to live up to his terms part of the Agreement.

1. Contract must be **Valid**. Breach of Contract can be the result of (A) the Defendants unjustified or unexcused failure to perform any obligation(s) of a contract is a Breach. (Brown vs. Grimes (2011))
2. Contract must not be obtained by **Fraud**.
3. Unilateral **mistake** that was material to agreement and that the party **knew** or **should have known** *mistake*.

**"The Breach of Contract can be a result of (1) the defendants specific acts or conduct (2) Defendants specific negligent performance (3) Defendants failure to act or perform (Nasrami v. Buck Consultants LLC (2014) 231 Cal., that it caused substantial harm or prejudiced to his or her rights, C.F.R. S 1201.56 (c)(3)."**

#### **Defense of Bivins**

Responsibilities of federal agency per EEOC to prevent Prohibited Personnel Practices (PPP), including reprisal for Whistle-blowing .

The FVAMC gross/malicious negligence, breach contract, contempt of court, non-compliance, failure to meet the minimal obligations in following numerous stated complaints; regarding my civil rights under numerous cited cases/federal laws, rules, regulations.

Comply with and enforces civil service laws, rules, & regulations. Repeated gross & malicious negligence.

Ensure that (in consultation with OSC) that federal employees are informed of their rights.

#### **Civil Service Reform Act (CSRA) of 1978:**

CSRA as amended, also protect federal government applicants & employees from discrimination in personnel action.

Prohibited Personnel Practices based on race, color, sex, religion, national origin, marital status, political or conduct which does not affect performance of the employee or applicant.

**Prohibited Personnel Practices:** A claim that the agency action or decision you are challenging was the personnel practices prohibited by 5 U.S.C. s 2302(b) Among the prohibited personnel practices most likely to be relevant as an affirmative defense in MSPB proceeding are: unlawful discrimination under subsection (b)(1) retaliation for protected whistle-blowing under subsection (b)(8) and retaliation for other protected activity under subsection (b)(9).

(D) On the basis of handicapping condition, as prohibited under section 501 Rehabilitation Act of 1973 (29 U.S.C. 791)

The Office of Special Counsel (OSC) and the Merit System Protection Board (MSPB) enforce the prohibition against federal employment discrimination.

Coded in CSRA:

Prohibitive Personnel Practices (PPP) are employment related activities that are banned from federal workforce because they violate the Merit System through some form of employee discrimination, retaliation improper hiring process or failure to adhere to laws, rules, or regulations that directly concern the (MSPB).

OSC has the authority to investigate & prosecute 14

PPP. Discrimination

Obstructing

Competition Whistle-blower Retaliation

Retaliation EEOC Section Eight 25AUG16

Veterans Preference

Violating rules that implement (MSPB)

1) Employee applies to MSPB under chapter 77 (formal appeal of a removal, demotion, suspension greater than 14 days & other significant personnel actions.)

06/16/2020 OWCP ECAB claim filed. Dr Hofsommer FVAMC podiatrist foot specialist states he believes my current surgeries are the same injury. Denied injury follows Medical journal verbatim. Still denied, Still no CA-7/Workers Compensation Schedule. "The Department of Labor (OWCP) its purpose to defend employees against discrimination, unsafe workplaces, and compensation in employment injury."

I had contacted OWCP repeatedly about wrongful termination, defamation character/slander unfounded job referrals from the FVAMC. All ignored.

F VAMC that were against HIP AA disclosing to employers my medical OWCP injury. Violates HIP AA privacy violation at medical center (Bob Crawford) . Unfounded/false chg in hours per work-study contract for college classes. I was disruptive in the office when I worked after hours/weekends /holidays, OWCP counselors ignored information causing relocation for work & negative job references to the MN Workforce Crookston, MN (1999) starting at \$42,500 better wages/benefits .

**Unlawful Discrimination** A claim that the agency action was the action was the result of PPP OWCP injury medical treatment foot \$750 sent to collection agency FVAMC/OWCP refused to pay medical bills.

05/12/2020 Left foot surgery

07/06/2020 Second right foot surgery, under foot

On 05/29/21 I have been denied ketamine treatment PTSD for severe depression by FVAMC . Research states there is GAP in medical insurance, file regular treatment and approved by insurance

08/10/2021 Second hip injection (bursitis) related to OWCP injury

09/07/21- present MRI right foot still feels broken from 10/06/98- current determined Bursitis in my hips and feet & feel the same limited to maybe 5 minutes standing, feel broken.

Pain pump, prosthetic brace/foot boot, injections, Tramadol (pain reliever) & walker cart.

Denied Chiropractor have to contact Accountability to have chiropractic treatment is cheaper to use Grand Forks Heartland Chiropractic (non-work).

Submitted on (08/21) the FVAMC /OWCP & I have even assisted you with all regulations/forms. If not completed in 30 days OWCP shall be contacting you regarding these **mandatory** federal requirements .

On 01/21/22, called OWCP told me to Resubmit CA-7 and OWCP Schedule Compensation to FVAMC. Resubmitted to FVAMC, have responded after numerous attempts and 23 years.

On 02/15/22, Order Remanding OWCP case, FVAMC negligent in filing CA-7/Schedule Awards

On 04/26/22, FVAMC filed CA-7/Awards Schedule confirming that the required federal forms are now submitted per claim. Twenty-three years & numerous requests verifies negligence/non-compliance/ retaliation/disparate treatment.

This **contradicts** the claims FVAMC met required federal employment laws; a majority of my claim. All of my claims are confirmed in writing the FVAMC through Gross & Malicious Negligence refused to meet any of its federal requirements for

employment/ADA/OWCP.

Both courts could have easily asked FVAMC for Motion for Discovery of CA-7/Schedule Awards the FVAMC submitted? Where is the testimony for rehire in hearing? Which job positions did the FVAMC provide as an option?

Just as the FVAMC the court transcript discussion of the FVAMC required federal employment rehire? nothing in the court records as it was NEVER communicated. This was easily verifiable.

Basic contract law violation, the other breach of contract is in writing 75 mile restriction to apply to the FVAMC. Geographic limitation for 6-8 yrs. restricting me from employment at FVAMC.

**All easily verifiable and no one bothered, where is my justice?**

Invalid contract makes my request to appeal the following dismissal., the FVAMC was in fact required to rehire me for my OWCP injury. Motion for Discovery from FVAMC/USA Federal Jobs of almost 50 applications will confirm: A continued pattern of retaliation, blatant unfair hiring practice, non-compliant, contempt of courts and disparate treatment of a disabled veteran has a continued pattern and shows the FVAMC is aware of & continues to disregard to all federal laws requiring rehire/employment. I am a strong Advocate for Veterans Rights and this treatment is not acceptable. It is imperative the courts hear my case for myself and all veterans/ADA civil rights.

The FVAMC filed 04/26/22 required CA-7/Schedule Awards. This is confirming my claims of continued disparate treatment (disability/veteran) & EEOC Retaliation, breach of contract, non-compliance & contempt of court The Agencies I contacted need to actually investigate these claims, the federal sector has the highest amounts of claims. The government needs to be the example & held accountable through hearing & compliance.

America is in a crisis with Mental Health & Suicides, our government needs to fix these easily correctable blatant shortcomings. Prosecute the guilty, this case has always been easily remedy available yet the FVAMC did not want to follow the laws. These Agencies need to be the checks and balances to prevent further loss of Civil Rights from occurring to Americans. This negligence is not acceptable, moral or ethical regarding federal employment.

**Not in accordance with the law:** A claim that the agency's action was unlawful in its entirety, that is, there is no legal authority for the action.

The courts need to listen to its citizens that are federal employees and uphold our laws. Private sector is complying, the government needs to start complying & setting the example. Americans are tired of the Government wasting money when simple fixes are able to have remedied this case. Let these individuals pay for their crimes with their retirement & criminal prosecution per law. No repercussions occurred to these individuals made advancements one even Center Director , is questionable with these

**Reason for Granting the Petition:**

Respectfully request granting this petition for Writ of Certiorari as the law, federal laws & regulations have been ignored for 23 years and \$85,000 legal fees, to date.

Every complaint registered against the Fargo VAMC has been in writing showing Susan Kay Slivicki's claims of the numerous disregard for the law or ethics for agencies OWCP, EEOC and ADA. Susan Kay Slivicki came in on her day off to help the undermanned Fargo VAMC was wrongfully terminated for my OWCP injury. A permanent 60% OWCP injury to my right foot/side in 1998. The Fargo VAMC again failed to file the required CA-7/Schedule of Awards. Negligence in filing numerous federally required forms. These are criminal acts.

Susan Kay Slivicki's attorney, Todd Foss passed away from cancer shortly after the 09/14/2006 The Fargo VAMC refused to speak of federal employment requirements of rehiring Susan Kay Slivicki back after wrongful termination. The Fargo VAMC is responsible to hire Susan Kay Slivicki back per federal employment law.

**The Fargo VAMC contract "may voluntary employment with any VA" except the Fargo VAMC apparently. Why? Never discussed re-employment/rehire**

**The contract must be legal**, it is not. Federal Employment requires the Fargo VAMC to rehire Susan Kay Slivicki. The Fargo VAMC did not communicate anything for rehiring in fact they refuse to communicate anything about reemployment. To be included in a valid contract employment terms needed to be **Communicated**.

Upon updating my address Minto ND (86 miles) the Fargo VAMC put 75 mile radius requirement to geographical non-inclusion for employment 6-8 years) Breaching contract through geographic limitation. **(geographic exclusion)**

I gave the Fargo VAMC approximately 50 positions from 2006-2015. In 2015, I requested unemployability benefits, I was denied told I was perfectly able to work. In 2019 reevaluated I was unemployable due to injuries. I was denied medical treatment and medication, sent to collections for OWCP injury treatment (3 surgeries). My case made West Law as precedence federal employees are not terminated for work injuries.

On 04/23/22 the Fargo VAMC finally signed the required CA-7/Schedule of Awards. This was 23 years late and most of my current charges. Continued retaliation *disparate treatment at the Fargo VAMC. Breached contract/contempt of court due to disregard for laws for federal employment*. No American should be treated in this manner.

Government is the worst offenders in EEOC cases. Our government needs to be the example not the offender. Respectfully requesting improvements via petition in this case to continue disabled civil rights. I believe in protecting our country & those who protect Americans. I have spent my savings & been an advocate for US veterans for 23 years to show you why our veterans are committing suicide and undermanned by 30,000 essential military personnel. A quarter of a century to fix an obvious hate crime trail of desperate treatment, unfair employment, from non-veterans those who are employed because of

veterans to take care of our soldiers. Veterans Matter, Disabled Veterans Matter. Being the example matters.

These individuals were employed to uphold the laws & benefits for all US veterans whose sacrifices are necessary for the protection of the USA. The VA is the largest part of veterans lives for benefits, medical, & services. Veteran suicide rates of 22 per day can be improved with the VA improving is a given.

“8 out 10 VA employees have witnessed veteran discrimination at the Veteran Affairs.” Washington Post. Veterans need to matter at every VA. Veterans need to matter in this country.

Thank you for your consideration in this matter.

Respectfully,



Susan Kay Slivicki (Pro Se)

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Susan Kay Shieck

Date: 06-08-22