

SUPREME COURT OF THE UNITED STATES

HENRY E. GOSSAGE,
Petitioner,

v.

OFFICE OF PERSONNEL
MANAGEMENT (OPM) and
U.S. DEPT. OF LABOR
(USDOL)

Respondent.

NINTH CIRCUIT COURT OF
APPEALS No. 2022-35643
U.S. DISTRICT COURT WESTERN
WASHINGTON No. 2004-5669RJB

MSPB SE-0731-01-0261-I-2 PFR

MOTION TO PROCEED AS A
VETERAN (USERRA)

Date: February 10, 2023

MOTION TO PROCEED AS A VETERAN

Henry Gossage requests the Court grant permission to proceed as a Veteran, pursuant to 38 U.S.C. §§'s 4302(a) and 4323(h)(1).

38 U.S.C. § 4323(h)(1), without "No fees or court costs may be charged or taxed against any person claiming rights under this chapter". *see also* 20 CFR 1002.310

The U.S. Supreme Court previously granted Henry Gossage "leave to proceed as a veteran" on June 12, 2006 in Gossage v. OPM (2005-1579) on appeal from Federal Circuit 2005-3155.

This pending case is intertwined with the original OSHA/OPM Pass-Over and Suitability OPM's May 16, 2001 "Negative Suitability Determination", which was Overturned/VACATED by OPM on December 27, 2004, exonerating Henry Gossage, establishing Petitioner's actual innocence. OPM's Vacated decision was concealed by OPM, when OPM waived its response to the Supreme Court, Petitioner, and MSPB in July 6, 2006.

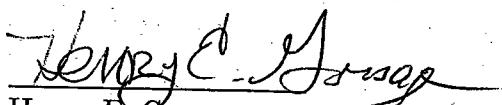
Henry E. Gossage
Motion to Proceed as a Veteran

Page 1

RECEIVED
FEB 17 2023
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In support of this motion to proceed without fees and costs under USERRA is attached and supported by the following documents: USDOL Passover of a preference eligible veteran (November 17, 2000); Agency Request to Pass Over a Preference Eligible (November 17, 2000); USDCWWWa ORDER (March 24, 2005); 2012 MSPB 97 (August 10, 2012); and USERRA Notification Form (July 25, 2022).

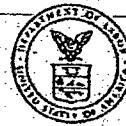
Respectfully Submitted



Henry E. Gossage
9421 Johnson Pt. Lp. NE
Olympia, WA 98516

U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210



Reply to the Attention of:

NOV 17 2000

Mr. Henry E. Gossage
9421 Johnson Pt. LPS NE
Olympia, WA 98516

Dear Mr. Gossage:

This letter is to inform you of our intent to object to you on the basis of suitability for federal employment as an Industrial Hygienist/Safety and Occupational Health Specialist with the U. S. Department of Labor, Occupational Safety and Health Administration (OSHA) on a nationwide basis. This decision is being made in response to your application for consideration for the position of Industrial Hygienist at the GS-11 level in Bellevue, Washington under vacancy announcement #OSH-00-87. This decision is based on information you provided on your Optional Form 306, Declaration for Federal Employment, in which you indicated you had been incarcerated for a period of time between 1992 and 1995.

Your application, a Request for Suitability Determination and a copy of this letter was forwarded to the Office of Personnel Management (OPM) in Boyers, Pennsylvania on November 17, 2000. As a 30 percent compensable veteran, you have 15 days from the date of this letter to respond (in writing) to our decision to pass over you and select a non-veteran applicant. The latter has also been referred for employment consideration on the certificate for this position. Your response should be sent to:

OPM-NACI Center
Boyers, PA 16018

The Office of Personnel Management will notify you in writing of their decision in this matter. If you have any questions, feel free to contact me on (202) 693-1800.

Sincerely yours,

Floria B. Jones
Floria B. Jones
Chief of Employment

Agency Request To Pass Over a Preference
Eligible or Object to an Eligible

OS/TO

22
0005

01-904-277

Block A - For Qualifications or Suitability Reasons

(Complete Block A and attach to the examining office which issued the certificate.)

INSTRUCTIONS: Reference FPM Chapter 322, Subchapter 4, and Appendix B. This form should be used to object to an eligible or to request authority to pass over a preference eligible and appoint a nonpreference eligible. Submit this form in triplicate along with all available information and documents considered pertinent to the case, i.e., position description, application, service record, etc. One copy will be returned to you with the decision. Pending approval of an agency's objection to an eligible or request for passover, the agency may not appoint an eligible who would be within reach only if the action is approved.

1. Name and Address of Eligible (Name, M.I., Last-First, WA, State and ZIP Code)

Henry E. Gossage

2. Grade	3. Certificate Number	4. Date of Certificate
110CPS	See attached	
5. Position Title and Grade		
Industrial Hygienist, GS-690-11		
6. Title of Examiner		

Reasons for Objection/Passover

We object to the eligible indicated above for reasons of: Qualifications Suitability

We propose to pass over this preference eligible to select a nonpreference eligible for reasons of: Qualifications Suitability
OSHA Compliance Officers must testify in court on behalf of the Agency. His conviction may affect his credibility.

Veteran has a service-connected disability of 30 percent or more and has been notified of this action, of the reasons for it, and of his or her right to respond to the Office of Personnel Management within 15 days in accordance with Title 5, USC, 3375(b)(2). (Attach copy of notification.)

REASONS (State reasons specifically and clearly so that the significance is readily apparent.) Eligibles have the right to request and review the reasons for these actions. The reasons, therefore, cannot be considered confidential. (Attach additional sheet, if necessary.)

Mr. Gossage is an applicant for an Industrial Hygienist position in Bellevue, Washington, however we would like to have him removed from consideration for all OSHA Compliance Officer positions nationwide for the reason aforementioned reason.

Signature and Title of Agency Appointing Officer <i>Chief of Employment</i>	Telephone Number (including Area Code) (202) 693-2461	Date (Month, Day, Year) 11/17/00
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OPM Decision

The action is sustained and the eligible is removed from consideration.

The action is not sustained for the following reasons:

Signature and Title of OPM Examiner

Mark L. Sutcliffe, Suitability Examiner

DATE (Month, Day, Year)

NOV 30 2000 5 1 85

U.S. Department of Labor
OSHA Personnel - Room N3308
200 Constitution Avenue, NW
Washington, DC 20210

Name of Agency
City, State, and ZIP Code
(Type return address for
use in a window envelope.)

Delivery Previews Available Upon Request
PHONE: (202) 205-4237

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

HENRY E. GOSSAGE.

Plaintiff,

V.^o

OFFICE OF PERSONNEL
MANAGEMENT, and U.S. DEPARTMENT
OF LABOR,

Defendants.

Case No. C04-5669RJB

ORDER ON PLAINTIFF'S
MOTION FOR
RECONSIDERATION,
DEFENDANTS' MOTION TO
DISMISS AND FOR SUMMARY
JUDGMENT, PLAINTIFF'S
APPLICATION FOR COURT-
APPOINTED COUNSEL IN
TITLE VII ACTION,
PLAINTIFF'S CROSS-MOTION
FOR SUMMARY JUDGMENT,
AND PLAINTIFF'S MOTION
FOR SANCTIONS

This matter comes before the court on plaintiff's Motion for Reconsideration. Dkt. 29. The court has reviewed all pleadings and exhibits filed in support of and in opposition to the Motion for Reconsideration, and the remainder of the record herein.

PROCEDURAL AND FACTUAL BACKGROUND

On October 8, 2004, plaintiff filed this case against the Office of Personnel (OPM) Management and U.S. Department of Labor (DOL), alleging that he is over forty years old, is Japanese-American, is a compensable disabled veteran, and is a person with physical disabilities; that he was employed by the State of Washington Department of Labor and Industries as an Industrial Hygienist Compliance Officer in the early 1990s; that he served three years in prison and was released in 1995; that he sought federal employment in 1995, and was denied employment by OPM because of

1 its "negative suitability determination"; that OPM "debarred plaintiff from federal employment for a
2 period of two and one-half years, which ended July 21, 2000"; that, following expiration of the period
3 of debarment, he sought employment with the Occupational Safety and Health Administration of the
4 Department of Labor (OSHA) in September of 2000, but the job was not offered to him, even though
5 the other two candidates were offered and then declined the position; that, based on score, education
6 and experience, plaintiff was the highest ranking applicant of the three for this position; that OSHA
7 obtained permission from OPM to pass over plaintiff for this position; that OPM determined that
8 plaintiff was unsuitable for federal employment and issued a debarment for an additional three years;
9 that plaintiff appealed OPM's decision to the Merit System Protection Board (MSPB); that OPM
10 withdrew its negative suitability determination for federal employment yet maintained that its decision
11 to permit OSHA to pass him over was correct; and that, as of September 27, 2004, the MSPB could
12 not agree as to the resolution of this case. Dkt. 1. In his complaint, plaintiff claims that his civil rights
13 were violated when defendants discriminated against him and failed to honor federally mandated
14 veterans' preferences, in violation of 42 U.S.C. § 1981, 42 U.S.C. § 1981a, and 42 U.S.C. § 1983, 5
15 C.F.R. Section 731.103(d) and 731.501, 5 U.S.C. § 2302, 42 U.S.C. § 2000(e)-16, 5. U.S.C. §
16 1221(a), 29 C.F.R. § 1401.101, 102, and 103, 28 U.S.C. § 2509, 38 U.S.C. § 4301, et seq., and 5
17 U.S.C. § 330(a). Dkt. 1, at 6-7. In the complaint, plaintiff stated that "[t]his is a mixed Board case,
18 encompassing discrimination and non-discrimination issues." Dkt. 1, at 4.

19 On December 8, 2004, plaintiff filed an application for appointment of counsel in a Title VII
20 case (Dkt. 15) and a Motion for Sanctions (Dkt. 16). Defendants filed a motion to dismiss and for
21 summary judgment (Dkt. 8), and plaintiff filed a cross-motion for summary judgment (Dkt. 14).

22 In their motion to dismiss and motion for summary judgment, defendants contended in part
23 that this court lacked jurisdiction over the Department of Labor and the Office of Personnel
24 Management, the only named defendants in this case. Dkt. 8, at 4-5. On January 5, 2005, the court
25 issued an order (hereafter, the January 5, 2005 Order), granting Defendants' Motion to Dismiss and
26 for Summary Judgment (Dkt. 8), denying plaintiff's Application for Court-Appointed Counsel in Title
27 VII Action (Dkt. 15), denying plaintiff's Cross-Motion for Summary Judgment (Dkt. 14), and denying
28 plaintiff's Motion for Sanctions (Dkt. 16). Dkt. 25.

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

2012 MSPB 97

Docket No. SF-4324-11-0228-I-1

Henry E. Gossage,
Appellant,

v.

Department of Labor,
Agency.

August 10, 2012

Henry E. Gossage, Olympia, Washington, pro se.

Bruce L. Brown, Esquire, and Matthew Vadnal, Esquire, Seattle,
Washington, for the agency.

BEFORE

Susan Tsui Grundmann, Chairman
Anne M. Wagner, Vice Chairman
Mark A. Robbins, Member

OPINION AND ORDER

¶1 The appellant has filed a petition for review of the initial decision that dismissed his appeal under the Uniformed Services Employment and Reemployment Rights Act of 1994 (codified at 38 U.S.C. §§ 4301-4333) (USERRA) for lack of jurisdiction.¹ For the reasons set forth below, we GRANT

¹ Although the Clerk of the Board granted the appellant's motion to consolidate this appeal with his appeal under the Veterans Employment Opportunities Act of 1998, MSPB Docket No. SF-3330-11-0227-I-1, we have issued separate decisions addressing

the appellant's petition for review, REVERSE the initial decision of the administrative judge, and REMAND the appeal for adjudication consistent with this Opinion and Order.

BACKGROUND

¶2 In September 2000, the appellant, a preference-eligible veteran, submitted an application for the position of Industrial Hygienist, GS-0690-11, at the agency's Occupational Safety & Health Administration (OSHA). Initial Appeal File (IAF), Tab 1 at 1, 10, 13. The appellant made the certificate of eligibles, as did two nonveterans. *Id.* at 15. Upon review of the appellant's Declaration for Federal Employment form, the agency requested the Office of Personnel Management (OPM) to make a determination regarding his suitability for employment. *Id.* at 13. On November 30, 2000, OPM sustained the agency's request to have the appellant deemed unsuitable for employment in the position.² *Id.* at 14.

¶3 On June 8, 2001, the appellant filed a Board appeal, *Gossage v. Office of Personnel Management*, MSPB Docket No. SE-0731-01-0261-I-1, in which he challenged, among other things, OPM's negative suitability determination and his nonselection. He also claimed discrimination and a violation of his rights as a veteran. IAF, Tab 1 at 4-6. Shortly thereafter, on July 1, 2001, the appellant filed a claim with the agency's Veterans' Employment and Training Service (VETS), using a VETS Eligibility Data Form 1010, alleging that OSHA violated

the appellant's two appeals because we find they do not contain sufficiently related factual or legal issues. *See 5 C.F.R. § 1201.36.*

² OPM initially responded to the request for a suitability determination by canceling the appellant's eligibility for the Industrial Hygienist position and any other competitive position, and debarring him from applying for any competitive-service position for 2 years. OPM later rescinded both the cancellation of eligibility and its general debarment. *See Gossage v. Office of Personnel Management*, 163 F. App'x 909, 910, 912 (Fed. Cir. 2006).

USERRA Notification Form

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

USERRA NOTIFICATION FORM

Case Number: 2004-5669 RJB

Short Case Caption: GOSSAGE v. OPM/USDOL

Petitioner: HENRY EUGENE GOSSAGE

Instructions: In a petition for review of a Merit Systems Protection Board decision, a petitioner is not required to pay the docketing fee or costs if the petitioner is claiming rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). *See 38 U.S.C. §§ 4323, 4324.* Please review the below statements and sign and submit this form if the underlying appeal at the Board involved a USERRA claim and you are pursuing your rights under USERRA on appeal. The signed original should be submitted within 14 days after the case is docketed.

CERTIFICATION OF USERRA APPLICABILITY

1. I certify that the petitioner is not required to pay the docketing fee or costs in this case because the underlying appeal at the Merit Systems Protection Board involved a USERRA claim and I am pursuing my rights under USERRA on appeal.
2. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. *See 28 U.S.C § 1746.*

Date: 07/25/2022

Signature: /S/

Name: HENRY E. GOSSAGE