NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

In re: WILLIAM B. JOLLEY

William B. Jolley

Petitioner

v.

United States Court of Appeals for the District of Columbia, and

United States District Court for the District of Columbia, and

United States Department of Housing and Urban Development

Respondents

Court of Appeals for the District of Columbia Case No. 23-5278

District Court for the District of Columbia Case No. 1:21-cv-02709-ZMF

Investigation of the Department of Housing and Urban Development No. HUD-00037-2019

PETITION FOR A WRIT OF MANDAMUS
AND/OR PROHIBITION

William B. Jolley ~~(pro se)~~
73 Bartram Trail
Brunswick, Georgia 31523
912-264-5900

QUESTION PRESENTED

Is 29 C.F.R. ¶ 1614 constitutional where Defendant HUD contends that the results of Investigation made under 29 C.F.R. ¶ 1614 (HUD-00037-2019) has no value in the federal court suit where HUD-00037-2019 shows that HUD discriminated on the basis of Age and Disability according to the interpretation rules of 29 C.F.R. 1614; and where ¶ 1614, used by all the federal agencies, has no provisions for compliance with the due process guarantee of the Constitution (No impartial tribunal, etc.); and ¶ 1614 is suppose to cover discrimination in employment applications, employment, etc.; all "discrimination" types covered being statutory rights.

PETITION FOR AN EXTRAORDINARY WRIT

ABBREVIATIONS USED:

HUD…U.S. Department of Housing and Urban Development (Defendant)

Court of Appeals … U. S. Court of Appeals for the District of Columbia

District Court… U. S. District Court for the District of Columbia

HUD-00037-2019…HUD's investigation: Plaintiff's evidence

BASIS FOR JURISDICTION

This Petition is timely filed within 90 days of the March 8, 2024 Order of the Court of Appeals for the District of Columbia Circuit (Apx pg.1). The United States Supreme Court has jurisdiction to hear and determine this Petition under 28 U.S.C. ¶ 1651(a).

REASON RELIEF NOT AVAILABLE IN ANY OTHER COURT

The issue stems from a case (No. 1:21-cv-02709-ZMF) now held by the District Court for the District of Columbia. That Court refuses to terminally decide the case so appeal was limited to the action for a writ to the Court of Appeals which went astray.

STATUTORY PROVISIONS INVOLVED

28 U.S.C. ¶ 1651(a): The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

29 C.F.R. ¶ 1614: This C.F.R. is 12,878 words in length. Originated by the Equal Employment Opportunity Commission (EEOC); it describes the procedures and the **Rules that Agencies must use** in "Investigations" for the resolution of discrimination for Age and Disability, as in HUD-00037-2019, which is the center of this dispute. **HUD-00037-2019**; interpreted, under Agency Rule **29 C.F.R. 1614**, shows that Plaintiff (Petitioner) Jolley prevails.

STATEMENT OF THE CASE

Defendant (HUD) does not accept that its own Investigation, HUD-00037-2019, shows that HUD discriminated against Plaintiff when he applied for a HUD job in 2018. Plaintiff, suspecting discrimination, sought assistance from HUD ODEEO (HUD Office of Departmental Equal Employment Opportunity). HUD decided to have the matter investigated as described by 29 C.F.R. 1614. Investigation completed 10-25-2019. 29 C.F.R. 1614.108(c)(3)(ii) determines that Mr. Jolley has prevailed as the result of HUD's investigation. Plaintiff filed suit when HUD refused to settle based on the Investigation. Defendant, keeping the case in court, is believed to be waiting for Plaintiff (Born 1930) to expire.

Plaintiff submitted a Petition for a Writ of Mandamus to the Court of Appeals seeking to direct the District Court to make a "final decision" to terminate the case within a specified time (Apx pg 2-13).

Four months later Petitioner received a response from the Court of Appeals (Apx pg 1). The Court of Appeals had never informed Plaintiff of its intended course of action. Based on what happened as defined by the 25 January 2024 **ORDER of Judge Faruqui (Apx pg 14-18)**; the matter of the Petition for the Writ to direct the action of the District Court had been "decided" by the **District Court** (APX pg 16-18) and not by the Court of Appeals … weird.

This case originated in 2020. From 2-04-2022 to 3-23-23 there was No action for 15 months. Case is now 39 months old with no action on dispository Motions of Plaintiff.

The matter in the Court of Appeals is one of "**failure of due process**" as to that Court's non-compliance with Rule 21 of the Rules of Appellate Procedure; and the matter that the District Court has been allowed unfettered right to deny Plaintiff's Petition for a Writ to the Court of Appeals without invitation, comment or control from the Court of Appeals in violation

of Rule 21 requirement that the District Court may only participate if **"invited or ordered"** (Appellate Procedure Rule 21(b)(4)).

The Court of Appeals has sanctioned (allowed without comment) a departure from the usual and accepted course of proceedings by a lower court. Considering the events in their entirety, one must acknowledge that the Court of Appeals and the District Court have so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of the Supreme Court's supervisory powers over the actions of both Courts for a prompt decision of this case based on the fact that the government's own 2019 investigation (HUD-00037-2019) governs the result ... and the fact that the Petitioner is **really very old**.

REASONS FOR GRANTING THIS PETITION

1. Plaintiff's DOB is: 1930
2. Case is thirty nine months old. 68 months since the discrimination occurred
3. Procedures of both Courts below violate Petitioner's right to due process
4. The Defendant should rely on, and abide by, its own Investigation per 29 C.F.R. 1614
5. Further judicial resources used in the courts below would make this case a classic boondoggle.

RELIEF SOUGHT BY PETITIONER

I

Petitioner seeks Mandamus to the Defendant that Defendant discriminated against Plaintiff and is directed to comply with the Order proposed in Plaintiff's Motion for Judgment on the Pleadings (APX pg 22).

II

Petitioner asks that 29 C.F.R. ¶ 1614 be declared unconstitutional as to "equal employment discrimination" claims where 29 C.F.R. ¶ 1614 does not provide due process and an impartial tribunal or impartial decision maker. "Discrimination claims" are a matter of statutory law providing "a property interest" requiring adherence to the requirement for Constitutional due process.

CONCLUSION

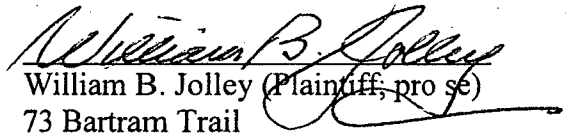
I

29 C.F.R. 1614.108(c)(3)(ii) determines that Plaintiff prevails on the issue of HUD having discriminated against Plaintiff on the basis of Age and Disability.

II

29 C.F.R. ¶ 1614 should be declared unconstitutional. Applicants for federal employment have statutory rights with respect to employment in federal civil service positions and a constitutionally protected property interest in ***not*** facing various forms of discrimination described by laws. 29 C.F.R. ¶ 1614 does not provide due process or an impartial tribunal or impartial decision maker for employment applicants who may be discriminated against.

Respectfully submitted,



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APPENDIX

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DOCUMENT	PAGES
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25 January 2024 ORDER of Judge Zia M. Faruqui	14-18
Plaintiff Motion for Judgment on the Pleadings (part of motion package)	19-22
HUD-00037-2019 Investigation Summary page (Matthew Hunter was Assistant Deputy HUD Secretary for the Office of Field Policy and Management (FPM) who would not support Agency in its claim that it had not engaged in Age and Disability Discrimination, and Reprisal, and had subjected Plaintiff to Disparate Treatment. Mary McBride is the previous Assistant Deputy Secretary for HUD FPM who also refused to support the Agency position.	23

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-5278 **September Term, 2023**

1:21-cv-02709-ZMF

Filed On: March 8, 2024

In re: William B. Jolley,

Petitioner

BEFORE: Henderson, Millett, and Walker, Circuit Judges

ORDER

Upon consideration of the petition for a writ of mandamus, it is

ORDERED that the mandamus petition be dismissed as moot. The district court ruled on petitioner's motion for summary judgment on January 25, 2024. Accordingly, petitioner has received the relief requested.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Selena R. Gancasz
Deputy Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Case No. _____

In re: **WILLIAM B. JOLLEY**

Petitioner

PETITION FOR A WRIT OF MANDAMUS
AND/OR PROHIBITION TO
THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

William B. Jolley 8 Nov. 2023

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INTRODUCTION

Petitioner (Plaintiff below) is a Veteran[1]. Plaintiff was granted authority to proceed without payment of fees or charges under the Uniformed Services Employment and Reemployment Rights Act (USERRA) by the district court in Indiana and in the District of Columbia court (DKT-5; Docket at App.3).

Defendant, in the complete absence of any possible cognizable defense, works for delay apparently to carry out the Defendant's continuing scheme of reprisal that began shortly after Judge Anthony Alaimo held the conference of the parties that resulted in Defendant settling that ADEA case in 2004 by giving Mr. Jolley a GS-15 HUD position in Florida and sixty thousand dollars. By 2007, ongoing retaliation evolved to "reorganize" the HUD Office of Field Policy and Management and "transfer" Mr. Jolley to Boise, Idaho, where he served as the Idaho State Director (Field Office Director) in 2008, 2009 and part of 2010. Despite an agreement with the AFGE, the Agency refused to allow Mr. Jolley to take other available positions east of the Mississippi River that would be more convenient to his wife, family, property and other interests. His only choice was to retire to amend the expensive distance between Idaho and his interests in Georgia and Kentucky. Employment applications to HUD, subsequent to 1 April 2010, were laughed at. When a position at Boise became available, and his situation had changed with the retirement of his wife, Mr. Jolley applied and was turned down because of age, disability and reprisal despite the fact that he was the only qualified candidate for that post. Instant case is the result of the Agency failure to comply with: age and disability laws; Veteran rights; reprisal law;

[1] Veteran DOB: 20 September 1930 (Age: 93); The VA defines his disability as a "hundred percent disabled." Deafness caused in the war zone at Kunsan, Korea during 1952. But Mr. Jolley successfully performed the duties of the Idaho assignment during 2008, 09, 10. (and the preceding four years in Florida; as well as other business ventures for the 44 years prior to 2004.).

and FINALLY; it failed to comply with the findings of its own investigation (as of 10-25-2019) and the applicable rules stated in 29 C.F.R. 1614.108 (App.2) ... which is the basis of the evidence against the Defendant herein and in the "***pending Motion for Summary Judgment at the D.C. District Court***" (App.1).

The district court case began 12-15-2020. Plaintiff had the results of the Agency's own investigation as evidence (HUD-00037-2019). Plaintiff filed a Motion for Summary Judgment at Docket No's 15 and 16. [See entire Docket at App.3]. Plaintiff filed Motion for Summary Judgment at Docket No's 21, 22, 23 and 24. At Docket 33, pending Motions for Summary Judgment were transferred to the D.C. District Court from the district court in Indiana.

A "Minute Order" (Unnumbered in the Docket sequence) dated 12-07-2021 ordered that Plaintiff's Motions for Summary Judgment "are hereby DENIED without prejudice" (Order signed by Judge Chutkan)'

On 6-12-2023, Plaintiff filed another Motion for Summary Judgment (DKT 50). By an unnumbered Minute Order dated 6-20-2023, Judge Chutkan stated, "Plaintiff's 50 Motion for Summary Judgment is hereby denied without prejudice.

This Petition is a request for a Writ of Mandamus to the District Court to decide the currently submitted Motion for Summary Judgment (App.1) within fifteen days, thereby avoiding unnecessary expenditure of judicial resources.

29 C.F.R. ¶ 1614.108(c)(3)(ii) (App.2) states that where "employees fail ... to respond fully ... etc." the decision-maker should: **(ii) consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party**."

Please note that App.1 (The current Motion for Summary Judgment has attached that portion of the investigation by HUD in which the Assistant Deputy Secretary for the HUD Office of Field Policy and Management refused to respond to requests from the HUD contract Investigator that he and/or HUD did not violate Plaintiff's rights under the pertinent age and disability laws). The Plaintiff should have thus prevailed when the investigation was provided to HUD. The Agency has NO defense.

SUMMARY JUDGMENT FOR AGE AND DISABILITY DISCRIMINATION

This specific instance of age and disability discrimination by the Department of Housing and Urban Development (HUD) dates from 2018. The case has been massaged by the Agency; the MSPB; the ADR; the ODEEO; the EEOC; the District Court in Indianapolis, Indiana; and now by the D. C. District Court.

Petitioner has made various Motions for Summary Judgment. Defendant has never responded to any of them beyond Defendants answer (App.4) to the 12-15-2020 Complaint; DKT 50 on 06-12-2023 ... two and a half years after the Complaint was filed.

RELIEF SOUGHT

Petitioner seeks Mandamus to the District Court requiring decision of the Summary Judgment Motion within fifteen days.

THE ISSUE PRESENTED

William B. Jolley applied for the position of GS-15 Field Office Director for the Office of Field Policy and Management Division of the Department of Housing and Urban

Development (HUD) at Boise, Idaho under multiple announcements. The announcements closed 6-13-2018.

The Agency decided that it would not hire Plaintiff because of (some, partial or all of the following) his hearing disability; and/or because of his advanced age; and/or because in 2004 he had successfully sued the Agency for age discrimination; and/or because he had successfully pursued USERRA rights for Veterans in 2007 MSPB 51 (Jolley v. Department of Homeland Security) and other Veteran cases.

THE FACTS NECESSARY TO UNDERSTAND THE ISSUE

Unrebuttable evidence of Agency failure to comply with legal requirements is the fact that the Assistant Deputy Secretary for the Office of Field Policy and Management (FPM) refused to state that the Agency (or he) did not violate age and disability laws with respect to Mr. Jolley's application.

Plaintiff had previously successfully held the Boise GS-15 Director position (2008, 2009, 2010) despite deafness and advanced age.

HUD cancelled the 2018 Boise position announcements and opened GS-14 announcements for the same position. The closing date was 12-20-2018. The change of grade for the position was to avoid hiring Plaintiff.

HUD did not comply with 48 U.S.C. 3535(p) to accomplish the reorganization in which HUD manipulated the grade change from GS-15 to GS-14 to avoid hiring Plaintiff.

Plaintiff appealed to the Merit System Protection Board as a Veteran. The MSPB would not deal with the discrimination issues. The MSPB conducted a hearing which did not comply with the requirement of the Constitution for ***due process*** (***MSPB use of 5 C.F.R. 1201.57(d) means that any resulting MSPB decision was not accomplished with due process***). Plaintiff did not prevail at the MSPB.

Mr. Jolley appealed to the Federal Circuit Court of Appeals where again he failed to prevail. Failure at the Federal Circuit was due to that Courts blind acceptance of the MSPB rule contained at 5 C.F.R. 1201.57(d) (***The ¶ 120.57(d) issue is currently submitted in a Petition to the Supreme Court***).

Subsequent to the MSPB action, Mr. Jolley appealed to the Agency (HUD) and underwent that agency's ADR (Alternative Dispute Resolution program).

REASONS WHY THE WRIT SHOULD ISSUE

The ADR program failed to resolve anything. The Agency simply insisted that the position of Petitioner was wrong.

Petitioner subsequently proceeded to the agency Equal Employment Opportunity (ODEEO) program. The Agency conducted an extensive investigation by contract. Attached to the Motion for Summary Judgment (App.1) is a copy of the Investigative Summary pages that reflect that the senior executive, Assistant Deputy Secretary Matthew Hunter[2], of the HUD Office of Field Policy and Management was asked to provide affidavits to support the Agency's position but failed to do so. The same is true of Assistant Deputy Secretary Mary McBride who

[2] Mr. Hunter has never talked to or met Mr. Jolley.

was the senior executive of the HUD Office of Field Policy and Management immediately prior to Mr. Hunter.

The ODEEO program morphed into an action before the Equal Employment Opportunity Commission (EEOC) where an EEOC administrative judge was supposed to conduct a hearing to determine the liability of the Agency. Plaintiff filed a motion for summary judgment[3] to the EEOC Hearings Judge immediately upon the assignment of the Hearing Unit Judge. Nothing happened. Mr. Jolley never heard a word from the assigned judge.

The Motion for Summary Judgment "***about the 2018 Boise, Idaho position***" to the EEOC Hearings judge had been served on EEOC and on the Agency as of 11-26-2019. EEOC and the Agency had acknowledged receipt a few days later. Neither the EEOC nor the Agency had responded to the motion in over a year as of 12-01-2020.

In the process of the EEOC administrative judge issue, another administrative judge was assigned. That judge failed to conduct the matter in accord with 29 C.F.R. 1614.109. Among a variety of issues was the fact that the "replacement administrative judge" engaged in ***ex parte*** communication with the Agency Representative. Complaints about the ***ex parte*** communication went unheeded. Mr. Jolley pulled the case from the EEOC, as allowed by law, when the matter was not resolved within the time frame required by law.

Mr. Jolley filed the case with the District Court at Indianapolis, Indiana on 12-7-2020.

Partial summary judgment for **Count I**, the age and disability issue (DKT 15 and 16 and DKT 21; 6-21 & 7-13-21), was asked of the Indiana Court. The U.S. Attorney for the

[3] See at page 10 of the Complaint filed with the Indianapolis Division of the District Court for the Southern District of Indiana which is now case No. 21-2709 in the District Court for the District of Columbia.

government asked for a stay of briefing on the Partial Summary Judgment, **Count I**, issue (DKT 19). The Court approved the stay on the Motion for Summary Judgment as to **Count II**. The case (and the motion) was transferred to the D.C. District Court (DKT 33) on 10-14-21. The D.C. District Court, by a MINUTE ORDER dated 12-07-2021 without any DOCKET NUMBER, "***ordered that Plaintiff's Motions for Summary Judgment ... are hereby denied without prejudice***". On 2-04-2022 are two "Minute Orders" by Judge Chutkan. The next action by Judge Chutkan is 5-24-2023 (DKT 46); a time span from February 2022 to May of 2023 (**about fifteen months**) during which period ... nothing happened. **The Court ignored the case for fifteen months.**

Mr. Jolley mailed another Motion for Summary Judgment to the D.C. District Court on 6-9-2023 (DKT 50). T**he Defendant did not respond to that motion**. The D.C. District Court "***Denied without prejudice***" adding that "***the motion is premature***" (6-20-23 Minute Order). Fed,R.Civ.P. states "the court should state on the record the reasons for granting or denying the motion. According to Rule 56, "A party may file a motion for summary judgment at any time until 30 days after the close of all discovery". The Court offers no guidance as to its characterization of the motion as "premature".

Commensurate with the mailing of this Petition for a Writ, Plaintiff-Petitioner submits another "Motion for Summary Judgment as to Count I" to the D.C. District Court.

THE LEGAL CRITERIA

Under the All Writs Act, "[t]he Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). Mandamus "is an

extraordinary remedy for extraordinary causes." *United States v. Denson*, 603 F.2d 1143, 1146 (5th Cir. 1979) (en banc). "A writ of mandamus may issue only if (1) the petitioner has 'no other adequate means' to attain the desired relief; (***Relief is decision prior to the death of the 93 year old Plaintiff***) (2) the petitioner has demonstrated a right to the issuance of a writ that is 'clear and indisputable; (***The Defendant has presented no evidence that disputes the claim of discrimination for age and disability***); and (3) the issuing court, in the exercise of its discretion, is satisfied that the writ is 'appropriate under the circumstances.'" *In re Dean*, 527 F.3d 391, 394 (5th Cir. 2008) (quoting *In re United States*, 397 F.3d 274, 282 (5th Cir. 2005)). In this case, all three requirements are easily met. The original MOTION FOR SUMMARY JUDGMENT (Attached to the Complaint) was initially served on the Agency on 11-26-2019. This is not a complex matter.

District court judges have broad discretion in managing their dockets. *Sims v. ANR Freight Sys., Inc.*, 77 F.3d 846, 849 (5th Cir. 1996). "However, discretion has its limits." *Id.* ***The Supreme Court has recognized that "where a district court persistently and without reason refuses to adjudicate a case properly[4] before it, the court of appeals may issue the writ 'in order that [it] may exercise the jurisdiction of review given by law.***'" *Will v. Calvert Fire Ins. Co.*, 437 U.S. 655, 662–63 (1978) (quoting *Ins. Co. v. Comstock*, 16 Wall. 258, 270 (1873)). A writ may be appropriate to address a district court's undue delay in adjudicating a case properly before it. *See In re Hood*, 135 F. App'x 709, 711 (5th Cir. 2005) (holding writ of mandamus was appropriate to address district court's **seven month delay in entering judgment**); *Madden v. Myers*, 102 F.3d 74, 79 (3d Cir. 1996) ("[A]n appellate court may issue a writ of mandamus on the ground that undue delay is tantamount to a failure to exercise jurisdiction."); *Johnson v.*

[4] **The D.C. District Court went for fifteen months without any action** from February 2022 to May of 2023 during which period … nothing happened.

//

Rogers, 917 F.2d 1283, 1285 (10th Cir. 1990) (granting writ of mandamus where district court failed to rule on a petition for writ of habeas which had been pending for fourteen months); *McClellan v. Young*, 421 F.2d 690, 691 (6th Cir. 1970) (granting writ of mandamus to address delay in ruling on pending petition for writ of habeas).

Here, the district judge has had ample time to consider and act on the various motions—yet we find unwarranted delay with the Defendant waiting for a ninety three year old Veteran to die so the case can end to the advantage of the Government Executive Branch Defendant.

Even a dog recognizes the difference between being stumbled over and being kicked. "\Justice delayed is justice denied." *Johnson*, 917 F.2d at 1285.

The combined delays in adjudicating this case are inexcusable and an unmitigated waste of judicial resources. This Court has the authority to grant mandamus relief.

THE PROPOSED WRIT

IT IS ORDERED that the Petition for Writ of Mandamus for Count I is GRANTED. Magistrate Judge Zia M. Faruqui is ordered to rule on the pending motion for summary judgment as to Age and Disability within fifteen days.

William B. Jolley 8 November 2023

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912-264-5900 (Text messages only, please)

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Case No. _____

In re: **WILLIAM B. JOLLEY**

Petitioner

PETITION FOR A WRIT OF MANDAMUS
AND/OR PROHIBITION TO
THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CERTIFICATE OF SERVICE

I hereby certify that a copy of the attached document has been mailed by First Class mail with appropriate postage affixed thereto to:

Clerk,
Attn: Magistrate Judge Zia M. Faruqui
D.C. District Court
333 Constitution Ave., N.W.
Washington, D.C. 20001

M. Jared Littman
Assistant United States Attorney
601 D Street, NW
Washington, D.C. 20530

_____ Date:
William B. Jolley (Plaintiff pro se)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WILLIAM B. JOLLEY, **Plaintiff,** **v.** **UNITED STATES OF AMERICA,** **Defendant.**	**No. 21-cv-02709-ZMF**

ORDER

Seven motions are pending before the court. Mr. Jolley filed six and the government filed one.

I. DISCOVERY MOTIONS

A. Background

Discovery must be "relevant to any party's claim or defense and proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1). Relevance "encompass[es] any matter that bears on, or that reasonably could lead to other matter that could bear on any party's claim or defense." *United States ex. rel. Shamesh v. CA, Inc.*, 314 F.R.D. 1, 8 (D.D.C. 2016) (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978)). "if a party objects to an interrogatory, it must state its grounds for objection 'with specificity.'" *United States v. All Assets Held at Bank Julius Baer & Co.*, 276 F.R.D. 396, 399 (D.D.C. 2011). A party's objections to document requests must be similarly specific. *See, e.g., Convertino v. U.S. Dep't of Justice*, 565 F. Supp. 2d 10, 12-13 (D.D.C. 2008).

[redacted] 14

The government's discovery requests seek information that has "some probable effect on the organization and presentation of the moving party's case." *Jewish War Veterans of the U.S., Inc. v. Gates*, 506 F. Supp. 2d 30, 42 (D.D.C. 2007) (quoting *Smith v. Schlesinger*, 513 F.2d 462, 473 (D.C. Cir. 1975)). For example, the government asked in an interrogatory for a detailed factual basis for Mr. Jolley's assertion that he was discriminated against based on his hearing disability. *See* Motion to End Discovery for Order to Decide the Case, Ex. A, Plaintiff's 2nd Response to Defendant's First Set of Discovery Requests 4, ECF No. 63-1. The government's requests are reasonable.

The record does not show that a protection order is necessary to "to protect [Mr. Jolley] from annoyance, embarrassment, oppression, or undue burden or expense." Fed. R. Civ. P. 26(c)(1). Moreover, Mr. Jolley's objections do not rise to the level of specificity required by law. *See Convertino*, 565 F. Supp. 2d at 12-13. For example, Mr. Jolley's objection that the government already has information in its possession, "references to a voluminous . . . record," and generic references to documents are legally insufficient. *Id.* at 400.

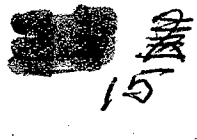
Mr. Jolley shall supplement his responses to the pending discovery requests. Thus, an extended deadline is warranted. Failure to comply with this extended deadline may result in sanctions, including dismissal of this action. *See* Fed. R. Civ. P. 37(b)(2).

Upon consideration of the above motions, it is hereby:

ORDERED that the government's Motion to Modify the Scheduling Order, ECF No. 62, is GRANTED;

ORDERED that Jolley's Motion for a Protective Order, ECF No. 59, is DENIED; and

ORDERED that Jolley's Motion to End Discovery and for Order to Decide the Case, ECF No. 63, is DENIED.



II. DISPOSITIVE MOTIONS

A. Background

There are two pending dispositive motions: (1) Mr. Jolley's Motion for Summary Judgment, ECF No. 57, and (2) Mr. Jolley's Motion for Judgment on the Pleadings, ECF No. 60.

B. Analysis

A motion for summary judgment is only appropriate when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56. A motion for judgment on the pleadings under Fed. R. Civ. P. 12(c) is only appropriate when the facts are undisputed. *See Murphy v. Dep't of Air Force*, 326 F.R.D. 47, 49 (D.D.C. 2018).

Discovery is ongoing and the facts are in dispute. *See* infra. Thus, both motions are premature.

Upon consideration of the above motions, it is hereby:

ORDERED that Mr. Jolley's Motion for Summary Judgment, ECF No. 57, is DENIED without prejudice; and

ORDERED that Mr. Jolley's Motion for Judgment on the Pleadings, ECF No. 60, is DENIED without prejudice.

III. PETITION FOR A WRIT OF MANDAMUS

A. Background

Also pending is Mr. Jolley's Petition for a Writ of Mandamus, ECF No. 58.

B. Analysis

"To show entitlement to mandamus, a plaintiff must demonstrate (1) a clear and indisputable right to relief, (2) that the government agency or official is violating a clear duty to act, and (3) that no adequate alternative remedy exists." *Mirbaha v. Pompeo*, 513 F. Supp. 3d 179,

[redacted] 16

187 (D.D.C. 2021) (internal quotation marks omitted). The Court is not violating its duty to act and has not taken an unreasonable amount of time to decide Mr. Jolley's case. *See id.* at 184 (finding a 27-month delay in agency action was not unreasonable). Mr. Jolley filed the earliest of his outstanding motions on November 6, 2023. There is "power inherent in every court to control the disposition of the cases on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment." *Am. Hosp. Ass'n v. Burwell*, 209 F. Supp. 3d 221, 224-25 (D.D.C. 2016) (describing factors for and against mandamus). Mr. Jolley cannot compel the Court to decide his motions on his time frame, and a writ is not appropriate after a motion has been pending for fewer than three months.

Upon consideration of the above motion, it is hereby:

ORDERED that Mr. Jolley's Petition for a Writ of Mandamus, ECF No. 58, is DENIED.

IV. MOTION TO PROCEED AS A VETERAN

A. Background

Finally pending is Mr. Jolley's Motion to Proceed as a Veteran, ECF No. 64.

B. Analysis

Veterans claiming relief under the Uniformed Services Employment and Unemployment Rights Act are exempted from filing fees. 38 U.S.C. § 4323(h)(1); *see also Jolley v. Merit Sys. Prot. Bd.*, 578 U.S. 903 (2016) (granting Mr. Jolley leave to proceed as a veteran).

Mr. Jolley, "proceeding pro se, is a U.S. Air Force veteran and a former employee of the U.S. Department of Housing and Urban Development." *Jolley v. United States*, No. 21-CV-2709, 2023 WL 3619415, at *1 (D.D.C. May 24, 2023). Mr. Jolley was claiming rights under the Uniformed Services Employment and Unemployment Rights Act, *see* Compl. 1, although Judge Chutkan dismissed those claims, *see* Mem. & Op. re: Defs.' Mot. to Dismiss, ECF No. 46.

[redacted] 17

However, because the claims were in the initial complaint, no "fees or court costs may be charged or taxed against" Mr. Jolley. 38 U.S.C. § 4323(h)(1).

Upon consideration of the above motion, it is hereby:

ORDERED that Mr. Jolley's Motion to Proceed as a Veteran, ECF No. 64, is GRANTED.

Zia M. Faruqui
2024.01.25
17:36:59 -05'00'

Date: January 25, 2024

ZIA M. FARUQUI
UNITED STATES MAGISTRATE JUDGE

[redacted]

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

William B. Jolley,

Plaintiff,

vs.

The United States of America, *et al*

Defendant,

Civil Action No. 21-2709 (ZMF)

MOTION FOR JUDGMENT ON THE PLEADINGS

Plaintiff hereby moves this Honorable Court to make judgment on the pleadings in response to the "Defendant's Answer to Plaintiff's Complaint".

Fed.R.Civ.P. 12(c) provides that such a motion may be submitted "After the pleadings are closed---but early enough not to delay trial ..."

The Case began 12-15-2020. The "Defendant's Answer to Plaintiff's Complaint" was filed in June 2023.

The question, resolved by the Defendant's own investigation (HUD -00037-2019), is whether HUD Assistant Deputy Secretary Matthew F. Hunter, senior executive in the HUD Office of Field Policy and Management (FPM), violated, or allowed the violation of, the laws relative to age and disability when he had authority to select and employ Plaintiff Jolley in the GS-15 Position of Field Office Director at Boise for the State of Idaho.

The Fed.R.Evid. Rule 301: presumptions in civil cases. "... the party against whom a presumption is directed has the burden of producing evidence to rebut the presumption. ..."

Mr. Hunter did not respond when he was requested by the Department of Housing and Urban Development (HUD) to answer questions about the issue of age and disability discrimination. (**See: pages 10 and 11 of the original Complaint**).

29 C.F.R. 1614.108 at par (c) at (3) [When] " ... employees fail ... to respond fully and in timely fashion ... the decision-maker should ...(i) "Draw an adverse inference ..." and (ii) "Consider the matters to which the requested information ... pertains to be established in favor of the opposing party;" The pertinent section of **29 C.F.R. 1614.108** is printed below:

§1614.108 Investigation of complaints.

(a) The investigation of complaints shall be conducted by the agency against which the complaint has been filed.

(b) In accordance with instructions contained in Commission Management Directives, the agency shall develop an impartial and appropriate factual record upon which to make findings on the claims raised by the written complaint. An appropriate factual record is one that allows a reasonable fact finder to draw conclusions as to whether discrimination occurred. Agencies may use an exchange of letters or memoranda, interrogatories, investigations, fact-finding conferences or any other fact-finding methods that efficiently and thoroughly address the matters at issue. Agencies are encouraged to incorporate alternative dispute resolution techniques into their investigative efforts in order to promote early resolution of complaints.

(c) The procedures in paragraphs (c) (1) through (3) of this section apply to the investigation of complaints:

(1) The complainant, the agency, and any employee of a Federal agency shall produce such documentary and testimonial evidence as the investigator deems necessary.

(2) Investigators are authorized to administer oaths. Statements of witnesses shall be made under oath or affirmation or, alternatively, by written statement under penalty of perjury.

(3) When the complainant, or the agency against which a complaint is filed, or its employees fail without good cause shown to respond fully and in timely fashion to requests for documents, records, comparative data, statistics, affidavits, or the attendance of witness(es), the investigator may note in the investigative record that the decisionmaker should, or the Commission on appeal may, in appropriate circumstances:

(i) Draw an adverse inference that the requested information, or the testimony of the requested witness, would have reflected unfavorably on the party refusing to provide the requested information;

(ii) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;

In short: Where Mr. Hunter refused to respond to the HUD investigation about age and disability discrimination, *the matters to which the requested information or testimony pertains* [are] *established in favor of the opposing party.* The decision must be in favor of the Plaintiff here ... that Mr. Hunter did, or allowed, age and disability violations in the selection of Mr. Jolley for the Boise position.

William B. Jolley (pro se; Plaintiff)
73 Bartram Trail
Brunswick, Georgia 31523
912-222-1660 (Text only please; Plaintiff is deaf)
n61u@yahoo.com

./.UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

William B. Jolley,

Plaintiff,

vs.

The United States of America, *et al*

Defendant.

Civil Action No. 21-2709 (ZMF)

PROPOSED ORDER

The Court ORDERS the Defendant, Department of Housing and Urban Development, to provide Plaintiff, Mr. Jolley, with employment as the GS-15, Step 10, Field Office Director at Boise, Idaho with back-pay and an amount equal to the back-pay as damages and the additional amount of one million dollars for punitive damages for the especially malicious and reckless acts of discrimination causing mental anguish, inconvenience and loss of enjoyment of life, and such further remuneration as allowed by law, rule or regulation for violation of Plaintiff's rights under the age discrimination issue. The Defendant is further Ordered to pay Plaintiff another amount equal to the total of the amounts cited above for the issue of disability discrimination. The Agency must comply with the ORDER of the Court within thirty days.

_____

Judge, United States District Court for the District of Columbia

INVESTIGATIVE SUMMARY

Statement of Claims to be Investigated: Whether the Office of Field Policy and Management discriminated against Complainant based on his age (DOB: September 1930), disability (physical), and reprisal (prior EEO activity) and subjected him to disparate treatment when he became aware on November 28, 2018 that the agency cancelled the Field Office Director position advertised under 18-HUD-561 and 18-HUD - 562-P to prevent his selection for the position.

Remedy Requested: As a resolution to this matter, Complainant requests to be placed into the position of GS-15 Field Office Director at Boise, Buffalo, or Albuquerque plus "all additional items allowed by law."

[INVESTIGATOR'S NOTE: Witnesses Matthew Hunter and Mary McBride were asked to provide affidavits but failed to do so. The request to Mr. Hunter was sent by email and received on July 2, 2019. EEO Specialist Paulette Ceophas made several follow up requests. This request is contained in the file under tab E. The request to Ms. McBride was sent by priority mail, tracking no. 9505 5154 3426 9224 2576 44 and received on August 14, 2019. This request is contained in the file under tab F.]

AFFIDAVIT TESTIMONY (Age Allegation)

Complainant testified he is 88 years old and his date of birth is September 1930. He further testified that agency officials were aware of his age through reference to his SF-50 form verifying status, his SF-15 VA disability form, and his DD-214 military discharge form, all of which were required to be submitted as part of his application. **[Affidavit A]**

Michael Lawyer testified that he is 41 years old and does not know Complainant's age. He believes Complainant is over 60; Mr. Lawyer obtained this knowledge during the EEO process. **[Affidavit B]**

Nelson Bregon testified that he is 68 years old, he believes Complainant is in his 70s, and he learned of Complainant's age from a previous complaint. **[Affidavit C]**

Patricia Hoban-Moore testified that she is 70 years old and is not aware of Complainant's age. **[Affidavit D]**

AFFIDAVIT TESTIMONY (Disability Allegation)

Complainant testified that he is deaf, his medical condition is permanent, and he was first diagnosed with a hearing deficit in or around 1998 by the Veterans Administration. Complainant asserted that anyone reviewing his application packet would become aware of his medical condition through reference to his status as a CPS 10-point veteran, and