

No. 23-224

In the
Supreme Court of the United States

CHRISTINA ALESSIO,
Petitioner,

v.

UNITED AIRLINES, INC.,
Respondent.

**On Petition for Writ of Certiorari to the
Court of Appeals of Ohio, Cuyahoga County**

**BRIEF IN OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI**

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QUESTION PRESENTED

1. Whether Petitioner's Ohio workers' compensation claims were properly disposed of by the lower courts' granting of Respondent's motion for summary judgment based on res judicata.

**PARTIES TO PROCEEDING
AND RULE 29.6 STATEMENT**

The caption of the case lists Christina Alessio and United Airlines, Inc. as the parties. The parent company of Respondent United Airlines, Inc. is United Airlines Holdings, Inc. Other than United Airlines Holdings, Inc., no other parent or publicly held company owns 10% or more of United Airlines, Inc.'s stock. In the lower court proceedings, the Administrator of the Ohio Bureau of Workers' Compensation was also a party but was not included as a Respondent in Alessio's Petition.

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OPINIONS BELOW

The opinion of the Ohio Supreme Court is available at 169 Ohio St.3d 1490, 2023-Ohio-1149, 2023 Ohio LEXIS 751, and reproduced in Petitioner's Appendix ("Pet. App.") at App.1a. The opinion of the Court of Appeals of Ohio Eighth Appellate District is not published but is available at 2022-Ohio-4510, 2022 Ohio App. LEXIS 4243, 2022 WL 17685613, and reproduced in Pet. App. at App.3a-12a. The opinion of the Cuyahoga County Court of Common Pleas is not published but is available at 2022 Ohio Misc. LEXIS 3753 and reproduced in Pet. App. at App.15a-16a.

JURISDICTION

The judgment of the Ohio Supreme Court was entered on April 11, 2023. The Petition for Writ of Certiorari was filed on September 1, 2023. Petitioner invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1257(a).

STATUTE INVOLVED

Petitioner asserts that the Hazardous Materials Transportation Act, 49 U.S.C. § 5124 is at issue. (*See* Petition for Writ of Certiorari, pp. 2-4). It is not. The statute involved herein is Ohio Revised Code § 4123.512.

STATEMENT OF THE CASE

This matter concerns Petitioner Christina Alessio's ("Alessio" or "Petitioner") request to participate in the Ohio workers' compensation fund for injuries alleged to have been sustained in the course of and arising out of her employment with

Respondent United Airlines, Inc. (“United” or “Respondent”). Alessio is employed by United as a flight attendant. For years, she has complained about United’s use of chemical cleaning products and air fresheners in the aircraft cabins within which she works.

On October 24, 2019, Alessio filed an application with the Ohio Bureau of Workers’ Compensation (assigned Claim No. 19-202076) alleging that she sustained an injury to her bilateral hands and wrists due to inhalation of chemical liquid air-freshener sprayed inside the aircraft cabin. Claim No. 19-202076 Record of Proceedings, Respondent’s Appendix (“Res. App.”) at 3. She amended the application to include the condition of “chemical exposure” alleging a cumulative trauma injury that occurred over a four-day period from October 5, 2019 through October 8, 2019. *Id.* Her claim was disallowed by the Industrial Commission of Ohio. Res. App. at 1-10. Alessio did not appeal her claim into the Cuyahoga County Court of Common Pleas pursuant to Ohio Revised Code (“O.R.C.”) § 4123.512. Pet. App. at App.6a.

Rather than exercise her right to appeal Claim No. 19-202076 into court, Alessio filed three new applications for workers’ compensation benefits. The three applications are identical to Claim No. 19-202076 with the exception that each application alleges a distinct date of injury/exposure. Claim No. 20-194183 alleges an October 6, 2019 date of injury, Claim No. 20-194185 alleges an October 7, 2019 date of injury, and Claim No. 20-194187 alleges an October 8, 2019 date of injury. Res. App. at 11-28;

Pet. Appendix at App.4a. These dates of injury/exposure are identical to those that were previously adjudicated against her in Claim No. 19-202076. The Industrial Commission adjudicated the three new applications together and held:

The Hearing Officer finds that the allegation in this claim has previously been ruled on in Claim No. 19-202076. As the Claimant has exhausted all administrative remedies in Claim No. 19-202076, and the subject matter and allegations in the former claim are the same as the subject matter and allegations in this docketed claim, the Claimant's request for an injury or occupational disease allowance, as well as the additional allowance request of chemical exposure must be DISMISSED. (Emphasis in the original). Res. App. at 11-28.

On July 7, 2021, Alessio appealed Claim Nos. 20-194183, 20-194185, and 20-194187 into the Cuyahoga County Common Pleas Court by filing a Notice of Appeal pursuant to O.R.C. § 4123.512 requesting the right to participate in the Ohio workers' compensation fund for the alleged bilateral hand and wrist injuries and chemical exposure. United moved for summary judgment on January 14, 2022 based on res judicata. On March 31, 2022, the Court granted judgment in favor of United and against Alessio. Pet. App. at App. 15a. Alessio appealed the adverse judgment to the Court of Appeals of Ohio, Eighth Appellate District.

On December 15, 2022, the Court of Appeals issued a Journal Entry and Opinion affirming the trial court's order granting judgment in favor of United. The Court held:

Our review of the record reflects that Alessio asserted identical claims encompassed by her prior claim No. 19-202076, that the parties had ample opportunity to litigate the matter in the prior proceeding, and that the issue was conclusively decided in a valid, final decision on the merits. Upon our review, we conclude that claim Nos. 20-194183, 20-194185, and 20-194187 are barred by res judicata and affirm the lower court's decision to grant United Airlines' motion for summary judgment. We are not persuaded by any other argument presented by Alessio, and we do not consider United Airlines' arguments concerning the sufficiency of the evidence to support her claims. Pet. App. at App. 11a.

On January 19, 2023, Alessio appealed the Court of Appeals' Journal Entry and Opinion to the Supreme Court of Ohio. On April 11, 2023, the Supreme Court of Ohio declined jurisdiction of the appeal. Pet. App. at App.1a.

Alessio filed her Petition with the United States Supreme Court on September 1, 2023. (*See* Petition for Writ of Certiorari.) In the Petition, Alessio asserts vague claims under the Hazardous Materials Transportation Act, 49 U.S.C. § 5124

(“HMTA”). Alessio’s Petition is essentially a refile of a Petition she filed with this Court on September 19, 2019 (*Christina Alessio, Petitioner v. United Airlines, Inc.*, U.S. Supreme Court Case No. 19-395) that also asserted claims under the HMTA. Indeed, Alessio acknowledges that she is seeking a second bite at the apple in the present Petition in her statement of Questions Presented Nos. 8, 9, and 10. This Court rightfully denied the Petition in Case No. 19-395 on November 25, 2019.

SUMMARY OF THE ARGUMENT

Alessio ostensibly asks this Court to grant certiorari to review the dismissal of her Complaint requesting the right to participate in the Ohio workers’ compensation fund for alleged bilateral hand and wrist injuries and chemical exposure. However, in her Petition, Alessio attempts to reassert a claim under the HMTA which this Court rightfully rejected in Case No. 19-395.

United respectfully opposes Alessio’s Petition. As a threshold matter, the questions Alessio sets forth do not involve a conflict of law or present a compelling reason for this Court’s review. In addition, it is well-settled that the doctrine of res judicata applies to administrative proceedings before the Ohio Industrial Commission. Further, the HMTA does not provide for a private cause of action and Alessio fails to articulate any authority to the contrary. Moreover, her purported claim related to the HMTA is derived from the June 24, 2019 judgment of the Sixth Circuit Court of Appeals in *Alessio v. United Airlines, Inc.*, No. 18-4251, 2019 U.S. App. LEXIS 18881, 2019 WL 12631628 (6th Cir.

June 24, 2019) and, therefore, is untimely. *See* Sup.Ct.R. 13 (providing that a petition for a writ of certiorari must be filed within 90 days after entry of the judgment).

ARGUMENT / REASONS TO DENY PETITION

I. The Petition should be denied because there are no “compelling reasons” for granting certiorari in this case.

Supreme Court Rule 10 provides that “[a] petition for a writ of certiorari will be granted only for compelling reasons.” Sup.Ct.R. 10. Rule 10 lists the following examples of the types of cases in which the Court may grant certiorari:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court’s supervisory power;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Id. Rule 10 expressly states, “[a] petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.” *Id.*

Alessio’s Petition should be denied because there are no “compelling reasons” for granting certiorari in this case. This case does not involve: (1) a conflict among United States courts of appeals, (2) a conflict between a United States court of appeals and a state court of last resort, (3) a conflict on an important federal question among state courts of last resort, or (4) a conflict between this Court’s decisions and the decisions of lower courts. Instead, this case concerns an appellant that is either attempting to (1) resurrect a dismissed Ohio workers’ compensation claim and/or (2) relitigate a purported claim under the HMTA. The circumstances of this case do not present “compelling circumstances” sufficient for this Court to grant certiorari.

II. The Petition should be denied because res judicata applies to proceedings before the Ohio Industrial Commission.

Ohio courts do not have inherent jurisdiction over workers’ compensation claims. *Jenkins v. Keller*, 6 Ohio St.2d 112, 126, 216 N.E.2d 376 (1966).

Rather, “the court’s subject matter jurisdiction is provided only to the degree allowed by statute ... [and] R.C. 4123.512 provides for the common pleas court’s jurisdiction in limited circumstances.” *State ex rel. Prestige Delivery Sys. v. Schroeder*, 10th Dist. Franklin No. 02AP-622, 2003-Ohio-3329, ¶ 14.

O.R.C. § 4123.512(A), states that a claimant may appeal an order “of a staff hearing officer made under division (D) of section 4123.511 of the Revised Code from which the commission has refused to hear an appeal.” To do so, the claimant “shall file the notice of appeal within sixty days after the date of the receipt of the order appealed from or the date of the receipt of the order of the commission refusing to hear an appeal of a staff hearing officer’s decision under division (D) of section 4123.511 of the Revised Code.” O.R.C. § 4123.512(A). *See Fisher v. Mayfield*, 30 Ohio St.3d 8, 505 N.E.2d 975 (1987), syllabus (confirming the jurisdictional requirements of R.C. 4123.512 are “satisfied by the filing of a timely notice of appeal which is in substantial compliance with the dictates of that statute.”). Accordingly, to vest the Court of Common Pleas with jurisdiction over the allegations set forth in Claim No. 19-202076, Plaintiff had to file a notice of appeal within sixty (60) days of her receipt of the Ohio Industrial Commission Record of Proceedings mailed February 18, 2021 which refused Plaintiff’s appeal of the staff order mailed on January 27, 2021. Plaintiff failed to do so and her right to participate in the Ohio workers’ compensation fund for “chemical exposure/inhalation,” and “bilateral wrist/hand/finger injury” was forever barred. *Richardson v. Indus. Comm.*, 2nd Dist. Montgomery No. 22797, 2009-Ohio-

2548, ¶ 25 (confirming “failure to timely file [a notice of appeal] is fatal.”)

Rather than appeal Claim No. 19-202076 into the Court of Common Pleas pursuant to O.R.C. § 4123.512, Alessio filed three new workers’ compensation claims alleging the same facts, medical conditions and dates of injury/exposure as alleged and adjudicated in Claim No. 19-202076. Pursuant to the doctrine of res judicata, “[a] valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action.” *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 1995-Ohio-331, 653 N.E.2d 226 (1995), syllabus. Res judicata operates “to preclude the relitigation of a point of law or fact that was at issue in a former action between the same parties and was passed upon by a court of competent jurisdiction.” *Office of Consumers’ Counsel v. Pub. Util. Comm. of Ohio*, 16 Ohio St.3d 9, 10, 475 N.E.2d 782 (1985). Res judicata bars workers’ compensation claimants from “taking a second bite of the apple by filing a second claim with the BWC claiming injuries from the same incident that was alleged in the initial claim.” *Thomas v. Ohio Bur. of Workers’ Comp.*, 2nd Dist. Nos. 26805, 26813, 2016-Ohio-7246, ¶ 22.

The Court of Appeals of Ohio, Eighth Appellate District, correctly determined that res judicata barred Alessio from relitigating her claim for injuries due to exposure to cleaning products and air fresheners from October 5, 2019 through October 8, 2019. The Court held that Alessio was asserting identical claims that were at issue in Claim No. 19-

202076 and that the parties had ample opportunity to litigate those claims at that time.

III. The Petition should also be denied because the HMTA does not provide for a private cause of action.

The background related to Alessio's purported HMTA claim was addressed in United's Brief in Opposition to her Petition for a Writ of Certiorari in *Christina Alessio, Petitioner v. United Airlines, Inc.*, U.S. Supreme Court Case No. 19-395 and is not restated herein to avoid unnecessary duplication.

However, it is important to note that the HMTA does not provide for a private cause of action, providing another basis for denial of her latest Petition. 49 U.S.C. § 5124 provides for criminal penalties, including fines and imprisonment, for certain violations of Chapter 51 – "Transportation of Hazardous Materials." 49 U.S.C. § 5123 provides for civil penalties, but those penalties may only be assessed by the government. ("The Attorney General may bring a civil action in an appropriate district court of the United States to collect a civil penalty under this section....") There is nothing in 49 U.S.C. §§ 5123-5124 indicating that Congress intended to create a cause of action for private citizens, and no court has recognized one. The statutory language of the HMTA simply does not contain a civil enforcement mechanism through which private individuals may seek relief.

The Supreme Court has made clear that even when a federal statute has been violated and an individual harmed, which United denies in this

instance, it “does not automatically give rise to a private cause of action in favor of that person.” *Touche Ross & Co. v. Redington*, 442 U.S. 560, 568, 99 S.Ct. 2479 (1979). Rather, “[p]rivate rights of action to enforce federal law must be created by Congress.” *Alexander v. Sadoval*, 532 U.S. 275, 286, 121 S.Ct. 1511 (2001). Even if Alessio had been harmed by an alleged violation of the HMTA – which she has not – she would only be entitled to a private right of action under the statute if Congressional intent indicated a desire to create such remedy. Here, there is no indication that Congress intended to create a private cause of action under the HMTA, and Alessio’s Petition fails to present evidence of congressional intent to the contrary. As a result, Alessio cannot state a plausible claim for relief premised on this statute. Accordingly, the district court appropriately dismissed Alessio’s claim under the HMTA, and the Sixth Circuit appropriately affirmed the dismissal. *See Christina Alessio, Petitioner v. United Airlines, Inc.*, U.S. Supreme Court Case No. 19-395.

CONCLUSION

For all of the foregoing reasons, this Court should deny Alessio’s Petition for a Writ of Certiorari.

Respectfully submitted,

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