

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

---

**In the**  
**Supreme Court of the United States**

---

Arthur L. Hairston,  
*Petitioner,*

v.

SECRETARY DEPARTMENT OF VETERANS AFFAIRS  
Martinsburg Et Al and  
NAGE (SEIU) Union Susan Anderson  
& Sarah E. Suszczyk,  
*Respondents.*

---

**On Petition for a Writ of Certiorari to Individual Justice;**  
Chief Justice John Roberts or in the  
Alternative if Chief Justice Roberts Assigned To  
The Fourth Circuit Cannot Grant The Relief  
Requested Place This Case Before The Entire Court  
Petition For A Writ Of Certiorari To  
**United States Court Of Appeals For The Fourth Circuit**

---

---

**Petition For A Writ Of Certiorari**

---

---

Arthur L. Hairston  
*Petitioner Pro Se*  
521 West Race Street  
Martinsburg West Virginia  
304-582-0209

---

---

i.

## **QUESTIONS PRESENTED**

1. Whether the Court of Appeals decision denying procedural due process in acquiesce to the district court's refusal to properly analyze and adjudicate Petitioner's summary judgment motion after the defendants defaulted was in fact an error of law?
2. Whether the Court of Appeals decision in acquiesce to the district court's issuance of a show cause order 15 days after the defendant's response, was due, was an error of law, when the defendant (DVA) failed to answer the complaint and enter an appearance after being officially served by the United States Marshal Service?

## **PARTIES TO THE PROCEEDING**

### **Petitioner**

---

- Petitioner Arthur Hairston was the Plaintiff in the United States District Court for the Northern District of West Virginia Martinsburg WV and the Plaintiff-Appellant in the United States Court of Appeals for the Fourth Circuit.

### **Respondent**

---

- The DVA Secretary and NAGE Union was the Defendant's in the United States District Court for the Northern District of West Virginia Martinsburg WV and the Defendant's Appellee's in the United States Court of Appeals for the Fourth Circuit.

**TABLE OF CONTENTS**

	Page
QUESTIONS PRESENTED .....	i
PARTIES TO THE PROCEEDINGS .....	ii
TABLE OF CONTENTS .....	iii
TABLE OF CONTENTS .....	iv
TABLE OF AUTHORITIES CITED .....	v
TABLE OF APPENDIXES .....	vi
STATUTES AND RULES .....	vii
OPINIONS BELOW .....	1
JURISDICTION .....	1
CONSTITUTIONAL AND STATUTORY	
PROVISIONS INVOLVED .....	2
STATEMENT OF THE CASE. ....	4
REASONS FOR GRANTING THE WRIT .....	6
CONCLUSION .....	10

**TABLE OF AUTHORITIES CITED**

	Page
Rios-Campbell v. U.S. Department of Commerce, No. 18-1420 (1st Cir. 2019) .....	Pp. 13
Parker v. Raging Cap. Mgmt., LLC, v. F.3d, 2020 WL 6844063 (2d Cir. 2020)..	Pp. 13
Thomas v. Tice, No. 18-1811 (3nl Cir. 2019) .....	Pp. 13
Carlson v. Boston Scientific Corp., 15-2440 U.S. App Lexis 82227 (4th Cir. May 9, 2017) .....	Pp. 13
Sohail Allaudin v. Perry's Restaurants Limited, No.19-20646 (5th Cir.2020) .....	Pp. 13
Donlin v. Watkins, 814 F.2d 273, 277 (6th Cir. 1987) .....	Pp. 13
Logan v. City of Chicago et al., No. 20-1669 (7th Cir. 1987) .....	Pp. 13
City of Rochester, 643 F.3d 1031, 1046 (8th Cir. 2011) .....	Pp. 13
Caceis v. County of Clark, No. 19-15126 (9th Cir. 2011) .....	Pp. 13
Adams v. C-3 Pipeline Construction, No. 20-2055 (lOth Cir. 2014) .....	Pp. 13

**TABLE OF AUTHORITIES - Continued**

	Page
Federal Trade Commission v. Stephen LaLonde, No. 11-13569 (11th Cir. 2014) .....	Pp. 13
Acceleration Bay v. Interactive Software, No. 2020-1700 (Fed. Cir. 2021) .....	Pp. 13
Winston & Straw v. McLean, No. 1497 (D.C. Cir. 2016) .....	Pp. 13

## **INDEX TO APPENDICES**

District Court Opinion appears at Appendix (A)

Court of Appeals Opinions appears at Appendix (B),  
(b-1) and (B-1)

EEOC Right to Sue Letter appears at Appendix (1)

Summons appears at appendix (2)

Show Cause Order appears at appendix (3)

Response to Show Cause Order appears at appendix (4)

The Complaint appears at appendix (6)

The Amended Order Granting Plaintiff Leave to  
Proceed appears at appendix (7)

The VA Directive appears at appendix (8)

## **STATUTES AND RULES**

28 U.S.C 1331

28 U.S.C 1254 (1)

Title VII Civil Rights Act 1963

F.R.Civ.P. 55

F.R.Civ.P. 56

F.R.Civ.P. 12 (a) (2) (3)

F.R.Civ.P. (8) (e)

1.



## **PETITION FOR WRIT OF CERTIORARI**

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



## **OPINIONS BELOW**

The opinions of the United States district court appear at

Appendix ..... A  
To the petition and is unpublished.

The memorandum of the United States court of appeals appears at

Appendix ..... B, b-1, B-1  
To the petition and is not published.



## **JURISDICTION**

The date on which the United States Court of Appeals decided my case was May 26, 2022.

A timely petition for rehearing was denied by the United States Court of Appeals on July 19, 2022. The deadline for filing is October 19, 2022.

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



## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **U.S. Const. amend. XIV**

[N]or deny any person within its jurisdiction the equal protection of the law.

### **Procedural Due Process**

[S]econd, courts consider whether the procedures that the governments has employed assure that a person receives fair treatment.

### **Federal Rule Civil Procedure 12(A)(1)(A),**

the Complaint as stated in the following: .... Or 60 days if you are the United States or a United States agency, or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) you must serve on the plaintiff an answer to the attached complaint or motion under Rule 12 of the Federal Rules of Civil Procedure.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED - Continued**

### **Federal Rule Civil Procedure 55; Default;**

#### **Default Judgment:**

(a) "Entering a Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." See Cornell Law School

### **Federal Rule Civil Procedure 56,**

#### **Summary Judgment:**

(a) **MOTION FOR SUMMARY JUDGMENT.**  
A party may move for summary judgment, identifying each claim or defense- on the part of each claim or defense- on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

---



## STATEMENT OF THE CASE

Mr. Hairston/Petitioner re-filed a complaint August 8th, 2020, against the Department of Veterans Affairs Martinsburg WV (DVA) and the National Association of Government Employees (NAGE). District court docket entry # 1. Defendant, Department of Veterans Affairs et al (DVA) and the National Association of Government Employees et al (NAGE) were served by summons through the United States Marshals Service on 01/29/2021. District court docket entries 15 and 16.

On 02/23/2021 approximately 30 days after the defendant (NAGE) was served, Petitioner filed a motion for Summary Judgment with a Statement Of Material Facts (SMF). On 03/12/2021 the defendant (NAGE) file a motion to dismiss, see district court docket entry 43. On 03/12/2021 the defendant (NAGE) filed for an extension of time to respond to the summary judgment motion and (SMF). The district court on 03/18/2021 denied the request made by (NAGE) finding no good cause for the extension, docket entry 47. The defendant (NAGE) never responded to the Petitioners motion for summary judgment. The defendant (DVA) failed to enter an appearance and respond to the summons, the complaint, and the summary judgment motion pursuant to the rules. The district court clerk failed to enter the defaults. On order by the district court, in

5.

violation of the rules and the rule of law as requested by the Petitioner. See docket entries 64, 78, 81. Petitioner was denied equal protection and procedural due process by the court of Appeals for the Fourth Circuit's entire enbanc court and the district court. Treated very unfairly.



## REASONS FOR GRANTING THE WRIT

The Fourth Circuit and the district court Martinsburg West Virginia have departed so far from the normal course of operation under the rules, and the constitution's equal protection clause and procedural due process. That it calls for the supervisory powers of the Supreme Court to correct the injustice. To reestablish the legitimacy of the federal courts to ensure that every American citizen is treated fairly.

In all 13 federal appeals courts when a summary judgment motion with a statement of material facts is filed in a district court. That court pursuant to F. R. Civ. P 56 adjudicates the motion even the Fourth Circuit but they have departed from the normal course. See, Rios-Campbell v. U.S. Department of Commerce, No. 18-1420 (1st Cir. 2019). Also, Parker v. Raging Cap. Mgmt., LLC, F.3d, 2020 WL 6844063 (2d Cir. 2020). Also, Thomas v. Tice, No. 18-1811 (3•d Cir. 2019). Also, Carlson v. Boston Scientific Corp., 15-2440 U.S. App. Lexis 82227 (4th Cir. May 9, 2017). Also, Sohail Allaudin v. Perry's Restaurants Limited, No. 19-20646 (5th Cir. 2020). Also, Donlin v. Watkins, 814 F.2d 273, 277 (6th Cir. 1987). Also, Logan v. City of Chicago et al., No. 20-1669 (7th Cir. 2021). Also, City of Rochester, 643 F.3d 1031, 1046 (8th Cir. 2011). Also, Caceis v. County of Clark, No. 19-15126 (9th Cir. 2011). Also, Adams v. C-3 Pipeline Construction, No. 20-2055 (10th Cir. 2021). Also, Federal Trade Commission v. Stephen LaLonde,

No. 11-13569 (11th Cir. 2014). Also, Acceleration bay v. Interactive Software, 2020-1700 (Fed. Cir. 2021). Also, (a district court must always analyze a motion for summary judgment) Winston & Straw, LLP, v. Mclean No. 1497 (D.C. Cir. 2016).

The court of Appeals for the Fourth circuit has created a split in all 13 Federal court of Appeals by the error of law it committed. In not analyzing and adjudicating the Petitioner's summary judgment motion in clear violation of Rule 56. This case is a case of first impression for this Supreme Court. In the history of the Federal Court system a district court has never failed to analyze a motion for summary judgment. In the cases listed on page 5 citations of authority, and page 13 of this writ. We see where all 13 courts of appeals dealt with plaintiffs or defendants summary judgment motions, on appeal from a district court analyzing summary judgment motions. Both defendants (DVA) and (NAG E) defaulted and did not respond to the summary judgment motion. The district court clerk did not enter the defaults as requested by the plaintiff at the behest of the district court. The Court of Appeals for the Fourth Circuit condoning this conduct was a clear error of law. A clear violation of the rules and an error of law violating equal protection and procedural due process.

We see where all 13 courts of appeals dealt with plaintiffs or defendants summary judgment motions, on appeal from a district court analyzing summary

judgment motions. Both defendants (DVA) and (NAGE) defaulted and did not respond to the summary judgment motion.

The district court clerk did not enter the defaults as requested by the plaintiff at the behest of the district court. The Court of Appeals for the Fourth Circuit condoning this conduct was a clear error of law. A clear violation of the rules and an error of law violating equal protection and procedural due process.

The Petitioner was given the right to sue by the EEOC on 08/30/2017, see appendix (1). Therefore, jurisdiction for the Court of Appeals or the district court was never an issue. The district court stated it did not have jurisdiction which the court of appeals condoned it is an error of law. 28 U.S.C 1331 and Title VII and the right to sue notice from the EEOC gave the district court jurisdiction. Therefore, the motion to dismiss the court adopted under a default is moot moreover it is without merit, see Appendix (A). The Marshal's service served the summons on both defendants on 01/28/2021, see Appendix (2). The defendant (DVA) et al., failed to respond to the complaint. The district courts issuance of a show cause order to, the U.S. Attorney West Virginia after the failure was an error of law. See, docket entry 57 dated 04/13/2021 Petitioner objected.

The summons served on 01/28/2021 the (DVA) response due on 03/28/2021. 15 days after the (DVA) response was due the district court issued a show cause order to the U.S. Attorney West Virginia who never made an appearance in this case, see appendix (3) the

show cause order. A clear violation of the rules and an error of law. The defendant responded to the show cause order and misled the court a violation of ethics and the rules, see, appendix (4).

The (DVA) is the Secretary of the Veterans Administration every facility. The district court and the AUSA knows this see, Appendix (4) the AUSA's response that is without merit. The summons list the defendant (DVA), who is the Secretary appendix (2). The complaint clearly list the (DVA), appendix (6). The district court's amended order appendix (7) list the (DVA), the address to the Department of Veterans affairs was provided (DVA) facility.

In appendix (8) VA Directive 6320, we see where at section letter (c) the employees of the DVA were made aware of the DVA, abbreviation, Department of Veterans Affairs. See, also number 3 at (c) of VA Directive 6320, it plainly states the formal title is "Department of Veterans Affairs" (DVA). At number 2 (c) of VA Directive 6320 states (other federal officials) is referenced, which would include the DOJ and the federal courts.

Therefore, the show cause order appendix (3) is an error of law. So is the Court of Appeals adoption of same, see, appendix (B) and (B-1), and the response by the AUSA, see, appendix (4). Who never made a formal appearance or a timely response to, the complaint or summary judgment motion. It is abundantly clear that Rule (8) (e) is very specific using mandatory language, concerning pro-se untrained in law litigants. The use of mandatory language, F.R.Civ.P. (8) (e) ("Pleadings must be construed to do justice").

## CONCLUSION

The record; this instant petition; and the appendices demonstrate that, respectfully a boiler plate opinion was issued appendix (B). Petitioner respectfully request that Chief Justice Roberts grant the request for the Writ to issue in ensuring that justice is done. Correcting the departure from the Rule of Law; the Rules and the creation of the circuit split.

ARTHUR L. HAIRSTON SR

*Pro-se*

521 West Race Street

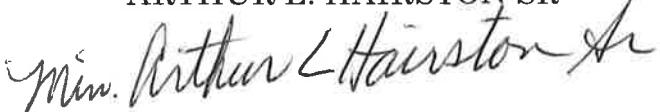
Martinsburg West Virginia 25401



### Certificate of Service

The original copy of pro-se petition in request for a writ to issue was sent to the clerk c/o Chief Justice John Roberts at 1 First Street, N.E. Washington D.C. 20543 by certified mail restricted delivery also 3 copies were sent to the following defendant's at the following addresses the U.S. Attorney's at 217 West King Street Martinsburg West Virginia 25401 and O'Donoghue & O'Donoghue LLP5301 Wisconsin Ave NW # 800, Washington, DC 20015. 28 U.S.C 1746.

ARTHUR L. HAIRSTON SR



## APPENDIX (A)

### DISTRICT COURT ORDER DENYING PETITIONERS COMPLAINT WITHOUT ADJUDICATION OF PETITIONERS SUMMARY JUDGMENT MOTION

Case 3:20-cv-00153-GMG-RWT Document 107  
Filed 11/12/21 Page 1 of 8 Page ID #: 604.

---

---

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT  
OF WEST VIRGINIA

MARTINSBURG

ARTHUR LEE HAIRSTON, SR.,

*Plaintiff,*

v.

DVA, MARTINSBURG, NAGE (SEIU),  
SUSAN ANDERSON,  
and SARAH E. SUSZCZYK,

*Defendants.*

---

CIVIL ACTION NO.: 3:20-CV-153 (GROH)

---

## **APPENDIX (A) - Continued**

### **ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS AND DISMISSING CASE**

---

---

Currently before the Court are two Motions to Dismiss. One motion was filed by the Secretary of Veterans Affairs, and the other motion was filed collectively by the remaining defendants ("NAGE Defendants"). ECF Nos. 43 & 82. Both motions were filed pursuant to Rules 12(b)(1) & (6). The Plaintiff vehemently opposes the motions. See ECF Nos. 46, 49, 50, 55, 87, 92 & 94. For the reasons that follow, the Defendants' Motions shall be granted, and this case will be dismissed.

# I

## BACKGROUND

In December 2015, the Plaintiff was appointed to a housekeeping aid position at the Veterans Affairs Medical Center (“VAMC”) in Martinsburg, West Virginia. See ECF No. 82-1 at 3. He was removed from this position on February 9, 2018, after he touched and kissed a co-worker without her consent.’ Id. at 7.

---

The Plaintiff insisted that his kiss was ‘non-sexual’ He was charged with Conduct Unbecoming administrative Judge for the Merit Systems Protection Board sustained, and the United States Court of Appeals for the Federal Circuit affirmed. See ECF Not 82-1 & 82-3.

The Plaintiff has filed several lawsuits relating to his removal from the VAMC. See e.g., Civil Action Numbers: 3:17-CV-149, 3:17-CV-137, 3:19-CV-16, 3:19-CV-64, 3:19-CV-198, 3:21-CV-22, and the instant case. The Plaintiff has also litigated these events, to varying degrees, before the Fourth Circuit Court of Appeals, the Merit Systems Protection Board (“MSPB”), and the United States Court of Appeals for the Federal Circuit.

## II

### LEGAL STANDARDS

Both Motions argue for dismissal under Rule 12(b)(1), which challenges the Court's subject-matter jurisdiction, if the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Fed R Civ. P. 12(h)(3). The Fourth Circuit articulated the framework for considering a Rule 12(b)(1) motion as follows:

When a Rule 12(b)(1) motion challenge is raised to the factual basis for subject matter jurisdiction, the burden of proving subject matter jurisdiction is on the plaintiff. Adams v. Bain 6m F.2d 1213, 1219 (4th Cir.1982). In determining whether jurisdiction exists, the district court is to regard the pleadings' allegations as mere evidence on the issue, and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment. Id. Trentacosta v. Frontier Pacific Aircraft Indus., 813 F.2d 1553, 1558 (9th Cir.1987).

The district court should apply the standard applicable to a motion for summary judgment, under which the non-moving party must set forth specific facts beyond the pleadings to show that a genuine issue of material fact exists. Trentacosta supra 813 F.2d at 1559 (citing Celotex Corp. v. Catrett, 477 U.S. 317,323-24, 106S.Ct. 2548,2552-53,91 L.Ed2d 265 (1986). The moving party should prevail only if the material jurisdictional facts are not in dispute and the moving party is entitled to prevail as a matter of law. Trentacosta supra 813 F.2d at

1558. A district court order dismissing a case on the grounds that the undisputed facts establish a lack of subject matter jurisdiction is a legal determination subject to *de novo* appellate review. *Revene v. Charles County Comm'r's* 882 F.2d 870, 872 (4th Cir. 1989); *Shultz v. Dept. of the Army*, 886 F.2d 1157, 1159 (9th Cir. 1989).

Richmond, Fredericksburg & Potomac R. Co.  
v.  
United States.

945 F.2d 765, 768-69 (4th Cir. 1991).

The motions alternatively seek relief under Rule 12(b)(6). “A motion to dismiss under Rule 12(b)(6) tests the sufficiency of a complaint importantly, it does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses.” Republican Party of N.C. v. Martin. 980 F.2d 943, 952 (4th Cir. 1992) (citing 5A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1356 (1990)). When reviewing a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, the Court must assume all of the allegations to be true, must resolve all doubts and inferences in favor of the plaintiff and must view the allegations in a light most favorable to the plaintiff. See Edwards v. City of Goldsboro 178 F.3d 231, 243-44 (4th Cir. 1999). But a complaint must be dismissed if it does not allege “enough facts to state a claim to relief that is plausible on its face.” Bell Atlantic. Com. v. Twombly 550 U.S. 544, 570 (2007). To that end, Federal Rule of Civil Procedure 8 articulates a pleading standard which

“does not require detailed factual allegations, but ... demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation’ *Ashcroft v. Jabal* 556 U.S. 662, 678 (2009) (citation and internal quotation marks omitted).

A complaint that offers “labels and conclusions or a formulaic recitation of the elements of a cause of action will not do.” *Id.* (citation and internal quotation marks omitted). Likewise, a complaint that tenders only “naked assertion[s] devoid of further factual enhancement’ does not suffice. *Id.* (alteration in original) (citation and internal quotation marks omitted). A party is required to articulate facts that, when accepted as true, “show’ he is plausibly entitled to relief. *Francis v. Giacomelli* 588 F.3d 186, 193 (4th Cir. 2009) (citing tuba). 556 U.S. at 678; *Twombly*, 550 U.S. at 557). “[Where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged-but it has not ‘show[n]’-that the pleader is entitled to relief.” *lqbal*, 556 U.S. at 679 (second alteration in original) (quoting Fed. R. Civ. P. 8(a)(2)). When a complaint’s sufficiency under Rule 12(b)(6), a court may consider “documents incorporated into the complaint by reference and matters of which a court may take judicial notice.” *Tellabs, Inc. v. Makor Issues & Rights, Ltd.* 551 U.S. 308, 322 (2007). The Supreme Court has repeatedly held that in the context of a motion to dismiss, a district court must construe a pro se complaint liberally. Such a complaint, “however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (internal quotations omitted). Dismissal of a pro se complaint for failure to state a valid claim is therefore only appropriate when, after\_apptLig this liberal construction, it appears

'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' Haines v. Kemer 404 U.S. 591, 521, 92 S.Ct. 594 (1972) (internal quotations omitted) (emphasis added).

### III

## ANALYSIS

Both motions to dismiss seek dismissal for lack of subject-matter jurisdiction, and, in the alternative, for failure to state a claim. Upon review and consideration of the parties' briefing, the record and applicable caselaw, the Court finds that dismissal is warranted.

### **a. The NAGE Defendants' Motion to Dismiss**

The NAGE Defendants aver that the Plaintiffs claims are preempted by the Civil Service Reform Act ("CSRA"). Specifically, these Defendants argue that because the Plaintiffs claims arose during a time when he was a federal employee, the Federal Labor Relations Authority ("FLRA") has exclusive jurisdiction over federal unfair labor practice and fair representation claims. In response to the NAGE Defendants' jurisdictional argument, the Plaintiff argues "the docket text states jurisdiction 28 U.S.C. 1331 federal question. No need to belabor further: ECF No. 46. 'The plaintiff will not belabor jurisdiction. This court has jurisdiction under 28 U.S.C. 1331 as explained [in] Hairston v. DVA et al, 19-1276 Fourth Circuit Court of Appeals.'" ECF No. 49 at 1. The Court finds the claims in this case arose while the Plaintiff was a federal employee. Therefore, the CSRA applies, and its framework vests the FLRA with exclusive authority over the Plaintiff's claims. Indeed, as the Supreme Court of the United States explained, neither the language nor the structure of the Act shows any congressional intent to provide a private cause of action to enforce federal employees unions' duty of fair representation. That duty is expressly recognized in the Act, and an administrative remedy for its breach is

expressly provided for before the FLRA, a body created by Congress to enforce the duties imposed on agencies and unions by Title VII, including the duty of fair representation. Nothing in the legislative history of Title VII has been called to our attention indicating that Congress contemplated direct judicial enforcement of the union's duty. Indeed, the General Counsel of the FLRA was to have exclusive and final authority to issue unfair labor practice complaints, and only those matters mentioned in § 7123 were to be judicially reviewable. H.R. Rep. No. 95-1403, p. 52 (1978) H.R. Rep. No. 95-1403, p. 52 (1978). All complaints of unfair labor practices were to be filed with the FLRA. S. Rep. No. 95-969, p. 107 (1978). Furthermore, Title VII contemplates the arbitration of unsettled grievances, but a House proposal that the duty to arbitrate could be enforced in federal court in the first instance was ultimately rejected. See H.R. Conf. Rep. No. 95-1717, p. 157 (1978) U.S. Code Cong. & Admin. News 1978 pp. 2723, 2829, 2860, 2891. Karahalios v. Nat'l Fed'n of Fed. Ems .. Loc. 1263. 489 U.S. 527, 533-34 (1989). Succinctly stated, at no point does the Act entitle a party to petition a district court for relief." Columbia Power Trades Council v. U.S. Dept of Enemy 671 F.2d 325, 327 (9th Cir. 1982). Here, that is exactly what the Plaintiff has done. Accordingly, his claims against the NAGE Defendants must be dismissed under Rule 12(b)(1) and 12(h)(3) because this Court lacks subject-matter jurisdiction. Assuming *arguendo* the Court had jurisdiction to entertain the Plaintiffs claims, they should still be dismissed under Rule 12(b)(6) for the reasons more fully articulated in the NAGE Defendant's Motion. ECF No. 44. The import of their argument is that the Plaintiffs complaint fails to state a plausible claim against them.

The Court agrees.

The Complaint is almost exclusively legal conclusions and random, meaningless statements. The scant factual assertions, even when construed liberally, are hardly enough to allege a plausible claim sufficient to survive the Defendants' 12(b)(6) motion.

b. Secretary of Veterans Affairs' Motion to Dismiss

The Secretary argues that the Plaintiffs claims should be dismissed due to claim preclusion. The Fourth Circuit has outlined the requirements to properly invoking res judicata to preclude subsequent litigation: 'the essential elements of the doctrine are generally stated to be (1) a final judgment on the merits in an earlier suit, (2) an identity of the cause of action in both the earlier and the later suit, and (3) an identity of parties or their privies in the two suits.' *Keith v. Aldridge* 900 F.2d 736, 739 (4th Cir. 1990) (internal quotation and citation omitted).

Applying the test to the facts at bar, the Secretary contends that all three essential elements have been established. First, 'the MSPB issued a final judgment on the merits, which was upheld by the U.S. Court of Appeals for the Federal Circuit.' ECF No. 82 at 6. Second, the Plaintiffs MSPB appeal and the case at bar are based upon Plaintiffs removal from federal employment and involve the same accusations and arguments. Third, the cases involved the same parties. In response to these arguments, the Plaintiff asserts that the Secretary is in default and that the style of the case was changed from "DVA" (Department of Veterans Affairs) to VAMC, which gave "the Government AUSA a 7 month advantage...." To the extent Plaintiff's arguments on this topic need addressed, the Court's Order Denying

Motion for Default Judgment, Directing the Clerk of Court to Substitute Defendant and Issue Summons in Accordance with Rule 4(i) [ECF No. 64] adequately addressed this issue. Plaintiff also filed a supplement to his response, contending that the MSPB and Federal Circuit Court of Appeals lacked jurisdiction over his claims. The Plaintiff notes that he will be suing the ‘clerk’s [sic] and judges who took part in the conspiracy to commit fraud.” ECF No. 94 at

1. Although the Plaintiff attached a brief filed by the Respondent in his case before the Federal Circuit, this Court finds it irrelevant. The Federal Circuit entered an Order noting that the Plaintiff (after initially asking his case be transferred to a District Court) filed a motion to reinstate his case before the Federal Circuit and waived any discrimination claims he may have. *Hairston v. Deal of Veterans Affairs.* No. 2018-2053 (Fed. Cir. filed Jul30, 2018). The Plaintiff offers no compelling argument to rebut the Secretary’s assertion that the claims currently before this Court are precluded by res judicata. There can be no question that “the appropriate inquiry is whether the new claim arises out of same transaction or series of transactions as the claim resolved by the prior judgment.” *Keith v. Aldridge.* 900 F.2d 736, 740 (4th Cir. 1990) (citing *Harnett v. Billman.* 800 F.2d 1308, 1312-13 (4th Cir.1986); 18 Wright, Miller, & Cooper, § 4407; Restatement (Second) of Judgments§ 24 (1982)). Thus, the Court finds that claim preclusion prevents the Plaintiff from advancing the claims in his Complaint against the Secretary. Had any of the Plaintiff’s claims survived the Court’s claim preclusion analysis, the Complaint against the Secretary would still be dismissed for failure to exhaust his administrative remedies or for failure to state a claim.

The Secretary and NAGE Defendants aptly note that the Plaintiff failed to demonstrate that he ever filed a formal complaint of discrimination prior to filing suit. Under Title VII, as a federal employee, the plaintiff was required to exhaust his administrative remedies, which he apparently failed to do. *Tonkin v. Shadow Mgmt ... Inc.*, 605 F. App'x 194 (4th Cir. 2015) (explaining that “[t]he failure of a plaintiff to exhaust her administrative remedies with the EEOC deprives the federal courts of subject matter jurisdiction over the claim”). Thus, the Court is required to dismiss Plaintiffs Title VII claims as to all Defendants.

**CONCLUSION**

Based upon the foregoing, the NAGE Defendants' Motion to Dismiss [ECF No. 43] and Secretary's Motion to Dismiss [ECF No. 82] are both GRANTED.

Accordingly, the Plaintiffs Complaint is DISMISSED, and the Clerk of Court is DIRECTED to remove this Civil Action from the Court's active docket.

The Court DENIES AS MOOT all outstanding motions. ECF Nos. 52 78, 81, 85, 87, 88, 91, 93 & 106. The Clerk of Court is further DIRECTED to transmit copies of this Order to all counsel of record herein and to mail a copy via certified mail, return receipt requested, to the pro se Plaintiff.

/s/ Gina M Groh Chief  
United States District Judge

Dated: November 12, 2021

## APPENDIX (B)

### COURT OF APPEALS DENIAL OF APPEAL

Filed: 05/26/2022 Pg: 1 of 2  
USCA4 Appeal: 21-2364 Doc: 21

---

---

UNITED STATES COURT OF APPEALS FOR THE  
FOURTH CIRCUIT

UNPUBLISHED

---

ARTHUR LEE HAIRSTON, SR,  
*Plaintiff-Appellant,*

v.

DVA MARTINSBURG; NAGE (SEIU);  
SUSAN ANDERSON;  
SARAH E. SUSZCZYK;  
RICHARD McDONOUGH, Secretary of Veterans  
Affairs (DVA, Martinsburg),  
*Defendants - Appellees.*

---

No. 21-2364  
FOURTH CIRCUIT

---

Appeal from the United States District Court for the  
Northern District of West Virginia, at Martinsburg.

Gina M. Groll; District Judge.  
(3:20-cv-00153-GMG-RWI')

Submitted: May 24, 2022      Decided: May 26, 2022

Before NIEMEYER, KING and  
RICHARDSON, Circuit Judges.

Affirmed by unpublished per curium opinion.  
Arthur Lee Hairston, Sr., Appellant Pro Se. Keith  
Richard Bolek, Diana Rachel Cohn, O'DONOGHUE  
& O'DONOGHUE, Washington, D.C., for Appellee.  
Unpublished opinions are not binding precedent in  
this circuit.

**AFFIRMED**

**APPENDIX (b1)**

**COURT OF APPEALS REHEARING DENIAL  
AND DENIAL OF REQUEST TO WAIVE  
PACER FEES  
FILED: July 19, 2022**

---

---

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

---

ARTHUR LEE HAIRSTON, SR.

*Plaintiff- Appellant*

v.

DVA MARTINSBURG; NAGE (SEIU);  
SUSAN ANDERSON;  
SARAH E. SUSZCZYK;  
RICHARD MCDONOUGH, Secretary of  
Veterans Affairs (DVA, Martinsburg)

*Defendants - Appellees*

---

No. 21-2364  
3:20-cv-00153-GMG-RWT

---

---

**ORDER**

The court denies the motion to waive pacer fees and  
the petition for rehearing. Entered at the direction of  
the panel: Judge Niemeyer, Judge King and  
Judge Richardson.

For the Court

/s/ Patricia S. Connor, Clerk

## APPENDIX (B1)

### UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

ARTHUR LEE HAIRSTON, SR.

*Plaintiff- Appellant*

v.

FILED: July 27, 2022

DVA MARTINSBURG; NAGE (SEIU);

SUSAN ANDERSON;

SARAH E. SUSZCZYK;

RICHARD MCDONOUGH, Secretary of  
Veterans Affairs (DVA, Martinsburg)

*Defendants - Appellees*

### MANDATE

The judgment of this court, entered May 26, 2022, takes effect today. This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor

## APPENDIX (1)

### EEOC FORM, RIGHT TO SUE AND U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

---

---

#### DISMISSAL AND NOTICE OF RIGHTS

---

To:

Arthur Lee Hairston, Sr.  
521W. Race Street  
Martinsburg, WV 25401

From:

Pittsburgh Area Office  
1000 Liberty Avenue  
Room 1112  
Pittsburgh, PA 15222

THE EEOC IS CLOSING ITS FILE ON THIS  
CHARGE FOR THE FOLLOWING REASON:

Charging Party is a federal employee

NOTICE OF SUIT RIGHTS  
Must be filed within 90 Days  
EEOC Form 161 (11/16)

---

On Behalf of the Commission

/s/ Roosevelt L. Bryant, Director  
Date Mailed: August 30, 2017

CC: Betty Veney

## APPENDIX (2)

U.S. DEPARTMENT OF JUSTICE  
UNITED STATES MARSHALS SERVICE  
PROCESS RECEIPT AND RETURN  
RECEIVED: January 26, 2021

---

---

Court Case 3:20cv153  
Summons  
Serve at: Director of Veterans  
Administration Martinsburg  
510 Butler Ave, Martinsburg, WV 25405

ARTHUR LEE HAIRSTON, SR.

*Plaintiff*

v.

DIRECTOR DVA MARTINSBURG:

*Defendants*

Served:  
PAUL MILLS Staff Assistant to Director  
January 28, 2021, 10:30am

*Number of process to be served with this Form 285: 1*  
*Number of parties to be served in this case: 3*

FOR THE U.S. MARSHAL  
Total Process: 1  
District of Origin: 87  
District to Serve: 87

/s/Signature of Authorized USMS Deputy or Clerk

November 26, 2021

/s/Signature of U.S. Marhsall or Deputy

## APPENDIX (3)

**ORDER TO SHOW CAUSE**  
**Case 3:20-cv-00I53 GMG RWT Document 57**  
**Filed 04/13/21 Page 1 of 1 Page**  
**Id. #: 327**

---

---

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT  
OF WEST VIRGINIA**

**MARTINSBURG**

---

**ARTHUR LEE HAIRSTON SR,**  
*Plaintiff,*  
v.

**DVA, MARTINSBURG, NAGE (SEIU),  
SUSAN ANDERSON,  
and SARAH E. SUSZCZYK**  
*Defendants.*

---

**CML ACTION No. 3:20-CV-I53 (GROH)**

---

### ORDER TO SHOW CAUSE

The Court ORDERS the Defendant DVA, Martinsburg to show cause why it has not yet appeared in this case. The United States Attorney's Office for the Northern District of West Virginia shall file a Response to this order on or before April 6, 2021.

The Clerk of Court is DIRECTED to transmit copies of this Order to the Acting United States Attorney for the Northern District of West Virginia and to the pro se Plaintiff by certified mail, return receipt requested, at his last known address as reflected upon the docket sheet.

/s/ Gina Groh  
Chief United States District Judge

DATED: April 13, 2021

## APPENDIX (4)

### FORMAL OBJECTION BY PETITIONER TO SHOW CAUSE ORDER

---

---

IN THE DISTRICT COURT UNITED STATES FOR  
THE NORTHERN DISTRICT  
OF WEST VIRGINIA

MARTINSBURG

---

Re: Hairston V DVA/NAGE Et Al; # 3:20-cv-153 (Groh)  
Formal Objection to This Courts Issuance of The Show  
Cause Order to the AUSA and Formal Request for  
Default Judgement Pursuant To Fed. R. Civil. P.: (55)  
Against The DVA and Request For Summary Judgment  
Against NAGE Et Al For Failure To Respond Under  
Fed. R. Civ. P. (56)

1. The Plaintiff to preserve this issue out of an abundance of caution files this formal objection.
2. The Plaintiff for the record states the following, and strongly objects to the show cause order issued to a party that never made an appearance in this case. This is a serious abuse of discretion on the part of this court.
3. Upon driving to, the gate of any DA V veteran hospital including Martinsburg, the Sign at the Gate says DAV, Department of Veterans Affairs. Therefore, the complaint in this case docket entry (1) DVA Martinsburg is exactly that Department of Veterans Affairs located in Martinsburg.

4. The court knows this; the DVA, Department of Veterans Affairs in Martinsburg knows this and were served. There was no need to issue a show cause order. Default Judgment is warranted.

5. On 02/23/2021 the plaintiff filed a motion for summary judgment docket entry # 30. The defendant DVA never answered the complaint or respond to said summary motion, default judgment is warranted. NAGE Et Al failed to respond by 04/02/2012. The defendant NAGE Et Al cannot rely on a rule 12 (b) motion to respond to a rule 56 motion for summary judgment, summary judgment is warranted at this time.

6. On 03/12/2021 the defendant NAGE filed a motion to dismiss docket entry 43 and 44. The Plaintiff filed a response and supplements see, docket entries 46; 49; and 55, submitting 50 exhibits to support, the complaint in demonstrating that Plaintiff is entitled to relief as a matter of law.

That the motion to dismiss must be denied based on such overwhelming evidence that proves beyond doubt that what Plaintiff is saying is true and entitles the Plaintiff to the relief requested. Summary Judgment is warranted at this time.

7. The Fed. R. Civ. P. were put in place to stop shenanigans within the federal and state court systems to protect the fairness, integrity and public reputation of the judicial proceedings. Plaintiff attaches the magistrates grant for this case to proceed see attachment (1).

That this court adopted wherein it specifically shows how, the court and magistrate changed DVA to VAMC on their own. DVA not to belabor means Department of Veterans Affairs and Martinsburg is where this section of the DVA is located. This court cannot punish and prejudice the defendant for its own illegal action of changing plaintiffs complaint from DVA to VAMC.

## CLOSING

The Plaintiff under the rules listed above and reasons listed for same respectfully request that this court grant plaintiffs request for default judgment rule 55 against defendant DVA. That this court grant Plaintiffs request for summary judgment rule 56 against the defendant NAGE et al for failure of defendant NAGE et al to respond to the summary judgment motion.

/s/ Arthur Lee Hairston Sr

---

## CERTIFICATE OF SERVICE

I Arthur Lee Hairston Sr. do hereby certify that the original copy of Plaintiffs motion in objection to this court's show cause order 3 pages total and attachment (1) this court's order showing this court's change of Plaintiffs DAV to VAMC was sent to the clerk district court 217 West King Street Martinsburg WV 25401 also copies were mailed to Rita M. Cherry, 581 Joseph E. Boone BLVD., NW, Atlanta GA a copy was also sent to Jeffery G. Blaydes at 2442 Kanawha BLVD., East Charleston WV 25311 by U.S. First Class Mail this 19th day of April 2021.

Arthur Lee Hairston Sr

## APPENDIX (5)

### DEFENDANTS RESPONSE TO SHOW CAUSE ORDER

---

---

IN THE DISTRICT COURT UNITED STATES FOR  
THE NORTHERN DISTRICT  
OF WEST VIRGINIA

MARTINSBURG

---

ARTHUR LEE HAIRSTON, SR.,  
*Plaintiff,*  
v.

DVA, MARTINSBURG; NAGE (SEIU);  
SUSAN ANDERSON;  
and SARAH K SUSZCZYK,  
*Defendants.*

Civil Action No. 3:20CV153 (GROH)

### RESPONSE TO ORDER TO SHOW CAUSE

Now comes the Defendant “DV A, Martinsburg”, by Erin K Reisenweber, Assistant United States Attorney for the Northern District of West Virginia, appearing specially, without waiving any defenses, including service of process, and responds to the Court’s Order to Show Cause. [ECF No. 57]. The Court’s Order, entered April 13, 2021, instructs defendant DVA Martinsburg to show cause why it has not yet appeared in this case. Defendant DV A Martinsburg now states as follows:

First of all, defendant DVA Martinsburg had not previously appeared in this matter because he/she is not a proper defendant to this employment discrimination suit brought pursuant to Title VII of the Civil Rights

Act of 1964. It appears that in using the word “Director” Plaintiff is referring to the Director of the Martinsburg Veterans Administration Medical Center (“VAMC”). Section 717 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C.s 2000e-16, requires any person complaining of race or sex discrimination to file any civil action within thirty days of receipt of notice of final agency action, and the statute specifically states that “the head of the department agency or unit, as appropriate, shall be the defendant.” Id. Thus in the case now before the Court, the proper defendant at the time Plaintiff brought his Complaint would have been Robert Iron Wilkie Jr., who on February 8, 2021 was replaced by Denis Richard McDonough as the Secretary of Veterans Affairs. See also *Gardner v. Gartman*, 880 F.2d 797, 798 (4th Cir. 1989) (holding “The language of the 42 U.S.C. § 2000e-16(c) is clear; the head of the department for which the plaintiff works is the proper defendant in a sex or race discrimination suit”) and *Simmons v. Shalala*, 946 F. Supp. 415, 418 (D. Md. 1996) (in employment discrimination action under Title VII, “Nile head of the department or agency is the only proper defendant” and “individual federal employees may not be sued for employment discrimination under Title VII” (internal quotation omitted)), affd., 112 F.3d 510 (4th Cir. 1997). Secondly, no one has appeared on behalf of defendant DVA Martinsburg in this matter because even if DVA Martinsburg were a proper party defendant, he/she is an agency, Corporation, Officer or Employee of the United States subject to service pursuant to Federal Rule of Civil Procedure 4(i) and to date, Plaintiff has not complied with F.R Civ .P. 4(i) to effect proper service:

Respectfully submitted,  
/s/Randolph. Bernard  
Acting United States Attorney

By: /s/ Erin K Reisenweber  
Erin K Reisenweber Assistant U.S.  
Attorney United States Attorney's Office  
217 West King Street, Suite 400  
Martinsburg, West Virginia 25401  
(304) 262-0590 telephone  
(304) 262-0591 facsimile

**CERTIFICATE OF SERVICE**

I, Erin K Reisenweber, Assistant United States  
Attorney for the Northern District of West Virginia,  
hereby certify that on the 16th day of April, 2021,  
I electronically filed the foregoing RESPONSE TO  
COURT'S ORDER TO SHOW CAUSE with the Clerk  
of the Court using the CM/ECF system, and, I hereby  
certify that I have mailed, by United States Postal  
Service, the document to the following non-CM/ECF  
participant.

Arthur Lee Hairston, Sr.  
521 West Race Street  
Martinsburg, WV 25401  
/S/

/s/ Erin IC Reisenweber  
Erin K Reisenweber

## APPENDIX (6)

### THE ORIGINAL COMPLAINT OF PETITIONER

---

---

IN THE DISTRICT COURT UNITED STATES  
FOR THE NORTHERN DISTRICT OF  
WEST VIRGINIA

MARTINSBURG

---

ARTHUR LEE HAIRSTON SR.,

*Plaintiff,*

v.

DVA, MARTINSBURG NAGE (SEIU),  
SUSAN ANDERSON,  
and  
SARAH E. SUSZCZYK,

*Defendant's.*

---

DOCKET No. \_\_\_\_\_  
CIVIL SUIT 28 U.S.C. 1331  
Federal Question Jurisdiction Title VII  
of the civil reform act 1978  
(GMG) REFILED FAILURE TO PROTECT

The district court has original subject matter jurisdiction over this matter pursuant to 28 U.S.C. 1331 which grants the district courts "original jurisdiction of all civil actions arising under the .... laws .... of the United States." Plaintiff was denied the protections of Title VII of the civil reform act 1978. Plaintiff was dues paying member and the NAGE told plaintiff no help and left defendant to fight management alone.

Jurisdiction, this complaint is well within the two year time frame of filing. [ The time for filing has been tolled due to

this courts interference with, the civil process standing in for defendants in violation of U.S. Supreme Court Law dismissing without prejudice so no appeal can be taken. The plaintiff is not talking about little green men; trips to Pluto or time travel.

Plaintiff was denied the protection of NAGE the Union. They failed to protect under Article 5 sections 1; 2; and 3 and article 6 section 9 and Article 21 section 9 clause 2. Therefore the defendant's must be made to answer, and discovery must move forward, the only way to get to the truth.] The DVA is guilty of fraud for the issuance of a false counseling statement in retaliation for Whistle Blowing and NAGE failed to protect the plaintiff, 28 U.S.C. 1746. The plaintiff filed a grievance but NAGE's non actions and delay caused great harm. Their so-called help was of no effect plaintiff was moved illegally. The union failed to protect breach of duty.

In this complaint plaintiff may not have cited fully the specific statute or legal theory under which his claim falls, but plaintiff has set forth all the basic elements of actionable claims, including but not limited to violations of due process and equal protection. Discovery is necessary in this case.

This complaint is filed against NAGE (SEIU), and the DVA for breach of duty of for representation as plaintiff named above seeks monetary; compensatory; injunctive relief and other damages in the amount of 2,000,000 million dollars and the return of all Union Dues paid and pay for all the legal defense work done in this case well over 300 hrs.

COUNT ONE:

On 7/11/2017 Robert Sterling and Mark Childers supervisors for the VA Medical Center issued a false written counseling statement against the plaintiff in retaliation for EEOC activity which is protected by the Master Agreement at Article 6 section 9 Employee Rights. The purpose of the false written counseling was to use same to move the plaintiff from his bided job CLCA nursing home. This declared under penalty of perjury 28 U.S.C.1746.

Plaintiff has the false written counseling that was used to reassign plaintiff to 4A that caused the termination. Also there is a witness to the false counseling signed by the witness and testified to as false on May 22, 2018 at a Merit System Protection Board hearing. Plaintiff went to Susan Anderson and NAGE officials repeatedly and nothing was done.

NAGE and Susan Anderson and Sarah E. Suszczyk did nothing to stop this illegal move activity. Plaintiff even contacted Mark Bailey in Washington DC who could advise me who could do nothing. Subsequently plaintiff was reassigned to 4A where plaintiff had not bided on 4A. Article 21 sections 9 at (A) of the master agreement between the Department of Veterans Affairs and the National Association of Government Employees (NAGE) states; Reassignments shall not be used as punishment, harassment, or reprisal. NAGE and named defendants (breach of duty for representation) in not stopping the illegal reassignment has caused serious hardship loss of job and future wages; loss of health care.

NAGE was aware of the false counseling but still failed to protect and keep the plaintiff a dues paying member in his bided job. This is a Breach of Duty of for Representation. A false counseling statement was written against the petitioner and NAGE knew this

and failed to protect the defendant after repeated request to do so. As a pro se plaintiff, plaintiff is entitled to a liberal reading of his complaint.

Pursuant to Federal Rule of Civil Procedure 8(c), “[p]leadings must be construed so as to do justice.” To ensure justice, courts must liberally construe pleadings filed by pro se litigants. See Erickson v. Pardus, 551 U.S. 89, 94 (2007); U.S. v Wilkes, 796 Fed. App’x. 183(4th Cir. 2020) “A pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers, “Erickson, 551 U.S. at 94 (internal quotation marks omitted).

The court of appeals 4th circuit has held that; {T} his court has recognized the “longstanding practice of courts to classify pro se pleadings from prisoners according to their content, without regard to their captions.” United States v Winestock, 340 F.3d 200, 203 (4th Cir. 2003). “[I]t is the substance of the pleadings, rather than their labels that is determinative.” Wilkes, 796 Fed. App’x. at 184 (citing Winestock, 340 F.3d at 203).

Discovery will aid in revealing the details and particular nature of the violations at issue in this case. The facts are not factually deficient and they provide a factual basis to show that the defendants acted arbitrarily, discriminatorily and in bad faith.

Wherefore in light of the facts plaintiff seeks damages listed hereinbefore including lost wages and backpay to be made whole from the breach of duty for representation.

ARTHUR LEE HAIRSTON SR

## CERTIFICATE OF SERVICE

I Arthur Lee Hairston do hereby certify that the original copy of this complaint was sent to the clerk's office upon the address of District Court 217 West King Street Martinsburg 25401 by U.S. First Class Mail this 19th day of August 2020.

“/s/” ARTHUR LEE HAIRSTON SR

## APPENDIX (7)

### DISTRICT COURTS GRANT FOR PETITION TO PROCEED

Case 3:20-cv-00153-GMG-RWT  
Document 14 Filed 01/29/21 Page 1 of 3 Page #:57

---

---

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT  
OF WEST VIRGINIA

MARTINSBURG

---

ARTHUR LEE HAIRSTON, SR.,

*Plaintiff,*

v.

DVA, MARTINSBURG, NAGE (SEIU),  
SUSAN ANDERSON,  
and SARAH E. SUSZCZYK

*Defendants.*

---

CIVIL ACTION NO.: 3:20-CV-153 (GROH)

Amended Order Granting Motion IECF No. 21 For  
Leave To Proceed Informa Pauperis

On August 21, 2020, the pro se plaintiff initiated this case by filing a civil rights complaint against the above-named defendants' and on the same date, filed a Motion [ECF No.2] for leave to proceed in forma pauperis.<sup>2</sup>. Accordingly, this matter is before the undersigned for an initial review pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915(A).

Amended Order Granting Motion IECF No. 21 For  
Leave To Proceed Informa Pauperis

On August 21, 2020, the pro se plaintiff initiated this case by filing a civil rights complaint against the above-named defendants' and on the same date, filed a Motion [ECF No.2] for leave to proceed informa pauperis.<sup>2</sup>. Accordingly, this matter is before the undersigned for an initial review pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915(A).

In this complaint, Plaintiff appears to make two distinct claims. 3 First, Plaintiff claims that Defendants breached their duty of fair representation by failing to prevent his job reassignment to 4A, which ultimately resulted in Plaintiffs termination. *Id.* at 1-2. Plaintiff also appears to claim that his employer, the VAMC, breached a collective bargaining agreement, which governed Plaintiffs employment with the VAMC, by reassigning him based on a false written counseling statement that was issued in retaliation for EEOC activity.

## **APPENDIX (8)**

### **VA ABBREVIATIONS AND TITLES**

**1. ABBREVIATIONS.** If an abbreviation that may not be familiar to the reader is used, the spelled-out word or phrase is followed by the abbreviation in parentheses. After this first definition of its meaning, the abbreviation may be used without further explanation.

**2. FIRST REFERENCE TO THE DEPARTMENT**

Except as provided in paragraph c below, when “Department of veterans Affairs” is spelled out with the abbreviation “VA” in parentheses without punctuation. Subsequent references may be either “the Department” (using capital “D”) or “VA” The abbreviation “DVA” is not authorized for use under de “Department of veterans Affairs” is spelled out with the abbreviation “VA” in parentheses without punctuation. Subsequent references may be either “the Department’ (using capital “D”) or “VA” The abbreviation “DVA” is not authorized for use under b. The abbreviation “VA” stands for “Veterans Affairs” which is only part of the Department’s full title. “The” is not used before the abbreviation when it is used as a noun. If “VA” is used as an adjective, then “the” will be used in front of “VA.” Example, The VA field facility will prepare the report. “Paragraph a above, does not apply to letters to persons familiar with the “VA” abbreviation, e.g., Member veterans service organizations, and the General Accounting Office.

## **REFERENCES TO THE DEPARTMENTS MAJOR OPERATIONAL ADMINISTRATIONS**

- a. The full titles and abbreviations of the major administrations are Veterans Health Administration (VHA); Veterans Benefits Administration (VBA); and National Cemetery System (NCS). When these elements are first referenced, the full title followed by the abbreviation in parentheses is used. In all subsequent references, the abbreviation is ‘uscd.
- b. Under certain circumstances, to avoid redundancy or over-repetition of the abbreviations, a general term “administration” may be used. When VHA, VBA, and NCS are referred to as a group, the generic term “administrations” may be used.
- c. When referring to VA facilities, the formal title is “Department of Veterans Affairs (facility type).” The common usage incorporating the “VA” abbreviation is “VA (facility type).

Blank Page

Blank Page

Blank Page

