NO. 23-7336

In The
Supreme Court of the United States

ORIGINAL

WEILI CAO-BOSSA,

Petitioner,

v.

NEW YORK STATE DEPARTMENT OF LABOR, et. al

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

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BASES FOR REQUESTING A WRIT OF CERTIORARI

The government employees' rights are determined under statutes which require that "all personnel actions effecting employees or applicants for employment . . . in executive agencies as defined in Title 5 . . . shall be made free from any discrimination . . ." *See* 42 U.S.C.§ 2000e-16(a) (race, color, religion, sex, or national origin) (emphasis added); 29 U.S.C. § 633a(a) (age).

QUESTIONS PRESENTED

The questions presented are:

Can summary judgment be granted solely on failure to respond timely or not in detail?

Should summary judgment be awarded on the merits of the motion or technicalities?

Would summary judgment be appropriate if there were genuine issues, legal and factual errors existing?

PARTIES

The petitioner is Weili Cao-Bossa.

The respondents are New York State Department of Labor, Lindsay Pulcher, Project Assistant, Associate Account; Arab Lin, Kathleen A. Elfeldt, Director of Finance.

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Statutes

- The NY state Civil Service (CVS) Chapter 7, Article 4, Section 61, the Rule of Three.

- The Government Employee Rights Act (GERA) of 1991 §2000e-16a to 2000e-16c. The GERA contains a number of prohibitions, known as prohibited personnel practices, which are designed to promote overall fairness in government personnel actions.

- Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits employment discrimination based on race, color, religion, sex, or national origin.

- the Age Discrimination in Employment Act of 1967 (ADEA), which protects individuals who are 40 years of age or older.

- U.S. Equal Employment Opportunity Commission

- Fed. R. Civ. P. 56 advisory committee's note

Cases

PROCEEDINGS BELOW

Petitioner commenced this action in the Northern District of New York, I was subject to discrimination in violation of Title VII of the Civil Rights Act and the Age Discrimination in Employment Act of 1967. Specifically, I was the victim of NY State civil service Rule of Three. I was stereotyped and discriminated against when respondents fabricated my declination of the grade 18 position to circumvent the Rule of Three, in other words, violating Rule of Three scienter. The race-plus-age discrimination violated Title VII and the ADEA.

The district court granted the Attorney General's motion for summary judgment on all of petitioner's claims. They were assumed undisputed since I failed to dispute in detail timely. The District court errored in decisions since they were based on incorrect and incomplete records the AG provided only.

The petitioner missed the deadline due to a pending motion which was an honest mistake and excusable neglect. I acted in nothing but good faith and got the formal response ready before the deadline with two extensions. I timely filed motion for relief from judgment or order per rule 60(b)(1) showing genuine issues, the circumstantial evidence of discrimination intent and pretext existing. The district court failed to consider the direct evidence in the previous filing the constructive evidence provided in the motion for relief from judgment. The Petitioner have proved discrimination claims under the "motivating-factor" test under *Quigg v. Thomas Cnty. Sch. Dist.*, 814 F.3d 1227 (11th Cir. 2016); 42 U.S.C. § 2000e-2(m); 29 U.S.C. § 633a or 42 U.S.C. § 2000e-16. And the evidence was sufficient to raise a jury question of whether discrimination was a "motivating factor" for these personnel practices

prohibited in 5 USC § 2302 (b)

With respect to the issues presented by this petition, the Second Circuit Court of Appeals affirmed District's decision based on the same reason. I was claimed to choose not to file the formal response timely, which was untrue. I took a full week off work preparing the formal response to AG's SJ, and got it ready before the deadline. I did not willfully or intentionally miss the deadline, neither chose to miss the deadline. The Second Appeal court avoids expressing the opinions for the constructive evidence with discrimination intention because the District Court independently ensured the Summary Judgment was supported with records which I have proved were incorrect and incomplete.

The Second Circuit denied petitioners' timely request for panel rehearing en banc.

I requested a writ of certiorari with this court.

PETITION FOR WRIT OF CERTIORARI

The respondents engaged in personnel activities prohibited in 5 U.S. Code § 2302 throughout the whole case including the hiring and firing. The legal counsel of respondents, the NY state Attorney General (AG) negligently, if not fraudulently, provided summary judgment full of factual and legal errors including the miscalculation of the statute limitation in Summary Judgment (SJ). Both NY Northern District and the 2nd Appeal Court granted it solely because I failed to dispute in detail timely and they assumed the records provided by AG were undisputed and correct despite adequate evidence showing otherwise in my filings.

Petitioner Weili Cao-Bossa requests that this court issue a writ of certiorari to reverse the decisions below.

OPINIONS AND ORDERS BELOW

The Oct 20, 2023, opinion of the court of appeals denying my request for rehearing en banc is set out at p. 1a of the Appendix (App. p 1a).

The Mar 7, 2023, opinion of the court of appeals, which was not designated for publication, is set out at App. p. 2a-5a. The August 19,2021 order of the district court is set out at App. p. 6a-46a.

The Nov 16, 2021, order of Northern District Court denying Plaintiff's motion for relief from judgment is set out at App. p. 47a-50a.

JURISDICTION

The decisions of the court of appeals were entered on Mar 7, 2023. A timely petition for rehearing en banc was denied on October 20, 2023. With 60-day extension, I have until Mar 18, 2024 to request for a writ of certiorari.

This court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The Rule of Three is a rule in the New York State Civil Service Laws. Candidates are selected off the eligible list using the rule of three, which means that agencies count down the first three people on the list and these three people, plus anyone else at the third person's score are the eligibles they can consider filling a position.

New York CPLR § 214-c (2) the deadline for filing is "computed from the date of discovery of the injury by the plaintiff or from the date when through the exercise of reasonable diligence such injury should have been discovered by the plaintiff, whichever is earlier."

5 U.S. Code § 2302 - Prohibited personnel practices (PPPs) are employment related activities that are banned in the federal workforce because they violate the merit system through some form of employment discrimination, improper hiring practices, or failure to adhere to laws, rules, or regulations that directly concern the merit system principles.

5 U.S.C. § 2302(b)(1) prohibits discrimination. An agency official shall not discriminate against an employee or applicant based on race, national origin, age, etc. -

5 U.S.C. § 2302(b)(4) prohibits obstructing competition. - An agency official shall not intentionally deceive or obstruct anyone from competing for employment.

5 U.S.C. § 2302(b)(5) prohibits influencing withdrawal from competition. An agency official shall not influence anyone to withdraw from competition in order to improve or injure the employment prospects of any person.

5 U.S.C. § 2302(b)(12) prohibits violating rules that implement a Merit System Principle. An agency official shall not take or fail to take a personnel action if doing so would violate a law, rule or regulation implementing or directly concerning the merit system principles.

42 U.S.C.§2000e-16a to 2000e-16c, the Government Employee Rights Act (GERA) of 1991, provides procedures to protect the rights of certain government employees, with respect to their public employment, to be free of discrimination based on race, national origin, age, etc.

The Age Discrimination in Employment Act of 1967 ("ADEA") prohibits employment discrimination against persons 40 years of age or older. 29 U.S.C. § 633a(a) (age). The ADEA applies to state and local governments regardless of their number of employees.

The Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, national origin, race, etc.

STATEMENT OF THE CASE

The pro se petitioner's discrimination case against the NY DOL, etc. started from the denial of a grade 18 FMU position, which violated NY state Rule of Three, and ended with the wrongful termination from the grade 14 position. The employment with the grade 14 position was a set up and I was hired to be terminated per the constructive evidence I revealed in discovery. It was exactly my original complaint, way before the discovery.

The respondents engaged in the prohibited personnel practices (5 USC § 2302 (b)) throughout the whole process including the denial of grade 18 position, the hiring and firing from grade 14 position. I was stereotyped and discriminated against based on race, national origin and age.

The attorney general provided negligent statements, if not fraudulent, and even miscalculated the limit of statute in her summary judgment, but both District and 2nd appeal court granted the summary judgment by default judgment by default despite it had genuine issues, material misstatements, obvious factual and legal errors. The conclusion drawn from incorrect and incomplete records the AG provided could never be correct.

I am currently a Certified Professional Accountant (CPA) and an Enrolled Agent (EA). The discrimination case against the NY DOL and Ms. Pulcher, Ms. Elfeldt etc. happened in 2016, back then I was a 44-year-old potential CPA working as cashier at a small hotel. I had no position to decline a state job offer, which later Ms. Elfeldt claimed and fabricated my declination of the grade 18 position.

I was the third on the acceptance list of the grade 18 FMU position in Finance Department of the DOL, Phobe Helou, who was finally hired for the position was the fourth with score 85. She has no better credentials but is of a different race or nationality and was 10 years younger. I was stereotyped and discriminated against when Ms. Elfeldt requested me to decline the position. She arbitrarily assumed and claimed that I was not qualified for the position more than entering debits and credits. She specifically told me that my credentials were not enough for that position since it was more than entering debits and credits. (App. p 53a) The internal email between Ms. Elfeldt and the hiring manager of the grade 18 position which I revealed in Discovery showed that they violated NYS Rule of Three scienter (App. p 52a). They wanted to and did hire the 4th on the acceptance list, Phoebe Helou. Although I did not know the civil service Rule of Three existing back then, Ms. Elfeldt's arbitrary assumption that I would not be qualified for a position more than entering debits and credits seemed to be insulting and discriminatory to me. I refused to decline with an email saying I would like to welcome the challenge if given the chance the same day, July 13, 2016(App. p 53a). Later I received the confirmation of declination letter dated July 14, 2016 (App. 55a).

Instead of changing the discriminatory stereotype of me and retrieving the fabricated confirmation of declination letter, when challenged, Ms. Elfeldt, arranged my employment with a grade 14 accounting position from which I was terminated due to so-claimed incompetence with 2 very negative evaluations. She "successfully" proved that I was not only unqualified for the grade 18 position, but also not even for a grade 14 position. Officially I was barred to be on the eligible list of any other permanent position with the same agency at the same location per

the confirmation of fabricated declination letter. It is not hard to figure out from what happened later that the employment of grade 14 position was a set-up from the beginning, I was hired to be terminated.

It made me sick that I was claimed that I had declined the grade 18 position even I explicitly refused to do so; it made me sicker that I had to prove I was not the idiot on the evaluations who needed to be reminded of each assignment and prompted for each step; not to mention the lower court considered those evaluations undisputed and were sufficient to justify my termination.

Respondents did not have proof that I declined the position, I don't think they had proof that I was the person on the evaluation either. Even there were one page of incidents they listed as evidence or record to support their claim, please see my argument with District court right at the beginning of this case, they were generated by Ms. Pulcher by all means. She would hand me a 10-page assignment and email the assignment of 15 pages claiming she had printed the assignment for me and later she claimed I completed the assignment incompletely. I worked at a hostile environment after 3-month evaluation.

Petitioner lost peace of mind, experienced excessive frustration, stress, and anger in the past several years, not to mention the opportunity for career advancement and a salary increase.

LEGAL BACKGROUND

The case invalidates NY State's Civil Service Law Sec 61.

New York State's Civil Service Law Section 61, also known as the "rule of three" or "one in three" rule, allows public employers to select individuals for appointment or promotion from the top three scores on an eligible list. New York State's Civil Service Rule of Three gives city agencies the option of selecting one of the top three candidates on the ranked list of exam passers when hiring. The rule's purpose is to allow employers to consider other factors besides a candidate's score when making appointments and promotions.

I was the third on the acceptance list for a grade 18 position with a score of 90 and Phoebe Helou was the fourth with score 85. She had no better credentials than me but of different nationality or race and she was 10 years younger than me. To circumvent the rule of three, Ms. Elfeldt fabricated my declination, when challenged, she went a step further and hired me with a grade 14 and then terminated me due to incompetency. I did not know the "rule of three" existing until I read the internal email sent by the hiring manager with "overly cautious reminding" to "offer me another position or receive a declination letter from me to hire Phoebe Helou". Respondents hired Phoebe Helou violating Rule of Three scienter.

The case invalidates 5 U.S. Code § 2302

5 U.S. Code § 2302 - Prohibited personnel practices (PPPs) are employment related activities that are banned in the federal workforce because they violate the merit system through some form of employment discrimination, retaliation, improper hiring practices, or failure to adhere to laws, rules, or regulations that directly concern the merit system principles.

5 U.S.C. § 2302(b)(1) prohibits discrimination. An agency official shall not discriminate against an employee or applicant based on race, national origin, age, etc. -

5 U.S.C. § 2302(b)(4) prohibits obstructing competition. - An agency official shall not intentionally deceive or obstruct anyone from competing for employment.

5 U.S.C. § 2302(b)(5) prohibits influencing withdrawal from competition. An agency official shall not influence anyone to withdraw from competition in order to improve

or injure the employment prospects of any person.

5 U.S.C. § 2302(b)(12) prohibits violating rules that implement a Merit System Principle. An agency official shall not take or fail to take a personnel action if doing so would violate a law, rule or regulation implementing or directly concerning the merit system principles.

In my case, the respondents engaged in the personnel practices prohibited in 5 U.S.C. § 2302, specifically the ones listed above. Ms. Elfeldt stereotyped and intentionally discriminated against me when she fabricated my declination claiming I was not qualified for the position more than entering debits and credits. The employment of the grade 14 position was the continuous of the self-evidence discrimination practice. She used supporting documents and "solid" records to show my incompetency and made it appear to be lawful. Incompetency was the pretext of the termination which would "legally" cover previous discrimination. The employment of the grade 14 was not lawful because respondents never retrieved my fabricated declination, and I should be barred from employment with DOL at the same location. If they retrieved my declination, I should be hired for the grade 18 position instead.

The case presents the miscalculation of limit of Statute.

The AG used the date of fabricated declination to be the starting point but logically as I explained prior, it should start from the date they hired Phoebe Helou. My case falls no problems into 300 days limitation.

Per **New York CPLR § 214-c(2)** the discovery rule, my discrimination claim based on the denial of the grade 18 position should start from the date of my termination from the grade 14 position when I experienced unacceptable injury.

Discovery Rule in Discrimination Cases:

The discovery rule is an exception to the statute of limitations that extends the deadline for filing a case based on the time it took to discover your injury, condition, damages, or the misconduct that gives rise to your lawsuit. It recognizes that in certain situations, the harm caused by discrimination may not be immediately apparent, and

plaintiffs should have a fair opportunity to seek legal recourse when they become aware of the injury or wrongful conduct.

Per **New York CPLR § 214-c (2)** the discovery rule, my discrimination claim based on the denial of the grade 18 position could start from the date of my termination from the grade 14 position when I experienced unacceptable injury. I knew it was wrong to fabricate my declination, but I did not know it was so wrong that she violated several laws. It is impossible for me to know the Rule of Three and I was the victim back then. The statue for my discrimination case regarding the denial of my grade 18 based on the fabricated declination did not expire.

If the declination was considered as true and official, per the notice, I should not be hired with the grade 14 position from which I was terminated. If it was not true, I should be hired with the grade 18 position. The denial of grade 18 position and the termination from grade 14 position were closely related. The employment was a cover up of a self-evidence discrimination practice of denial grade 18 position, the termination was legal in appearance, but discriminatory in nature per the constructive evidence, not to mention with the numerous direct evidence. In both situations, I don't have to fight for those defamatory evaluations! Those two evaluations and the termination have been nightmares and made me countless sleepless nights.

FACTUAL BACKGROUND

The factual errors in SJ are as following:

1. Petitioner was the third on the acceptance list for the FMU grade 18 position with a score of 90 and Phoebe Helou was the fourth with a score of 85. In SJ, AG provided a list on which I was the fourth and Phoebe Helou was not even there. But I confirmed with AG, Phoebe Helou was finally hired for the position.

2. On 7/13/2016, Ms. Elfeldt tried to convince me to decline claiming my credentials were not enough for the position since it was more than entering debits and credits. She then fabricated my declination by sending me the confirmation notice. I did not decline. In SJ, AG did not mention my declination although it was the official base for the denial, since she knew it was a fraud and could not survive the scrutiny.

3. Per the confirmation of declination notice, I should not be on the eligible list for any permanent position with them but I was claimed to be eligible and hired with a grade 14 position from which I was terminated with two very negative evaluations 6 months after. In SJ, AG claimed I was on the eligible list again. My employment with grade 14 position was a set up and I was hired to be terminated.

4. In my previous filing before respondents' SJ, I argued in detail how ridiculous the claims in both evaluations. I was claimed to be a person who needed to be reminded of each assignment and be prompted for each step! I complained to the HR personnel, Ms. Arbab about the evaluations not in good faith right after I received 3-month evaluation. (Ironically, it turned out that she was the person who set the tone and drafted the evaluation which I revealed in the discovery.) I complained to

DOL's EEOC for discrimination right after I received a 6-month evaluation. In SJ, AG claimed I agreed with the claims on the evaluations. I did not agree with the claims showing I was an idiot or even retarded.

5. I was not only able to carry out my daily responsibilities, I simplified the daily solution to reset the password, but also helped our neighbor unit complete other grade 18 senior accountant's work and was acknowledged and appreciated by the grade 18 senior accountant and his supervisors. I had provided satisfactory performance while I worked in the grade 14 position. As a two-year probation trainee, I was not required to prove myself to be perfect. I submitted a Summary of the Day every day after I complained to Ms. Arbab showing I had no problems fulfilling my assigned responsibilities at all. Ms. Pulcher never argued or disputed my performance during my employment, I had never received any complaints about my work performance but appraisals from other colleagues. The evaluation was surprising and out of the blue. In SJ, AG claimed I was incompetent based on two evaluations plus a list of 11 incidents which only showed I was not perfect, and I had regular learning curve too. BTW, Ms. Pulcher made great efforts to make me incompetent. She once emailed me an assignment as attachment of 15 pages but handed me a paper copy for 10 pages, and then claimed I submitted incomplete work. I worked in a hostile environment for the last three months. It made me so angry to dispute those claims that I am glad I don't have to since my employment with grade 14 position was not legit per constructive evidence.

I have argued in detail and provided sufficient direct evidence to show my competency and I provided satisfactory performance before AG submitted her SJ. The District Court errored in granting the Attorney General's Summary Judgment

without determining whether the claims in SJ were properly supported.

6. Without the fabricated declination, Ms. Elfeldt could not deny my employment unless she hired another qualified person per civil service Rule of Three. I was discriminated against when an unqualified person was hired. My discrimination case started from the date they hired Phobe Helou, the fourth on the eligible list. It was Oct 20, 2016. It perfectly falls into the 300 days of limitation.

As a potential CPA, I could pass 4 CPA exams in 6 months, but I was claimed not fit for a job more than entering debits and credits (the grade 18), and I was "proved" not even for a job entering debits and credits (the grade 14). With the direct evidence I provided before AG's SJ and the constructive evidence I found in Discovery, a reasonable fact finder can find I was discriminated against and wrongfully treated.

REASONS FOR GRANTING THE WRIT

In Petitioner's case, the panel of the Second Circuit Court of Appeals agreed that the default summary judgment is only appropriate if there are no genuine issues existing. I have sufficient evidence showing genuine issues existed and respondents engaged in PPP and violated federal and NY state civil service law scienter with clear intention of discrimination due to nationality, race and age. The fourth on the acceptance list, Phobe Helou has no better credentials than me and I was treated disparately.

My discrimination case presents questions whether a default summary judgment can be granted solely based on the failure to respond or dispute timely.

Per *The Committee Notes on the 2010 amendment of Rule 56 provide, when referring to the new subdivision (e), that "summary judgment cannot be granted by default even if there is a complete failure to respond to the motion, much less when an attempted response fails to comply with Rule 56(c) requirements." "[the party who failed to respond] remains free to contest the fact at further proceedings."* In my case, I did not willfully or intentionally miss the deadline to dispute AG's SJ. The records or facts I submitted in my motion for relief from a judgment and the appeal brief should be considered. There were genuine issues existing in SJ and the default SJ was not appropriate. The decisions and orders of lower courts are full of legal and factual errors, the same as the defaulted SJ.

The Second Circuit's decision conflicts with other circuits

In Ronbinson v. Watermark, the Seven Circuit made it clear that the district court was wrong to say that Robinson's failure to oppose the motion was "sufficient grounds, standing alone, to grant the motion." Regardless of the local rules, a failure to file a timely response to such a motion is not a basis for automatically granting summary judgment as some kind of sanction. See Raymond v. Ameritech Corp., 442 F.3d 600, 608 (7th Cir. 2006) (citing cases); see also Marcure v. Lynn , 992 F.3d 625, 631 (7th Cir. 2021) (extending rule to analogous context of Rule 12(b)(6)). Even where a nonmovant fails to respond to a motion for summary judgment, the movant "still had to show that summary judgment was proper given the undisputed facts," Yancick v. Hanna Steel Corp. , 653 F.3d 532, 543 (7th Cir. 2011), with those facts taken as usual in the light most favorable to the nonmovant.

The Second Circuit's decision conflicts with the Supreme Court.

As explained by the Supreme Court in Adickes v. S.H. Kress & Co., 398 U.S. 144 (1970), the burden of the non-movant to respond arises only if the motion is properly "supported" - and therefore summary judgment only is "appropriate" when the moving party has met its burden of production under Fed. R. Civ. P. 56(c) "to show initially the absence of a genuine issue concerning any material fact." Id. at 159. If the evidence adduced in support of the summary judgment motion does not meet this burden, "`summary judgment must be denied even if no opposing evidentiary matter is presented.'" Id. at 160 (quoting Fed. R. Civ. P. 56 advisory committee notes to the 1963 amendments). Thus, even when a nonmoving party chooses the perilous path of failing to submit a response to a summary judgment motion, the district court may not grant the motion without first examining the moving party's

submission to determine if it has met its burden of demonstrating that no material issue of fact remains for trial. If it has not, summary judgment is inappropriate, for "[n]o defense to an insufficient showing is required." Id. at 161 (internal quotation marks omitted).See Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986);

In my case, the default summary judgment was full of genuine issues, material misstatements, and even miscalculated the limit of statutes and the district court errored in granting it. Even I did not realize respondents' violating civil service laws and engaging in the personnel practices prohibited by federal laws before the summary judgement, I had argued or disputed in detail that I had provided satisfactory performance which was on the contrary of the "undisputed" facts in the Summary Judgment. The fact I sued the respondents was against the claim in SJ that I agreed with the claims on the 3-month evaluation. Like the fabricated declination cannot justify the denial of the grade 18 position, the fully defamatory evaluations can only be the pretext of discrimination. The summary judgement thus was inappropriate and should be evocated.

The two ridiculous unreasonable evaluations may be "properly" supported by the 11 incidents (Ms. Pulcher contributed a lot to generate those incidents), but they were disputed right at the beginning of the case and were the exact reasons for this case. Like the fabricated declination, they only served the purpose of appearing to be legit, but to hide the intention of discrimination.

The Second Circuit's decision also conflicts with its own decisions

In Amaker v. Foley, 274 F.3d 677 (2nd Cir. 2001), The U.S. Second Circuit

Court of Appeals, reversing the U.S. District Court for the Western District of New York, held that defendant prison officials were not entitled to summary judgment solely on the basis of the prisoner plaintiff's failure to file any papers or evidence in response to the summary judgment motion. The grant of summary judgment solely for failure to file apposing papers was therefore improper. Woodford v. Cmty. Action of Greene County, Inc., 268 F.3d 51, 54 (2d Cir. 2001). Cf. McCall v. Pataki, 232 F.3d 321, 322-23 (2d Cir. 2000) (error to dismiss complaint solely for failure to file opposition to motion to dismiss under Fed. R. Civ. P. 12(b)(6) without assessing legal sufficiency of complaint); Maggette v. Dalsheim, 709 F.2d 800, 802 (2d Cir. 1983) (error to grant motion for judgment on pleadings under Fed. R. Civ. P. 12(c) for failure to oppose motion where pleadings themselves sufficient to withstand dismissal)

The previous case decision of the Second Circuit showed the court agrees that granting a SJ solely based on the failure to respond is improper. The factual or merit needs to be taken into consideration.

I hated to argue that I was not the idiot in the evaluations and how Ms. Pulcher generated those records to prove I was one, but I hated more to lose the chance to seek justice. I did not choose to dispute SJ in detail untimely, as claimed in the Second Circuit court's decision entered on Mar 7, 2023. I tried so hard to proceed with the case despite of great mental discomfort.

WORDS AFTER REASONING

I did not carry out the other two presented questions since I had argued in detail in my previous filings. Both courts affirmed that the case should be decided based on merits and the SJ should not be granted if genuine issue exists although they did not follow these principles and rules in my case. Like Respondents, they knew civil service law labor law perfectly, but they broke them and other laws due to intentional discrimination.

Lacking legal knowledge, as a pro se petitioner, I started this discrimination case based on the true feeling of being discriminated against. I could sleep on the fabricated declination without knowing Respondents violated Rule of Three but not on the disgraceful termination due to so-claimed incompetency. I understand people may have reasons to stereotype a minority aged more than 40 because they don't know the person enough, but not after 6-month of hard working proving my ability.

Although the fabricated declination seems to be the legit reason to deny me the grade 18 position, AG did not provide it in SJ since she knew it was not true. They could not provide any evidence showing I declined it since I did not. In the termination, they provided two evaluations to show my incompetency with 11 incidents. Any reasonable person who reads the evaluations with so claimed supporting documents may understand my excessive anger these years. They served the same purpose just like the fabricated declination to make it appear to be lawful, but both cannot justify respondents' discrimination practices.

CONCLUSION

When the labor law enforcement, the DOL violated labor laws and engaged in PPPs to invalidate federal laws against discrimination; when the AG, the legal counsel of DOL, negligently, if not fraudulently, provided incorrect and incomplete records to protect Respondents' illegal conducts; when lower courts ignored all the disputed facts and existing genuine issues and granted SJ by default with obvious factual and legal errors, the principle of justice and fairness is challenged.

For the foregoing reasons, this Court should grant this petition and issue a writ of certiorari to review and reverse the judgment and opinion of the Second Circuit Court of Appeals entered on Mar 7, 2023, the court orders of Northern District entered on Aug 19 and Nov 16, 2021.

Respectfully submitted,

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