App No. _______

In The
Supreme Court of the United States

WEILI CAO-BOSSA,

Applicant,

v.

NEW YORK STATE DEPARTMENT OF
LABOR,

Respondents.

On Application for an Extension of Time to File Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

Weili Cao-Bossa
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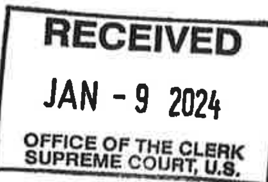
Dec 29, 2023



To the Honorable Sonia Sotomayor, as Circuit Justice for the United States Court of Appeals for the Second Circuit:

In accordance with this Court's Rules 13.5, 22, 30.2, and 30.3, Applicant Weili Cao-Bossa respectfully requests that the time to file its petition for a writ of certiorari be extended for 60 days, March 20, 2024. The Court of Appeals issued its opinion on March 7, 2023 and denied the request for rehearing en banc on October 20, 2023. Absent an extension of time, the petition would be due on Jan 18, 2024. The jurisdiction of this Court is based on 28 U.S.C. 1254(1). This request is unopposed.

Background

This case presents an important question regarding rule 56: Is default summary judgment appropriate if genuine issues, negligent misrepresentation, if not fraudulent, and even miscalculation of limit of statute exist in the summary judgment? The 2nd circuit court agrees that summary judgment is only appropriate if there are no genuine issues existing in summary judgment. It assumes the facts are undisputed claiming that I failed to dispute in detail and the District Court independently ensured that the material facts identified by NYSDOL were supported by the record. I failed to file the substantive response before the due date due to miscommunication with court clerk and my limited legal knowledge as a pro se plaintiff. My opposition to NYSDOL's summary judgment based on exceeding the page limit has never meant to be the formal response. I clearly expressed the intention to file formal or substantive response to dispute material facts in that motion. The formal response was completed on time and was ready to file with the

court before the due date. In both my appeal brief and request for rehearing en banc, I have provided clear evidence showing that genuine issues exist in summary judgment. Although NY District court independently ensured that material facts in NYSDOL's summary judgment were supported by records, I have provided evidence to prove they were incomplete and incorrect. The incomplete and incorrect records provided by NY state attorney general result in at least negligent misrepresentation, if not fraudulent. They resulted in the miscalculation of limit of statute as well.

I am currently a senior accountant with a Certified Professional Accountant (CPA) license and an Enrolled Agent (EA) certificate. I was a 44-year-old potential CPA back in 2016 when the case started. I passed both accounting and auditing civil service exams with score 90 and ranking 14. As the third on the acceptance list of a grade 18 position in Finance Department of the DOL, I was claimed that I was not qualified for a position more than entering debits and credits, and Ms. Elfeldt, director of the finance, requested me to decline the position. The internal email between Ms. Elfeldt and the hiring manager of the grade 18 position revealed in Discovery showed that they violated NYS Rule of Three scienter. They wanted to and did hire the 4th on the acceptance list, Phoebe Helou, who had a score 85. Although back then I did not know the exact reason why Mrs. Elfeldt drew such a discriminatory conclusion, 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. I received the confirmation of declination letter the next day. Instead of changing 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 not qualified for the grade 18 position, but even not for a grade 14 position. She must forget that 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. The employment of grade 14 position was a set-up from the beginning, I was hired to be terminated. Ironically, in the summary judgment, NYSDOL used the date they fabricated my declination as the denial of the grade 18 position to calculate limit of statute, not the date I was hired with the grade 14 position, or the date Phoebe Helou was hired, and the 2nd appeal court affirmed the summary judgment.

The case also presents the conflicts with 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 score 90 and Phoebe Helou was the fourth with score 85. 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 with "overly cautious reminding", I did not have unacceptable damage until I was terminated after 6 months working for the DOL. Per the discovery rule, my discrimination claim based on the denial of the grade 18 position could start from the date of my termination.

It seems that both NYSDOL and I became the victim of the "rule of three". If there were no "rule of three", I believe I still could have been discriminated and would have been denied for the appointment of that grade 18 position, but I wouldn't have to experience the overt discrimination, the denial of the grade 18 position, and then the covert discrimination, the humiliating termination of the grade 14 position. Were there no "rule of three", NYSDOL would not need to fabricate my declination, then keep lying on my eligibility, performance evaluations, and calculation of limit of statute. As the enforcement of labor law, NYSDOL has no problems to make a discrimination case looks or appears to be lawful with supporting records.

I made an honest mistake filing the motion claiming the summary judgment exceeding the page limit, I acted nothing but good faith that I intended to submit the substantive response on time, and I did get it ready timely. I filed Motion to request relief from a judgement or order per rule 60(b)(1) timely on Aug 2, 2021, and so did the appeal with the 2nd circuit court. The default summary judgment has genuine issues, material misstatements, miscalculation of limit of statutes.

Reasons For Granting an Extension of Time

I have been devastated since the NYSDOL fabricated my declination and denied my employment with the grade 18 position. I have been so angry and frustrated that I could not complete the request for a writ of certiorari by myself even though I have truth and evidence. I have been contacting national law firms to represent me on behalf. It takes time for them to respond and unfortunately the deadline is very close to the year end with two holidays.

Conclusion

Applicant respectfully requests that the time to file a writ of certiorari in the above-captioned matter be extended 60 days to and including Mar 20, 2024.

Dated this 29th day of December 2023.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 20th day of October, two thousand twenty-three.

Weili Cao-Bossa,

Plaintiff - Appellant,

v.

New York State Department of Labor,

Defendant - Appellee,

Lindsay Pulcher, Project Assistant, Associate Accountant,
Kathleen A. Elfeldt, Director of Finance,

Defendants.

ORDER

Docket No: 21-2593

Appellant, Weili Cao-Bossa, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk