

FILED

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

MAR 25 2024

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ETHAN E. PRINTEMPS-HERGET,

Plaintiff-Appellant,

v.

MEGAN J. BRENNAN, Postmaster General,

Defendant-Appellee.

No. 22-35230

D.C. No. 3:18-cv-00476-MO

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Michael W. Mosman, Senior District Judge, Presiding

Submitted March 20, 2024**
San Francisco, California

Before: FRIEDLAND, SANCHEZ, and H.A. THOMAS, Circuit Judges.

Plaintiff-Appellant Ethan E. Printemps-Herget appeals pro se the district court's dismissal of his disability discrimination claims based on his termination

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

from the United States Postal Service (USPS) in December 2014.¹ We have jurisdiction under 28 U.S.C. § 1291. We affirm.

At a 2020 pretrial conference, the district court allowed Printemps-Herget, over the Postmaster General's objection, to modify his theory of the case from one of actual hamstring disability to one based on a "record of" or being "regarded as" having a hamstring disability. However, the modification was premised on Printemps-Herget's production of a 2013 Equal Employment Opportunity Complaint (2013 EEO Complaint) from a different USPS station, which allegedly contained mention of his hamstring injury, and Printemps-Herget's ability to demonstrate that his supervisors had knowledge of the complaint. After Printemps-Herget did not comply with the court's instruction to produce the 2013 EEO Complaint and did not produce any other evidence to prove that his supervisors believed he had a record of disability, the district court dismissed the case for "not having evidence on which a rational jury could rely to support any of the claims."

The district court properly dismissed the case. Printemps-Herget abandoned his actual disability claim, leaving only the "record of" and "regarded as" theories

¹ Printemps-Herget also raises concerns with pre-trial discovery procedures, that he could not name individual USPS employees as defendants, and the effectiveness of his pro bono counsel in district court. However, these issues are not properly before the court where Printemps-Herget concedes that he only challenges "the decision to dismiss the case before trial."

to proceed to trial. But without the 2013 EEO Complaint, Printemps-Herget offered no evidence that those involved in his termination ever perceived him as having a history of disability. *See K.D. ex rel. C.L. v. Dep't of Educ., Haw.*, 665 F.3d 1110, 1117 (9th Cir. 2011) (establishing appellant's burden on appeal).

AFFIRMED.

Appendix B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

ETHAN E. PRINTEMPS-HERGET,

Plaintiff,

No. 3:18-cv-00476-MO

v.

ORDER OF DISMISSAL

MEGAN J. BRENNAN,

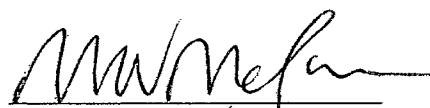
Defendant.

MOSMAN, J.,

For the reasons stated on the record at the Pre-Trial Conference held on January 10, 2022, this case is DISMISSED.

IT IS SO ORDERED.

DATED this 10th day of January, 2022.



MICHAEL W. MOSMAN
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAY 15 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ETHAN E. PRINTEMPS-HERGET,

Plaintiff-Appellant,

v.

MEGAN J. BRENNAN, Postmaster General,

Defendant-Appellee.

No. 22-35230

D.C. No. 3:18-cv-00476-MO

District of Oregon,

Portland

ORDER

Before: FRIEDLAND, SANCHEZ, and H.A. THOMAS, Circuit Judges.

Judges Friedland, Sanchez, and H.A. Thomas vote to deny Plaintiff-

Appellant Ethan Printemps-Herget's petition for panel rehearing. Accordingly, the petition for panel rehearing filed May 13, 2024, (Dkt. 33), is DENIED.

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

Form 14. Motion for Extension of Time

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form14instructions.pdf>

9th Cir. Case Number(s)

Case Name

Requesting Party Name(s)

I am: The party requesting the extension.
 Counsel for the party or parties requesting the extension.

I request an extension of time to file a:

- Brief (*you must also complete the Declaration on page 3*)
- Motion to proceed in forma pauperis
- Motion for a certificate of appealability
- Response/opposition to a pending motion
- Reply to a response/opposition to a pending motion
- Certified Administrative Record
- Response to court order dated
- Other (*you must describe the document*)

The requested new due date is:

I request the extension of time because (**cannot be left blank**):
(attach additional pages if necessary)

Defense counsel has multiple other deadlines converging on other cases, as well as an upcoming trial, and needs additional time to complete Respondent's Brief. The USAO for the District of Oregon is currently short-staffed, operating with two less attorneys who have left to take other positions, thereby increasing the workload of the remaining AUSAs.

Signature **Date**

(use "s/[typed name]" to sign electronically-filed documents)

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

Recitals in criminal and immigration cases pursuant to Circuit Rule 27-8

Complete this section for criminal or immigration cases.

Previous requests for extension of time to file the document, including any request for a Streamlined Extension of Time under Circuit Rule 31-2.2(a) (*select one*):

- I have **NOT** filed a previous request to extend time to file the document.
- I have previously requested an extension of time to file the document.

This motion is my request.

(Examples: first, second)

Bail/detention status (*select one*):

- The defendant is incarcerated. The projected release date is: .
- The petitioner is detained.
- The defendant/petitioner in this criminal/immigration case is at liberty.

Signature

Date

(use "s/[typed name]" to sign electronically-filed documents)

Declaration in support of extension to file brief under Circuit Rule 31-2.2(b)
Complete this section if you are requesting an extension of time to file a brief.

1. I request an extension of time to file the brief.

(Examples: opening, answering, reply, first cross-appeal)

2. The brief's current due date is:

3. The brief's first due date was:

4. A more detailed explanation of why the extension of time to file the brief is necessary: *(Under Circuit Rule 31-2.2(b), a request for extension of time to file a brief must be "supported by a showing of diligence and substantial need" and a conclusory statement as to the press of business does not constitute such a showing. Attach additional pages if necessary.)*

Defense counsel has multiple other deadlines converging on other cases, as well as an upcoming trial, and needs additional time to complete Respondent's Brief. The USAO for the District of Oregon is currently short-staffed, operating with two less attorneys who have left to take other positions.

5. The position of the other party/parties regarding this request is:

Unopposed.

Opposed by *(name of party/parties opposing this motion):*

Unknown. I am unable to verify the position of the other party/parties because:

6. The court reporter is not in default with regard to any designated transcripts.

If the court reporter is in default, please explain:

7. I have exercised diligence and I will file the brief within the time requested.

I declare under penalty of perjury that the foregoing is true and correct.

Signature

Date

(use "s/[typed name]" to sign electronically-filed documents)

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

Ethan E Printemps-Herget
625 NE Jessup St
Portland, OR 97211

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

ETHAN E PRINTEMPS-HERGET

Case No.: 3:18-cv-00476-MO

Plaintiff

REQUEST FOR DISCOVERY

v.

MEGAN J BRENNAN

Defendant

DISCOVERY REQUESTS

Plaintiff requests that Defendant produce full and complete answers to interrogatories under oath and true and correct requested documents to the plaintiff's address. These requests are continuing in character so as to require you to file supplementary answers if you obtain further or different information before trial. In accordance, the terms, "document" or "documents" includes all writings, emails, drawings, graphs, charts, photographs, recordings, and any other data computations from which information can be obtained, translated, if necessary by (you), through detection devices, into reasonably usable form. Where knowledge or information in possession of a party is requested, such request includes knowledge of the party's agents, representatives, and unless privileged, his attorney's. When answer is made by corporate defendant, state the name, address and title of persons supplying the information and making the affidavit, and announce the source of his or her information.

INTERROGATORIES

1. Identify how and when Marta Hartman learned of Plaintiff's medical history and details of the mediation agreement leading to his reinstatement in 2013.

2. Identify details of Plaintiff's extended probation as identified by Marta Hartman in 2013.
3. Provide a list of all City Carrier Assistants hired in the western district between August 2013 and January 2015, including date of hire, training records, station assignments, dates of probation, dates of disbursement of uniform allowance and average number of hours worked on a weekly basis
4. Provide a list of average weekly number of hours worked for all western district city carriers and city carrier assistants by station between the period of August 2014 through October 2018 including the overtime desired list.
5. Identify the reasons why the Plaintiff's Uniform Allowance was delayed and why other city carrier assistants at Piedmont station with later hiring dates received their allowance
6. Explain why Plaintiff was sent home for being out of uniform before receiving a uniform allowance.
7. State the reasons why Plaintiff was denied the ability to Opt on routes in August 2014.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. All documents discussing or related to the Plaintiff or his employment at the United States Postal Service (USPS)
2. Job descriptions for the positions that the plaintiff held at USPS
3. Documents showing the plaintiff's compensation and benefits, such as retirement plan benefits, fringe benefits, employee benefit summary plan descriptions, and summaries of compensation
4. All documents related to the USPS work schedule of Plaintiff
5. All documents related to probationary employment status of Plaintiff at USPS
6. All documents regarding the training received by Plaintiff at USPS

7. The plaintiff's personnel file, in any form, maintained by the defendant, including files concerning the plaintiff maintained by the plaintiff's supervisor(s), manager(s), or the defendant's human resources representative(s), irrespective of the relevant time period
8. The plaintiff's performance evaluations and formal discipline
9. Inventory and ordering records for safety equipment for Portland area stations
10. Documents relied upon to make the employment decision(s) at issue in this lawsuit
11. Documents concerning the formation and termination, if any, of the employment relationship at issue in this lawsuit, irrespective of the relevant time period
12. All documents related to Plaintiff's 2014 EEOC, Workers' Compensation, FMLA, Department of Labor and Department of Justice complaints
13. All Documents related to the September 2013 EEOC complaint filed by plaintiff, including the mediator's notes regarding mediation
14. Documents concerning investigation(s) of any complaint(s) about the plaintiff or made by the plaintiff, if relevant to the plaintiff's factual allegations or claims at issue in this lawsuit and not otherwise privileged
15. Responses to claims, lawsuits, administrative charges, and complaints by the plaintiff that rely upon any of the same factual allegations or claims as those at issue in this lawsuit
16. All documents to or from Janet Schulz regarding City Carrier Assistants between August 2013 and January 2015
17. All documents to or from Reece Steelman regarding city carrier assistants between August 2013 and January 2015
18. All documents to or from Jonathan Taylor regarding city carrier assistants between August 2013 and January 2015

19. All documents to or from Ken Striecher regarding city carrier assistants between August 2013 and January 2015
20. All documents to or from Piedmont and Multnomah Station Managers, acting managers and supervisors regarding city carrier assistants between August 2013 and January 2015
21. All documents discussing City Carrier Assistants' opting on routes in the western district between August 2013 and January 2015
22. All documents concerning the factual allegations or claims at issue in this lawsuit among or between the plaintiff and the defendant; and the plaintiff's manager(s), and/or supervisor(s), and/or the defendant's human resources representative(s)
23. Workplace policies or guidelines relevant to the adverse action in effect at the time of the adverse action, which may address discipline; termination of employment; promotion; discrimination; performance reviews or evaluations; misconduct; retaliation; and nature of the employment relationship
24. Any employee handbook, code of conduct, or policies and procedures manual in effect at the time of the adverse action
25. Documents in the possession of the defendant and/or the defendant's agent(s) concerning claims for unemployment benefits unless production is prohibited by applicable law
26. Any other document(s) upon which the defendant relies to support the defenses, affirmative defenses, and counterclaims, including any other document(s) describing the reasons for the adverse action

Dated October 24th, 2018



Ethan Printemps-Herget