

ORIGINAL 24-5697

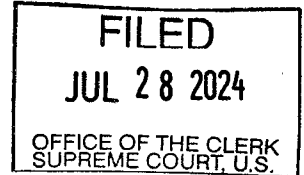
SUPREME COURT OF THE UNITED STATES

ORIGINAL

IN RE: Frank Deville,
Petitioner,

v.

United States of America,
Respondent.



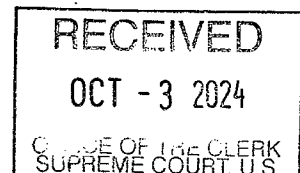
ON PETITION FOR A WRIT OF CERTIORARI

On Petition for a writ of Certiorari To United States Supreme Court from
the United States Circuit Court of Appeals for the District of Columbia

To the Honorable John G Roberts, Jr., Chief Justice of the Supreme Court of
the United States and Circuit Justice for the Circuit

Applicant(s), Pro Se

Respectfully submitted,
Frank Deville
frankdeville4734@gmail.com
255 S. Glendora Ave
Suite 2042
Glendora Ca. 91740
(424)361-6933



QUESTIONS PRESENTED

When an underfunded pension plan that is covered by Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA") terminates, Respondent Pension Benefit Guaranty Corporation ("PBGC") must pay benefits up to the statutory limit, regardless of the level of plan assets. PBGC determines those benefits according to ERISA's complex provisions governing the guarantee and the allocation of plan assets and recoveries.

If a participant is dissatisfied with PBGC's initial determination of his or her statutory benefit, the participant may file an appeal with PBGC's Appeals Board ("Appeals Board"), an independent adjudicatory body within the agency. See 29 C.F.R. §§ 4003.1, 4003.2, 4003.55, 4003.58. The Appeals Board will then reach a decision after considering PBGC's file and all material submitted by the participant and any third parties. 29 C.F.R. § 4003.59.

The Appeals Board's decision constitutes the final agency action, after which the participant may seek judicial review of PBGC's determination.

1. Was the court of appeals correct in applying deference to PBGC's interpretations of ambiguous provisions in Title IV of ERISA regarding 5 U.S.C § 706(2)(A)?
2. Was the court of appeals correct by ignoring substantial harm to the petitioner by leaving a want of unaddressed issues that were set before the court?
3. Was the court of appeals action contrary to constitutional rights?

PARTIES TO THE PROCEEDING

Petitioners' (movant in the court of appeals) Frank Deville was the plaintiff in the trial courts. The petitioner was the appellant in the United State of appeals for the District of Columbia Circuit court.

The following Respondents in the court is the United States Court of Appeals for the District of Columbia Circuit court. The real party in interest on the respondent side of this case (the plaintiff on the court of absent relief) is the United States.

The United States of America is represented by the Attorney General of the United States according to pursuant to 28 U.S.C § 2403(b) certifying to the State Attorney General the fact that the constitutionality of a statute of that state was drawn into question according to rule 14.1(e)(v).

Parties:

Solicitor General of the United States:
Department of Justice
950 Pennsylvania Avenue North West
Room 5614
N.W. Washington DC, 20530-0001

emailed:

Kellv.Krvstvniak@usdoj.gov
Supremectbriefs@usdoj.gov

LIST OF PARTIES IN LOWER CASE

<u>Respondent:</u>	<u>Petitioner(s)</u>
Pension Benefit Guaranty Corporation	Frank Deville Petitioners', Pro Se

ATTORNEYS FOR PARTIES in lower case:

Petitioner(s) Attorney:	Respondent Attorneys for Pension Benefit
Guaranty Corporation:	
Pro Se Litigant	Nicole C. Hagan
Frank Decville	Karen Morris
255 south Glendora Ave.	Daniel S. Liebman
Suite 2042	Kenneth J. Cooper
Glendora Ca 91740	Office of the General Counsel
	445 12th Street, S.W.
	Washington, D.C. 20024-2101

Disclosure Statement
RULE 29.6 STATEMENT

Petitioners, Frank Deville, are individuals

NOT publicly held companies.

Petitioners submit the following statement of corporate interests and affiliations for the use of the Justices of this Court: Petitioners have no corporate interests. Petitioners are not a publicly-held corporation or other publicly-held entity. Petitioners have no stock, so no publicly-held corporation or entity owns any stock in Petitioners.

Dated: July 25, 2024

Respectfully submitted,

Frank Deville
Petitioner(s)

A handwritten signature in cursive script, appearing to read "Frank Deville", is written over a horizontal line.

Frank Deville

RELATED PROCEEDINGS

Caese:

United States Court of Appeals for the District of Columbia
Circuit court.:

- *Frank Deville v. Pension Benefit Guaranty Corporation*
(February 8, 2024)

United States District Court for the District of Columbia:

- *Frank Deville v. Pension Benefit Guaranty Corporation*
Case No. 1:23-cv-01343-DLF (Transferred, May 11, 2023)

United States District Court for the District of California:

- *Frank Deville v. Pension Benefit Guaranty Corporation* Case
No. 2:22-cv-09258-FLA-JPR (December 21, 2022)

TABLE OF CONTENT

OPINION BELOW.....	12
JURISDICTION.....	13
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	14
STATEMENT OF THE CASE.....	16
REASONS FOR GRANTING THE WRIT.....	17
A. The court should grant mandamus/alternative Certiorari to resolve a circuit conflict on An important and recurring issue concerning Pro se litigants.....	18
B. The courts are divided concerning right to a fair trial conflict.....	18
1. The conflict between dismissal of claims and protections of the Fourteenth amendment Rights balance.....	18
2. A conflict nationwide, including the Circuit Court, exhibit a pattern and practice of refusing to adjudicate EVERY issue Presented.....	19
a. Notice orders dismissing fourteen appeals without adjudicating any issues raised.....	
3. The mandamus/alternative certiorari Is particularly important because the District court and the Appeals court interpretation is wrong.....	19
I. MATERIAL FACTS WERE OVERLOOKED.....	22
1. Erred in decision for relief for motion to alter judgment and motion for relief from judgment.....	22
2. Plaintiff does satisfy the requirements for a disability benefit Under the plan.....	23
a. In the plan he is unable to engage in any employment for which you are reasonably qualified (based on the training, education and experience) because of a physical or mental impairment;.....	24

b.	Your impairment is expected to result in death or to last for a long-continued period.....	24
c.	You submit proof of disability under the Social Security act;.....	24
d.	Your impairment did not result from your Participation in a felony or from an intentional, self-inflicted injury; and.....	24
e.	The events causing your impairment and the manifestation of your impairment occurred while you were actively employed by the Company or an affiliate.....	24
II.	The board's Decision was an abuse of discretion concerning plaintiff's retirement Benefit under the plan.....	25
a.	The defendant failed to review all medical records in the Administrative Record	25
b.	The defendant failed to investigate whether it was a manifestation of post medical condition when making the decision.....	25
c.	The defendant acted not in accordance with law." 5 U.S.C. § 706(2)(A).....	25
d.	The defendant decision was an abuse of discretion because it ignored material evidence and acted out of concert with the regulation of ERISA.....	25
e.	The defendant decision was arbitrary, capricious, an abuse of discretion.....	26
1.	narrow" standard of review.....	26
2.	When reviewing that determination courts must "consider whether the decision was based on a consideration of the relevant Factors.....	26
3.	What arbitrary and capricious standard requires.....	26

4. The agency must be able to provide the essential facts.....	27
III. The courts conflict with decisions with other circuit courts decisions.....	27
IV. Section 1983 states without a fair trial a Citizen Right to be heard is overruled.....	27
V. The circuit court erred by mistakenly overlooking material facts.....	28
1. <u>circuit</u> court erred by mistakenly overlooking the defendants failure to comply with the judge's order.....	28
2. <u>circuit</u> court erred by mistakenly overlooking the defendants failure to comply with the serving of the defendants appendix used for trial.....	28
3. <u>circuit</u> court erred by mistakenly overlooking the defendants failure to comply to LCv5.4(e)(1).....	28
4. <u>circuit</u> court erred by mistakenly overlooking that the plaintiff needed to file the entire administrative record.....	28
5. <u>circuit</u> court erred by mistakenly overlooking that there was minimal damages.....	28
6. <u>circuit</u> court erred by mistakenly overlooking that if there was <i>a manifestation of the physical and the mental disability</i>	29
a. Lead levels reveals in 1986-2014(Department of Human Health).....	29
b. The manifestation happened in early 2000.....	29
c. Sanathara report dated 12/12/2017 Certified Medical report.....	29
d. Other Prior records exist.....	29
e. The Certified Doctor determined that the injury was work related while working at exide.....	29
VI. CONCLUSION.....	29

INDEX TO APPENDICES

APPENDIX A	Court Order of Appeals Denying petition for Rehearing
APPENDIX B	District. Magistrate Order on Summary Judgement
APPENDIX C	Memorandum/Opinion District Court
APPENDIX D	Petition for Rehearing decision
APPENDIX E	Pension Benefit Guaranty Corporation denial letter
APPENDIX F	Exide technologies retirement plan 2015

APPENDIX G Exide technologies retirement plan 2014

APPENDIX H District of California ruling

APPENDIX I Social Security Administration decision

APPENDIX J Order accepting findings concl. and rec.of district court of ca

APPENDIX K Report and recommendation of US District court

APPENDIX L Consultative rating determination div. Of workers
compensation

APPENDIX M Doctor's first report of occupational injury

APPENDIX N Work Grievance report

APPENDIX O Psychiatric Panel Qualified Medical Evaluation Dr
Sanathara

APPENDIX P Psychiatric Medical report Dr Curtis

APPENDIX Q Toxicologist Dr Brautbar May 20, 2016

APPENDIX R Toxicologist Dr Brautbar May 6, 2016

APPENDIX S Toxicologist Dr Brautbar July 13, 2016

APPENDIX T Toxicologist Dr Brautbar April 12, 2016

APPENDIX U EDD, Disability Insurance Program

APPENDIX V California Department of Public Health

APPENDIX W Pension Benefit Guaranty Corporation Disability
determination

APPENDIX X EDD, Disability Insurance Payment History

APPENDIX Y Appeals Court Mandate district of Columbia

2020

APPENDIX Z Appeals Court Mandate district of Columbia

Table of Authorities Cited

Cases:	Page Number
Hughes v. United States, 953 F.2d 531.....	15
U.S. v. Throckmorton, 98U.S. 61.....	15
Cheney v. United States Dist. Court, 542 U.S. 367, 380-381 (2004).....	18,19
Hill v. S.C. Dep't of Health & Envtl. Control, 389 S.C. 1, 22.....	19
Goldberg v. Kelly, 397 U.S. 254, 265-70 (1970).....	20
Plaine v. McCabe, 797 F.2d 713, 718-19 (9th Cir. 1986).....	20
Castillo v. City of Los Angeles, 92 Cal.App.4th 477.....	20
Khaligh v. Hadaegh.....	20
USCA, D.C. Circ. 15-5035 Ellis v. Comm'r.....	21
USCA, D.C. Circ. 16-5233 McNeil v. Comm'r.....	21
USCA, D.C. Circ. 16-5308 DePolo v. Ciraolo.....	21
USCA, D.C. Circ. 17-5054 Crumpacker v. Ciraolo.....	21
USCA, D.C. Circ. 17-5055 McGarvin v. McMonagle.....	21
USCA, D.C. Circ. 17-5056 Podgorny v. Ciraolo.....	21
USCA, D.C. Circ. 17-5057 DeOrio v. Ciraolo.....	21
USCA, D.C. Circ. 17-5058 Dwaileebe v. Martineau.....	21
USCA, 9th Circuit 18-17217 Ford v. USA.....	21
USCA, 8th Circuit 19-2985 Kurz v. USA.....	21
USCA, 9th Circuit 21-35125 Howe v. USA.....	21
USCA, 9th Circuit 21-70662 Howe v. The Hon. Nye.....	21
89 Orange St. Partners v. Arnold, 179F.3d 656, 665.....	19,22
Winter v. Natural Res. Def. Council(2008).....	23
Daghlian v. DeVry Univ., Inc., 582 F. Supp.2d 1231.....	23
United States v. Fiorelli, 337 F.3d 282, 338 (3d Cir. 2003).....	23
Lands Council v. McNair, 537 F.3d 981,987 (9th Cir.2008).....	23
Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).....	23
Am. Trucking Ass'ns v. City of Los Angeles.....	23
KRL v. Moore, 384 F. 3d 1105, 1110 (9th Cir. 2004).....	23
Anderson v. Liberty Lobby, Inc.,477 U.S. 242 (1986).....	23
Council v. McNair, 537 F.3d 981, 987 (9th Cir.2008).....	24
Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7 (2008).....	24
Arrington v. Daniels, 516 F .3d 1106, 1112 (9th Cir.2008).....	24
Supreme Court's decision of Motor Vehicle v. State Farm.....	27
Lumber Co. v. State Water Resources Control Board.....	27
Cf. Austin v. Valverde (2012) 211 Cal.App.4th 546, 550.....	27
Holloway, supra, 242 Cal.App.4th at p. 14.....	29
Garrison v. Colvin, 759 F 3d 995, 1009 (9th Cir. 2014).....	29
Ayre v. State, supra note 10.....	29
Christian v. State, 309 Md. 114.....	29

STATUTORY PROVISIONS

29 U.S.C. § 1342.....	22
20 CFR 404.1520(e).....	22
29 U.S.C. § 1342,.....	23-24
5 U.S.C § 706(2)(A)	2, 27
12 U.S.C. § 1848	25
28 U.S.C § 2403(b).....	3
42 U.S.C 1983	16
28 U.S.C. 1651(a)	15
28 U.S.C. 1254(1)	15
28 U.S.C. § 1291.....	16
28 U.S.C. § 2101(e)	17
Rule 56(c).....	24
Fed. R. Civ. P. 56(e).....	24
Rule 59.....	15, 24

Others:

Title IV of the Employee Retirement

Income Security Act of 1974,.....	2
-----------------------------------	---

Administrative Procedure Act(APA).....	24
--	----

5 U.S.C. § 706(2)(A).....	2, 28, 31
---------------------------	-----------

Employee Retirement Income Security Act of 1974

("ERISA").....	2
----------------	---

FRCP Rule 60(b)(6).....	16
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**To the Honorable John G. Roberts, Jr. Chief Justice of the Supreme
Court of the United States and Circuit Justice for the District of Columbia**

The Applicant, respectfully in this Petition for writ of Certiorari and reversal to the United States District Court for District of Columbia. The Applicant respectfully requests that the Court treat this petition as a petition for a writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the District of Columbia in this case. The first Appeal in case No. 24-5029.

Applicant is without counsel and lacks a fair opportunity for fair trial.

This application filing provides that such an application will be granted “only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court. Applicant has thus in great details and a explanation to why this application should be granted as set forth below:

SUPREME COURT OF THE UNITED STATES

IN RE: Frank Deville,
Petitioner,

ON PETITION FOR A WRIT OF CERTIORARI

On Petition for a writ of Certiorari To the United States Circuit Court of Appeals
for the District of Columbia

To the Honorable John G Roberts, Jr., Chief Justice of the Supreme Court of
the United States and Circuit Justice for the Circuit

The Petitioners, respectfully petitions for a writ of Certiorari to the United States Circuit Court of Appeals for the District of Columbia . In the alternative, the Petitioner respectfully requests that the Court treat this petition as a petition for a writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the District of Columbia in this case.

Opinions Below

The applicant respectfully pray? That the Writ of Certiorari issue to review the judgment below.

The Appeals courts decisions are not published but is Attached to the App. A at 3a.The decision was made on April 30, 2024. The mandate was filed on June 26, 2024 Attached to the App. Z at 244a.The district court decision Memorandum/order was made on December 6, 2023 Attached to the App. B at 5a.The applicant filed for a review/reconsideration , denied on January 23, 2024 Attached to the App. D at 33a.

JURISDICTION

JURISDICTION

The judgment of the district court of columbia was entered in on December 12, 2023 and the review under rule 60 and rule 59 denied on January 23, 2024. A timely petition for rehearing was denied by the United States Court of Appeals on April 30, 2024. The jurisdiction of this Court is in-voked under 28 U.S.C. 1651(a) to issue "all writs" necessary and proper in aid of the Court's appellate -jurisdiction by exercising its control of the United States Court of Appeals and the United States District Courts to insure that "due process" rights, equal protection under the law and access to the courts to present evidence is properly afforded to the Devilles without prejudice or outside of the administration of justice or, in the alternative, 28 U.S.C. 1254(1).

This application filing provides that such an application will be granted "only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court. Applicant has thus in great details and a explanation to why this application should be granted as set forth below:

The writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretion-ary powers, and that adequate relief cannot be obtained in any other form or from any other court.

This petition is timely, filed within 90 days after entry of the order denying discretionary review.

Therefore, this court is the only forum for the

petitioners to secure relief. Accordingly, this case should be heard pursuant to S.C rule 10 to call for an exercise of this court's supervisory power, FRCP Rule 60(b)(6) which Provides that this court may relieve a party from a final

Judgment for any other reason justifying relief from the
Operation of judgements and for the mandatory conscience
based duty of Justices as seen in:

- Hughes v. United States, 953 F.2d 531.
- U.S. v. Throckmorton, 98U.S. 61.

Constitution and Statutory Provision

The Fourteenth Amendment to the
United States Constitution Arndt. 14, §
1; 42 U.S.C. § 1983;

"The Fourteenth Amendment to the United States
Constitution provides that a State shall not 'deprive any
person of life, liberty, or property, without due process of law.'
Arndt. 14, § 1. In 42 U.S.C. § 1983, Congress has created a
federal cause of action for "the deprivation of any rights,
privileges, or immunities secured by the **2803 Constitution
and laws.

28 U.S.C. § 1291, in relevant part:

"The courts of appeal (other than the
United States Court of Appeals for the
Federal Circuit) shall have jurisdiction
of appeals from all final decisions of the
district courts of the United States...,
except where a direct review may be
had by the Supreme Court."

Fed. Rules of Civil Procedure 60(b)(4)-

"(b) Grounds for Relief From a Final
Judgment, Order, or proceeding. On
motion and just terms, the court may
relieve a party or its legal repre-
sentative from a final judgment, order,
or proceeding for the following reasons
(4) the judgment is void."

Eleventh Circuit Rule 41~1(b)-

"(b) A mandate once issued shall not be

recalled except to prevent injustice.”

S.C rule 10

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons Such as appeals has decided an important question of federal law that has not been, but should be or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Rule 11. Certiorari to a United States Court of Appeals before Judgment

A petition for a writ of certiorari to review a case pending in a United States court of appeals, before judgment is entered in that court, will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court. See 28 U.S.C. § 2101(e).

FRCP Rule 60(b)(6)

Provides that this court may relieve a party from a final Judgment for any other reason justifying relief from the Operation of judgements and for the mandatory conscience based duty of Justices

Statement of the case

For more than a century laws concerning pro se litigants have given The subject matter in this case, in one form or another, has been dealing with the issues at different times over 3 years; Deville's claims have never changed but new and unripe and further evidence of abuse of the system has been added. The decision was made on October 18, 2021(App. E 37) with Pension Benefits Guaranty Corporation. Applicant appealed and the decision was made and requested for extension of time , which was granted and on November 10, 2022(App. Y 235) the PBGC submitted its decision.PBGC became trustees on 10/16/2020 but the plaintiff did not receive a letter until 6/3/2021, seven months after the termination of the plan. The plaintiff quickly requested calculation and application on 6/9/2021 but plaintiff never received an application. The applicant filed a complaint in the central district court on 12/21/2022 and transferred to the District of Columbia on April 10, 2023.

On applicant file for summary judgment which was denied on December 6, 2023(App. B at 5).Applicant request for review/reconsideration and the decision was made on January 23, 2024 (App. D at 33). The applicant appealed the decision and denison was made on April 30, 2024 (App. A at 3)and the mandate was filed in the case on June 24, 2024. The applicant has filed this timely Petition for review within the 90 day period after entry of the order denying discretionary review.

Upon the record according to *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. at 244,246,247, the Circuit Court of Appeals had the power and the duty to vacate its 1932 judgment and to give the District Court

appropriate directions. (P. 322 U. S. 247). Even if Hazel failed to exercise due diligence to uncover the fraud, relief may not be denied on that ground alone, since public interests are involved. P. 322 U. S. 246.

REASON FOR GRANTING PETITION

Applicants, respectfully requests that this Court issue a writ of mandamus/writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit required it to act and adjudicate every issue presented concurrently with this application for a writ of mandamus/petition for writ of certiorari. Should the Court determine that this case does not meet the criteria for a writ of mandamus, it should grant the petitioners the alternative request for a writ of certiorari for the reasons stated in that petition. A writ of mandamus is warranted when a party establishes that:

- (1) the "right to issuance of the writ is 'clear and indisputable,'"
- (2) the party has "no other adequate means to attain the relief" sought, and (3) "the writ is appropriate under the circumstances." *Cheney v. United States Dist. Court*, 542 U.S. 367, 380-381 (2004)(citation omitted). Mandamus is reserved for "exceptional circumstances amounting to a judicial 'usurpation of power.'" *Id.* at 380 (citation omitted). Those are the circumstances of this case.

Applicants filed an informal brief and need not comply with requirements according to FRAP 28(a). A writ of certiorari is warranted when a party establishes that (1) the "right to issuance of the writ is 'clear and indisputable,'" (2) the party has "no other adequate means to attain the relief" sought, and (3) "the writ is appropriate under the circumstances." *Cheney v. United States Dist.*

Court, 542 U.S. 367, 380-381 (2004)(citation omitted).Exceptional circumstances amounting to a judicial 'usurpation of power.' " Id. at 380 (citation omitted). Those are the circumstances of this case. Generally, a party must be a real party in interest to the litigation to have standing." Hill v. S.C. Dep't of Health & Envtl. Control, 389 S.C. 1, 22, 698 S.E.2d 612, 623 (2010) (internal quotation marks omitted).

A real party in interest for purposes of standing is a party with a real, material, or substantial interest in the outcome of the litigation." Id.

A. The court should grant a Mandamus/alternative Certiorari to resolve a circuit conflict on An important and recurring issue concerning Pro se litigants.

The acknowledged circuit conflict concerning the question presented in this case cannot be resolved without this Court's intervention. Given how frequently the question presented arises, the confusion it is currently causing across the country, and how important it is when it does arise, this Court should grant this petition now to resolve the conflict.

B. The courts are divided concerning right to a fair trial conflict

1. The due process clause applies to state agencies. U.S. Const., amend. XIV, § 1; Cal. Const. Art. 1, §7(a); Goldberg v. Kelly, 397 U.S. 254, 265-70 (1970); To assure that fairness is acquired Adjudicatory proceedings must adhere to a fundamental administrative adjudication bill of rights, including basic due process and fairness in accessible procedures, a public hearing, a neutral

presiding officer, a prohibition of ex parte communications and a written decision based on the record. See, e.g., Cal. Gov't Code §§ 11400-11470.50; 25 Cal. L. Revision Comm'n Reports 55 (1995), which took place in this case presented before the court, *Plaine v. McCabe*, 797 F.2d 713, 718-19 (9th Cir. 1986).

2. The conflict between dismissal of claims and protections of the Fourteenth amendment Rights balance.

An administrative determination will possess adequate judicial character if the agency adheres to basic notions of due process and fairness provided in any given situation as seen in *Castillo v. City of Los Angeles*, 92 Cal.App.4th 477, 484-86 (2001); *Khaligh v. Hadaegh*, 338 B.R. 817, 828-30 (9th Cir. B.A.P. 2006), *aff'd*, 506 F.3d 956 (9th Cir. 2007); Restatement (Second) of Judgments § 83.

a. Notice orders dismissing fourteen appeals without adjudicating any issues raised

- USCA, D.C. Circ. 15-5035 *Ellis v. Comm'r*
- USCA, D.C. Circ. 16-5233 *McNeil v. Comm'r*,
- USCA, D.C. Circ. 16-5308 *DePolo v. Ciraolo*
- USCA, D.C. Circ. 17-5054 *Crumpacker v. Ciraolo*,
- USCA, D.C. Circ. 17-5055 *McGarvin v. McMonagle*
- USCA, D.C. Circ. 17-5056 *Podgorny v. Ciraolo*,
- USCA, D.C. Circ. 17-5057 *DeOrio v. Ciraolo*
- USCA, D.C. Circ. 17-5058 *Dwaileebe v. Martineau*
- USCA, 9th Circuit 18-17217 *Ford v. USA*
- USCA, 8th Circuit 19-2985 *Kurz v. USA*
- USCA, 9th Circuit 21-35125 *Howe v. USA*.
- USCA, 9th Circuit 21-70662 *Howe v. The Hon. Nye*

3. A conflict nationwide, including the Columbia Circuit, exhibits a pattern and practice of refusing to adjudicate EVERY issue presented.

Courts of appeal refuse to adjudicate every issue

presented to them as seen in the underlying IRS record falsification program, which is expressly done to defeat the appellate power of this Court. Such vicious misconduct leaves "nothing to appeal."

The court ignored that the defendant violated 29 U.S.C. § 1342 by failing to disclose the terminated plan timely. According to the title the disclosure should have taken place no later than 15 days later but the plaintiff did not receive it until almost a year later.

I. MATERIAL FACTS WERE OVERLOOKED

At the time of the plan termination the plaintiff was aged 54. The plaintiff is now 58 years of age. The plaintiff has met the requirements for disability benefits because a manifestation of medical conditions prior to termination did exist (App. N at 131), which guarded the plaintiff to receive his disability benefits. The plaintiff worked from 1986-2015 (App. N 131a) equals 29 years of service multiplied by the rate of \$25.75. PBGC misinterpreted the plan concerning the freeze of the Exide Plan and a Retroactive pay should be given from 6/1/2016 to present. The plaintiff was hired way before the freeze so it did not affect him, the plan stated Participation in the plan was frozen as of June 24, 2007 (App. G at 79), so that no additional employees became participants after that date.

The causation of his disability was determined industrial (App. O at 132), because the applicant experienced toxic exposure while working at Exide Technologies. Mr. Deville engaged in extraordinary circumstances with a long history of toxic exposure long before systematic (App. O at 147). The plaintiff's disability was attributable to a disabling event that occurred before the plans DOPT. ALJ admitted in the Social Security Administration Decision dated 5/11/2021, since 6/1/2016 the claimant has had the following severe impairments: neurocognitive disorder; major depressive disorder; generalized anxiety disorder; vasculopathy; and status post heavy metal poisoning (20 CFR 404.1520(e)). Status post (S/P) is a term used in medicine to refer to a treatment (often a surgical procedure), diagnosis or just an event, that a patient has experienced previously.

PBGC wrongly stated that the plan pays plaintiff once he becomes 65 years of age but according to the plan summary, it should start at age 50 because plaintiff had at least 15 years vested at the time he became disabled (App. F at 52). PBGC misinterprets the freeze, employer frozen plan dated 6/24/2007, states that no additional employees can become participants in the plan after that date.

QME Dr Sanathara who was agreed upon by the plaintiff attorney and the defendant which states: according to labor code 3208.3 multiple episodes were presented long before plaintiff was laid off report 12/12/2017(App. O at 146-147). Dr Sanathara report 5/6/2016 diagnoses plaintiff with long term lead exposure, lead toxicity. Under 29 U.S.C. § 1344, the allocation scheme 'protects against evasion of the . . . limits on the [PBGC's] insurance benefits by use of pension fund assets to first pay uninsured benefits, under section 1344, plan assets are allocated to guaranteed benefits before they may be allocated to pay additional, non-guaranteed benefits.

Employees Retirement Income Security Act Formed to protect employees against the loss of those vested benefits. Exide Technologies Retirement Plan a defined benefit pension plan sponsored by Exide to provide its Employees with security in their retirement years. PBGC relies on the information it receives from a plan administrator unless PBGC'S audit of that information and it shows that it is incorrect, or a participant supplies PBGC with documents showing that the information is incorrect. PBGC collects participant information and copies of the plan's governing documents from the plan's administrator and audits that data but failed to in this case.

Whether to grant a motion for reconsideration under Local Rule 59 is a matter within the court's discretion." *Daghlian v. DeVry Univ., Inc.*, 582 F. Supp.2d 1231, 1251 (C.D. Cal. 2007). The plaintiff alleges error as seen in " *United States v. Fiorelli*, 337 F.3d 282, 338 (3d Cir. 2003). As such, Rule 59(e) can be used to pursue post-judgment relief on almost any grounds. The district court Has committed a clear error. The argument does provide a basis for reconsideration of the Court's December 6, 2023 order. The court does establish extraordinary circumstances warranting relief under fed. Rule civ. Pro. 59 or 60 but it neglected to act.

1. Erred in decision for relief for motion to alter judgment and motion

The Court may grant summary judgment if the motion and supporting materials, including the facts considered undisputed, show the movant is entitled to

summary judgment and if the responding party fails to properly address the moving party's assertion of fact as required by Rule 56(c). See Fed. R. Civ. P. 56(e).

for relief from judgment

Exceptional circumstances did exist, only three types of arguments provide an appropriate basis for a motion for reconsideration: arguments based on newly discovered evidence, arguments that the court has committed clear error, and arguments based on "an intervening change in the controlling law." 89 Orange St. Partners v. Arnold, 179 F.3d 656, 665 (9th Cir. 1999). A manifest showing does exist of a failure to consider material facts presented to the Court before such decision.

The responding party cannot point to mere allegations or denials contained in the pleadings. It is not enough for the non-moving party to produce a mere "scintilla" of evidence. Celotex Corp., at 252. Instead, the responding party must set forth, by affidavit or other admissible evidence, specific facts demonstrating the existence of an actual issue for trial. See KRL v. Moore, 384 F. 3d 1105, 1110 (9th Cir. 2004), Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986). 29 U.S.C. § 1344.

The district court erred by mistakenly overlooking that no manifestation had taken place which he was as seen and overlooked because not just SSA Act but also by a certified medical report, which clarified that the injury date 1986-2014 and the workplace (Exide Technologies)the reason for the injury.

The court ignored that the Defendant's ignored material evidence and acted out of concert with the regulation of ERISA as seen in Lands Council v. McNair, 537 F.3d 981, 987 (9th Cir.2008) (en banc), overruled in part on other grounds by Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7 (2008), as recognized by Am. Trucking Ass'ns v. City of Los Angeles, 559 F.3d 1046, 1052 (9th Cir.2009).

The Agency action is valid if the agency “considered the relevant factors and articulated a rational connection between the facts found and the choices made.” Arrington v. Daniels, 516 F .3d 1106, 1112 (9th Cir.2008), which violated the plaintiff due process rights. Agency action was contrary to constitutional rights, power, privileges unsupported by substantial evidence in a case and without observance of procedure required by law. The Agency violated the APA.

Agency action was contrary to constitutional rights, power, privileges unsupported by substantial evidence 12 U.S.C. § 1848 & 5 U.S.C. § 706(2)

The defendant failed to review all medical records in the Administrative Record

2. Plaintiff does satisfy the requirements for disability benefits Under the plan

The plaintiff became eligible for SSA benefits on 11/1/2016 but the plaintiff met the requirements of WCAB continuance trauma (CT) injury date 12/2/1986-8/14/2014 according to Dr. Sanathara legal medical report dated (App.O at 132) on 4/24/2015 Workers Compensation Claim Form (DWC-1 DOI is CT 12/2/86-11/15/2014),(app.AA at 270).

Dr. Brautbar went into more details to some other chemicals the plaintiff was exposed to Dr Brautbar Toxicologist legal report manifestation of illness due exposure to toxic metals mainly lead but also cadmium, arsenic, bismuth at Exide as seen in his report 5/6/2016 (App.P-152). A Medical examiner certified a statement for manifestation of illnesses, (App.R at 175-176), (App. P at 177-178) and (app.Q-181-182).

- a. According to the plan (app.F at 49)he is unable to engage in any employment(Dr Sanathara Addendum App. AA at 269)for which you are reasonably

qualified (based on the training, education and experience) because of a physical or mental impairment as seen in (app.F at 49).The applicant has a mental impairment according to Dr Sanathara a Panel Qualified Psychiatrist Medical Examiner opine that the actual events of employment are the predominant cause contributing to the psychiatric injuries (app.O at 145).

- b. Your impairment is expected to result in death or to last for a long-continued period as also met by the Applicant according to Dr Brautbar.
- c. You submit proof of disability under the Social Security act in which the applicant did and the Applicant gave evidence that went into details Explaining the details of the decision.
- d. Your impairment did not result from your Participation in a felony or from an intentional, self-inflicted injury and the applicant did give proof for the reason for his injury as seen in Dr Brautbar report(App R at 182).
- e. **The events causing your impairment and The manifestation** of your impairment Occurred while you were actively employed by the Company or an affiliate as seen in Social Security decision explanation (App. I at 90).Dr Sanathara (App. O at 135). and District magistrate central District judge admitted that the plaintiff manifestation of injury as seen in the Report and Recommendation (R & R) of United States Magistrate Judge dated 5/4/2020(App. K at 102).

The Magistrate Judge which states that the plaintiff sought for treatment for

his exposure-related issues where she quotes lead levels testing throughout plaintiffs employment with Exide Technologies ranging from 2.0 ug/lld to 29.0 ug/dl. (App. K at 104).

II. The Decision was an abuse of discretion concerning plaintiff's retirement Benefit under the plan

- a. The defendant failed to review all medical Records in the Administrative Record because if all records were reviewed It would had been evident that the applicant Had met the condition as seen above and the the district and the appeals court agreed with The defendant decision even if the decision was not supported by substantial evidence in the case.
- b. The defendant failed to investigate whether it was a manifestation of post medical condition when making the decision as seen above and The district court/appeal court upheld there Determination.
- c. The defendant acted not in accordance with law." 5 U.S.C. § 706(2)(A), allowing the court to Set aside only if "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.
- d. The defendant decision was an abuse of discretion because it ignored material evidence and acted Out of concert with the regulation of ERISA making The district court/appeals decision in violation of applicant civil rights as set forth in this petition.
- e. The defendant decision was arbitrary, capricious, an abuse of discretion U.S. Court of Appeals for the District of Columbia (D.C. Circuit) has suggested: "an agency can declare its understanding of what a statute requires without providing notice-and-

comment, but an agency cannot go beyond the text of a statute and exercise its delegated powers without first providing adequate notice-and-comment." the Supreme Court's decision of Motor Vehicle Manufacturers Association v. State Farm Auto Mutual Insurance Co.

1. In State Farm, the Court explained that in applying this "narrow" standard of review, "a court is not to substitute its judgment for that of the agency." Rather, a court should only invalidate agency determinations that fail to "examine the relevant data and articulate a satisfactory explanation for [the] action including a 'rational connection between the facts found and the choice Made.
2. "When reviewing that determination, courts must "consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." In general, the Court noted that an agency decision is arbitrary and capricious.
3. Fundamentally, the arbitrary and capricious standard requires only that an agency demonstrate that it engaged in reasoned decision making by providing an adequate explanation for its decision.
4. The agency must be able to provide the "essential facts upon which the administrative decision was based" and explain what justifies the determination with actual evidence beyond a "conclusory Statement which in tern may or may not offer benefits that's why the plaintiff leave the decision to the court. Though the

issues in this case are legal questions concerning benefit provisions of ERISA and PBGC's regulations, PBGC acted out of the course of its normal rationale. The defendant ignored medical evidence.

III. The courts conflict with decisions with other circuit courts Decisions

This court may consider whether the hearing officer's decision was adjudicatory and in writing with a statement of reasons, and whether that decision was adopted by the director of the agency with the potential for later judicial review as seen in *Pacific Lumber Co. v. State Water Resources Control Board*, 37 Cal.4th 921, 944 (2006) as seen in the fourth circuit. In this case it did not.

IV. Section 1983 states without a fair trial a Citizen Right to be heard is overruled

Petitioners' right to have the evidence reviewed with explanation has been Violated Evidentiary rulings present an opportunity for the judge to explain in plain English the basis for a ruling admitting or excluding a particular piece of evidence. In the Holloway case the appellate court reversed the trial court on the grounds that it had not recognized its discretion to give neutral guidance to Holloway. Reasonable steps, appropriate under the circumstances, to enable the litigant to be heard." (Cf. *Austin v. Valverde* (2012) 211 Cal.App.4th 546, 550 ["[f]ailure to exercise discretion is itself an abuse of discretion"].) Doing so would have served the interests of justice as well as conserving the resources of the court and its personnel. *Holloway*, supra, 242 Cal.App.4th at p. 14.

This Court erred in its prior order 86 and the Court's opinion prejudiced the plaintiff by denying the right to fair and equality to a full trial according to Article 10. *Ayre v. State*, supra note 10, 291 Md. at 158-60, 433 A.2d at 1153 (trial court has authority to strike its judgment anytime during term of court in which

order rendered); Christian v. State, 309 Md. 114, 120, 522 A.2d 945, 948 n. 3 (1987).

V. The circuit court erred by mistakenly overlooking material facts

The administrative determination should possess adequate judicial character if the agency adheres to basic notions of due process and fairness provided in any given situation.

1. The **circuit** court erred by mistakenly overlooking the defendants failure to comply with the judge's order as seen in (dkt. No. 75) for contempt under tile 18 and LCv 83.14(App. at D 30).
2. The **circuit** court erred by mistakenly overlooking the defendants failure to comply with the serving of the defendants appendix used for trial the plaintiff.
3. The **circuit** court erred by mistakenly overlooking the defendants failure to comply to LCv5.4(e)(1) because the plaintiff did not agree not to be served the sealed document by mail.
4. The **circuit** court erred by mistakenly overlooking that the plaintiff needed to file the entire record because The plaintiff relies upon the entire record.The full record should have been reviewed because the court must test Whether defendant conduct warrants violation of 5 U.S.C. § 706(2)(A)Garrison v. Colvin, 759 F 3d 995, 1009 (9th Cir. 2014).
5. The **circuit** court erred by mistakenly overlooking that there was minimal damages. The plaintiff denied benefits that should have been due because of a loss of benefits that should have been paid otherwise (App. at B 5), not minimal when it is inconsequential to the ultimate nondiability determination.
6. The **circuit** court erred by mistakenly overlooking that if there was*a manifestation of the physical and the mental disability must be incurred while a participant is an active employee*, which he was at the time of manifestation of his injury.
 - a. Lead levels reveals in 1986-2014 by Department of Human Health
 - b. The manifestation happened in early 2000 as seen in Dr Sanathara report dated 12/12/2017
 - c. Sanathara report dated 12/12/2017 Certified Medical report
 - d. Other Prior records exist


- e. The Certified Doctor determined that the injury was work related while working at exide.

VII. CONCLUSION

For this reason, a writ of mandamus should be granted. In the alternative, the petitioners has filed concurrently with this petition, a separate petition for writ of certiorari. Should the court determine that this case does not meet the criteria for a writ of mandamus, it should grant the petitioners alternative request for a writ of certiorari for the reasons this petition, The petitioner request for the court to grant the petition, and reverse the court of appeals' decisions and any mandates filed in the case.

Respectfully submitted.

Frank Deville
Petitioner(s)



Frank Deville

ORIGINAL

NO. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

IN RE: Frank Deville,
Petitioner,

v.

United States of America,
Respondent.

On Petition for a writ of Certiorari To United States Supreme Court from
the United States Circuit Court of Appeals for the District of Columbia

CERTIFICATE OF WORD COUNT

Applicant(s), Pro Se

Respectfully submitted,
Frank Deville
frankdeville4734@gmail.com
255 S. Glendora Ave
Suite 2042
Glendora Ca. 91740
(424)361-6933

CERTIFICATE OF WORD COUNT

As required by Supreme Court Rule 33.1(h),
I certify that the document contains 7,143 words, excluding the parts of
the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct
and that everything stated in the petition is true and correct to the best
of my ability.

Executed on September 26, 2024.


Frank Deville