

IN THE
Supreme Court of the United States

LANLAN LI,

Petitioner,

v.

FRESENIUS KABI USA, LLC,

Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT**

**BRIEF IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI**

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QUESTIONS PRESENTED

1. Whether Petitioner has established there is a split in the Circuit Courts on whether an “essential job function” is a question of fact.
2. Whether Petitioner has established the Seventh Circuit and many other Circuits are allowing courts to grant summary judgment by (1) misconstruing the pretext analysis; (2) overly crediting employer testimony, and (3) overlooking failures to engage in the interactive process required under the ADA.

CORPORATE DISCLOSURE

Respondent Fresenius Kabi USA, LLC is a wholly-owned subsidiary of Fresenius Kabi Pharmaceuticals Holding, LLC (“Holding”). Holding is a wholly-owned subsidiary of Fresenius Kabi AG, whose parent company is Fresenius SE & Co., KGaA, a publicly-traded company in Germany.

No publicly held company owns 10% or more of the Respondent’s stock.

RELATED PROCEEDINGS

1. *Li v Fresenius Kabi USA, LLC*, Case No. 23-3286 (7th Cir. 2023)
2. *Li v Fresenius Cabi USA, LLC*, 20-cv-07110 (N.D. Ill. 2020)

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INTRODUCTION

In responding to Respondent's motion for summary judgment, Petitioner failed to submit evidence to support her claims. As a result, the District Court granted Respondent's motion for summary judgment, and the Seventh Circuit affirmed that ruling. Based on a purported conflict in the Circuit Courts that does not actually exist, Petitioner now seeks to have this Court review those rulings. This case presents the essence of a fact-bound dispute that does not give rise to this Court's intervention under Supreme Court Rule 10.

STATEMENT OF THE CASE

Petitioner attempts to paint this case as one involving diverging Circuit Court opinions in the application of the law regarding the Americans with Disabilities Act ("ADA") or failure of the lower courts to follow established precedent. However, this case actually stems from whether or not there was a material question of fact, specific only to this particular Petitioner, and not one of wide-ranging legal implications appropriate for review by this Court. In the words of the District Court in denying Petitioner's motion for reconsideration of its summary judgment ruling, this is an instance in which Petitioner simply "disagrees with [the] Court's original decision but does not demonstrate [the] Court erred in its decision."

Petitioner Lanlan Li, a scientist of Chinese descent, was hired on October 20, 2014, as a Senior Scientist for Respondent Fresenius Kabi USA, LLC. Her job duties included the development and experimental research for the production of pharmaceutical products. She

conducted specialized research, including the testing of bioassays in a lab, seated at a bench. In July 2019, Petitioner suffered a back injury which restricted her from performing any “bench work.” Between August 2019 and May 2020, Respondent provided Petitioner with various accommodations for her injury, including shortened hours, frequent breaks, and a modification of duties. When there was no light duty work available, Respondent provided Petitioner with short-term disability leave. By May 2020, after Petitioner’s leave had expired and she remained unable to perform the essential functions of her job, specifically bench work in the lab, Petitioner’s employment was terminated by Respondent.

Petitioner then filed claims of discrimination, failure to accommodate, and retaliation based on her disability, national origin, sex, and age under both state and federal law. Petitioner asserts that at the District Court level, she argued her inability to perform “bench work” did not preclude her from fulfilling the essential functions of her job as a Senior Scientist for Respondent. She also asserts that the District Court accepted Respondent’s testimony that “bench work” was an essential function and dismissed her evidence to the contrary when it granted Respondent’s motion for summary judgment. This misrepresentation of the District Court’s finding now forms the primary basis of her Petition. Contrary to her assertion, the District Court did not weigh the factual evidence before it and make a determination on the facts as Petitioner claims; rather, the District Court concluded there was no factual dispute because the Petitioner did not submit any evidence into the record under Rule 56. The District Court examined Petitioner’s disability and retaliation claims on the merits and found that she cited to no record evidence to support

her allegations or contradict the evidence submitted by Respondent. The District Court further found that Petitioner failed to exhaust her administrative remedies, making some of her claims time barred, and also failed to comply with and violated the District Court's local rule on fact statements opposing summary judgment.

Petitioner appealed and the Seventh Circuit affirmed the District Court's decision granting summary judgment, finding that Petitioner did not raise a dispute of material facts as to any of her claims against Respondent. The Seventh Circuit recognized Respondent's judgment of whether a job function is essential is not necessarily controlling, but the Seventh Circuit then determined that Petitioner did not offer any evidence into the record to raise a genuine dispute as to any of Respondent's assertions of fact. Because there was no dispute of material fact in the record, the undisputed evidence showed that Petitioner could not perform the essential functions of the job and therefore the District Court properly granted summary judgment, finding she was not a qualified individual under the ADA, subject to its protections. Following briefing and oral argument, the Seventh Circuit affirmed the District Court's granting of Respondent's motion for summary judgment.

REASONS FOR DENYING THE PETITION

I. There is No Conflict Among the Circuits on the Question Presented by the Petitioner

The ADA requires that an employee be able to perform the essential functions of her job, with or without an accommodation, in order to be a qualified employee

under its protections. 42 U.S.C. § 12101 *et seq.* Petitioner contends that the Seventh Circuit’s decision in this case was inconsistent with its prior holdings on whether an employee’s job function is essential is a question of fact for a jury. She also asserts that there is a difference between Circuit Courts as to whether an essential job function is a question of fact and therefore not appropriate for summary judgment. This is false. The Petitioner correctly points out that the Sixth and Seventh Circuits have held that the question of whether a job function is essential is an issue of fact, not a question of law, and that the Fourth Circuit has held that employers are entitled to “considerable deference.” *See Brown v. Smith*, 827 F.3d 609 (7th Cir. 2016); *Elledge v. Lowe’s Home Centers, LLC*, 979 F.3d 1004 (4th Cir. 2020). These are not conflicting positions; all three circuits recognize that essential job functions are a question of fact. Petitioner points to language in the Fourth Circuit’s ruling in *Elledge*, where the court there merely noted the statutory requirement set forth in 42 U.S.C. § 12111(8) provides “in any determination of a position’s essential functions, consideration shall be given to the employer’s judgment.” But the court there did not apply a different standard nor find that an essential job function is a question of law. *Id.* As a result, there is no conflict between the Circuits on this issue to reconcile.

Contrary to Petitioner’s assertion, the lower courts here applied the standard that the determination of whether an employee’s job function is essential is generally a question of fact. But the issue in this case is that Petitioner did not submit any facts into evidence for the lower courts to evaluate on the issue of essential job functions. Both the District Court and the Seventh Circuit outlined in their decisions that the reason that

the employer's definition of an essential job function was controlling in this case is because Petitioner did not present any evidence to the contrary. Thus, like any fact issue, a failure to submit such evidence in response to a properly supported summary judgment motion is fatal to a plaintiff's claim. This is not an issue of profound or widespread importance, nor is it an issue where lower courts have reached conflicting decisions. Rather, the fact that Petitioner did not submit any facts into evidence to contradict the Respondent's evidence is both an individual failure and one that is unique to the issues in this case. There is no examination of Circuit Court rulings that could correct Petitioner's failure to present evidence to raise a genuine issue of material fact to survive summary judgment for Respondent.

II. The Seventh Circuit's Decision Does Not Conflict With Decisions By This Court

Petitioner next asserts that the lower courts' granting summary judgment on her claims contravenes the standard for granting inferences in favor of the non-movant as outlined by this Court in *Anderson v Liberty Lobby Inc.*, 477 U.S. 242 (1986). Petitioner argues that the lower courts accepted Respondent's evidence without weighing it against the "substantial counterevidence" presented by Petitioner, as is required by *Anderson*. The problem with this argument is that both the District Court and the Seventh Circuit were clear—and correct—in their rulings that while the evidence should be weighed in the light most favorable to the Petitioner, Petitioner did not put any evidence into the record to be examined, let alone "substantial counterevidence."

Petitioner concludes, without citing any support, that the holding in *Reeves v Sanderson Plumbing*, 530 U.S. 133 (2000), which states that courts may not make credibility determinations or weigh the evidence, has been repeatedly ignored by the lower courts and that courts are engaging in fact-finding when they rule on motions for summary judgment. Whether or not that is the case, which Respondent denies, it is not relevant here. Neither the District Court nor the Seventh Circuit rejected the *Reeves* standard, nor did they weigh the evidence and determine that Respondent's evidence was more credible than Petitioner's evidence. What they instead found was that the Petitioner did not submit any evidence. Without the requisite evidence in the record to establish a genuine material issue of fact, the District Court properly ruled as a matter of law and dismissed Petitioner's claims.

III. Petitioner Seeks Review on a Question Not Presented by This Case

Finally, Petitioner asserts that there is an essential component of the ADA which requires clarification by this Court. Specifically, Petitioner states that the ADA's interactive process requirement regarding accommodations must be clarified by this Court, despite the fact that generally a claim for a break-down in the interactive process is not an independent basis for liability. Yet Petitioner does not state that there is either a conflict or a confusion about this requirement in any of the underlying decisions in this case. Instead, Petitioner once again makes a factual argument. She does not assert that there is a question of whether an employer must engage in the interactive process, but instead questions whether the employer adequately did so in this case. This

is a factual issue, not a legal issue properly before this Court. Petitioner claims that the employer did not engage in the interactive process and that the Seventh Circuit dismissed the necessity with doing so, thereby setting a “dangerous precedent” regarding the application and interpretation of the ADA. The Seventh Circuit examined whether accommodations were made for the Petitioner’s restrictions and, as outlined above, found that Petitioner submitted no evidence into the record to create a material dispute of fact on this point. Because there was no evidence contradicting Respondent’s factual evidence in the record, the Seventh Circuit properly determined that the record demonstrated Respondent provided Petitioner with numerous accommodations following her injury, satisfying the ADA’s requirement.

Once again, there is no overarching discrepancy in how the lower courts ruled with respect to the ADA and the required interactive process between employers and employees. Petitioner attempts to paint this case as an example of how lower courts are eroding the requirements of the ADA to the detriment of disabled individuals across the country. This statement is a misapplication and misinterpretation of the lower courts’ holdings, both factually and legally. In the present case, the Respondent argued that it did engage in the interactive process with the Petitioner and that it granted various accommodations to her for over nine months. Petitioner claimed that she wanted different accommodations, such as a promotion (which is not a reasonable accommodation), and therefore there was no interactive process. When these arguments were presented to the lower courts, both the District Court and the Seventh Circuit properly found that the Petitioner failed to contradict the evidence presented by

the Respondent. At no time did the lower courts rule that the interactive process was unnecessary or no longer a component of the ADA. They simply found, quite properly, that Petitioner did not submit any evidence into the record in this regard and therefore only Respondent's evidence could be considered. This case is no more than a fact-bound dispute and resolution will not be of importance to anyone other than the immediate parties. There is no misapplication of the law, nor is it an example of contradictory holdings by the lower courts, and no reason for this Court to accept the case.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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