

FILED: March 2, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-1863
(1:16-cv-04025-JFM)

ROSE GLORIOSO-BRANDT
Plaintiff – Appellant

v.

ERIC HARGAN, Acting Secretary, Dept. of Health
and Human Services
Defendant – Appellee

MANDATE

The judgment of this court, entered 1/8/2018, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/PATRICIA S. CONNOR, CLERK

FILED: January 8, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-1863, Rose Glorioso-Brandt v. Eric Hargan
1:16-cv-04025-JFM

NOTICE OF JUDGMENT

Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

PETITION FOR WRIT OF CERTIORARI: To be timely, a petition for certiorari must be filed in the United States Supreme Court within 90 days of this court's entry of judgment. The time does not run from issuance of the mandate. If a petition for panel or en banc rehearing is timely filed, the time runs from denial of that petition. Review on writ of certiorari is not a matter of right, but a judicial discretion, and will be granted only for compelling reasons. (www.supremecourt.gov)

VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED COUNSEL: Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney

Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available on the court's web site, www.ca4.uscourts.gov, or from the clerk's office.

BILL OF COSTS: A party to whom costs are allowable, who desires taxation of costs, shall file a Bill of Costs within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

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UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-1863
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ROSE GLORIOSO-BRANDT
Plaintiff – Appellant

v.

ERIC HARGAN, Acting Secretary, Dept. of Health
and Human Services
Defendant – Appellee

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/PATRICIA S. CONNOR, CLERK

UNPUBLISHED

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

No. 17-1863

ROSE GLORIOSO-BRANDT
Plaintiff – Appellant

v.

ERIC HARGAN, Acting Secretary, Dept. of Health
and Human Services
Defendant – Appellee

Appeal from the United States District Court for
the District of Maryland, at Baltimore. J. Frederick
Motz, Senior District Judge. (1:16-cv-04025-JFM)

Submitted: November 16, 2017

Decided: January 8, 2018

Before GREGORY, Chief Judge, and TRAXLER
and KEENAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Rose Glorioso-Brandt, Appellant Pro Se. Evelyn Lombardo Cusson, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in
this circuit.

PER CURIAM:

Rose Glorioso-Brandt appeals the district court's order granting summary judgment in favor of the employer in Glorioso-Brandt's employment discrimination action. "[W]e review de novo the district court's order granting summary judgment." *Jacobs v. N.C. Admin. Office of the Courts*, 780 F.3d 562, 565 n.1 (4th Cir. 2015). "A district court 'shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Id.* at 568 (quoting Fed. R. Civ. P. 56(a)). "A dispute is genuine if a reasonable jury could return a verdict for the nonmoving party." *Id.* (internal quotation marks omitted). In determining whether a genuine issue of material fact exists, "we view the facts and all justifiable inferences arising therefrom in the light most favorable to . . . the nonmoving party." *Id.* at 565 n.1 (internal quotation marks omitted). However, "the nonmoving party must rely on more than conclusory allegations, mere speculation, the building of one inference upon another, or the mere existence of a scintilla of evidence." *Dash v. Mayweather*, 731 F.3d 303, 311 (4th Cir. 2013).

We have reviewed the arguments pressed on appeal in conjunction with the record, which includes the transcript of a five-day administrative hearing. On this record, we find no reversible error in the district court's rejection of Glorioso-Brandt's employment discrimination claims. Accordingly, we affirm the district court's order. See *Glorioso-Brandt v. Price*, No. 1:16-cv-04025-JFM (D. Md. July 13, 2017). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil No. – JFM-16-4025

ROSE GLORIOSO-BRANDT

v.

THOMAS E. PRICE, M.D.

ORDER

For the reasons stated in the memorandum entered herewith, it is, this 13th day of July 2017.

ORDERED

1. Defendant's motion to dismiss or, in the alternative, for summary judgment (document 10) is granted, and
2. Judgment is entered in favor of defendants against plaintiff.

/s/J. FREDERICK MOTZ
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil No. – JFM-16-4025

ROSE GLORIOSO-BRANDT

v.

THOMAS E. PRICE, M.D.

MEMORANDUM

Plaintiff has instituted this *pro se* action for employment discrimination. She suffers from Bilateral Carpal and Cubital Tunnel Syndromes. Thomas E. Price, M.D., Secretary of the Department of Health and Human Services, has filed a motion to dismiss or, in the alternative, for summary judgment. The motion will be granted.

The record is clear that plaintiff's supervisor extended to plaintiff several accommodations, including an ergonomic work site, making sure plaintiff was not required to perform repetitive typing or writing, allowing for the performance of any necessary lifting (such as access manuals or books) by an assistant, and upgrading the computer to allow plaintiff to use a computer program called "Dragon Naturally Speak." The additional request made by plaintiff for work-at-home on Fridays ("consultation only") was not, however, extended to plaintiff. Plaintiff performed more than consulting work, and accommodating this request would have required other employees of defendant to assume other duties for plaintiff.

Plaintiff has also filed claims for defamation and for violation of the Fair Labor Standards Act but has provided no evidence that would support those claims.

On these facts defendant committed no actionable wrong against plaintiff. Accordingly, Dr. Price's motion to dismiss or for summary judgment will be treated as one for summary judgment and, as such, will be granted.

Date: July 13, 2017

/s/J. FREDERICK MOTZ
United States District Judge

PERJURY AND CASES

United States Code: Perjury, 18 U.S.C. (Suppl. 5 1946). TITLE 18.-CRIMES AND CRIMINAL PROCEDURE—Chapter 79-PERJURY—Sec. 1621. Perjury generally. Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall, except as otherwise expressly provided by law, be fined not more than \$2,000 or imprisoned not more than five years, or both. (June 25, 1948, ch. 645, § 1, 62 Stat. 773, eff. Sept. 1, 1948.)

“In addition, the law is also clear (and helpful!) in the Fourth Circuit that the knowledge of Government witnesses such as police officers is attributed to the prosecution even where the individual prosecutors have no personal knowledge that their witness is lying on the stand on a material issue. *See Boyd v. French*, 147 F.3d 319, 329 (4 th Cir. 1998), *cert. denied*, 119 S.Ct. 1050 (1999); *see also Strickler v. Green*, 527 U.S. 263, 301 (*Brady* rule applies to evidence “known only to police investigators and not to the prosecutor,” quoting from *Kyles v. Whitley*, 514 U.S. 419, 438 (1995)) (1999) . . . Typically, the Government will contend that a different test applies and that defense counsel must show that “the newly discovered evidence would probably produce an acquittal.” *See United States v. Custis*, 988 F. 2d 1355, 1359 (4th Cir. 1993) (listing five part new trial test), *sentence aff’d on other grounds*, 511

U.S. 485 (1994) . . . The Fourth Circuit cases such as *Wallace*, *Cooke*, and *Burkes* could not be clearer that where a Government witness is shown after trial to have committed perjury in a trial that a new trial in the case where the perjury occurred is required if disclosure of the perjury could have produced a different result.”

“The United States Supreme Court has repeatedly held that the right to testify does not include a right to commit perjury. *Nix v. Whiteside*, 475 U.S. 157, 173 (1986); *United States v. Havens*, 446 U.S. 620, 626 (1980) . . . In imposing the enhancement, the sentencing court should either make a separate and independent factual finding to address each element of the perjurious trial testimony or make a finding concerning an obstruction of justice that encompasses all of the factual predicates for a finding of perjury. *Id.* at 95 (“The court finds that the defendant was untruthful at trial with respect to material matters in this case. [By virtue of her failure to give truthful testimony on material matters that were designed to substantially affect the outcome of the case, the court concludes that the false testimony at trial warrants an upward adjustment by two levels.”) The government need not demonstrate that the defendant’s false testimony was particularly flagrant. *United States v. Thompson*, 962 F.2d 1069, 1071 (D.C. Cir. 1992), *cert. denied*, 507 U.S. 974 (1993). False testimony before the grand jury also warrants the obstruction enhancement. *United States v. Gordon*, 61 F.3d 263, 270 (4th Cir. 1995).

JUDGE SHUBOW'S INDISCRETIONS

The internet states that the "Administrative Law Judge Program" is nationwide in scope and has a very high degree of sensitivity and importance to the Government and to the public. Judge Shubow was not fair and did not show sensitivity to me at the hearings.

The following are all in Vol 1 unless otherwise stated.

1. On pg 348, I told Judge Shubow that he was answering the questions that I was asking David and David should speak for himself and Judge Shubow says "I just stated what he stated. I restated it."

2. On pgs 392-395, I was trying to prove a discrimination incident by questioning my supervisor and Judge Shubow said it was a month after his denial of my request and there is no relevancy to this. Judge Shubow would always cut me off and never let me prove any discrimination. Judge Shubow wanted me to only ask questions concerning my reasonable accommodation.

3. I had several questions to ask David that was addressed in my Deposition that I had to skip because Judge Shubow would not allow me to ask. The Deposition was on June 15, 2010, and Mr. Weld, Agency's attorney, asked the questions. The following shows blatant bias by Judge Shubow for the Agency. Vol 3, pg 97, Judge Shubow stated that he never said I could not bring up my Deposition, that I misunderstood and he would never say that. Pg 98, Judge Shubow enters my Deposition given on 2010 as an exhibit. On pg 99 and 100, Mr. Weld is allowed to enter questions concerning my Deposition. On pg 377, Ms. Sicard is also allowed to ask questions concerning my deposition. Pgs 396-397, I state that I am getting to a question

about my Deposition. Judge Shubow states that I can't talk about 2010 because it is over 2 years later. I asked if Mr. Weld will be able to bring up questions concerning my deposition and Judge Shubow's response was to not ask him questions about what Mr. Weld may or may not ask. On August 3, Vol 4, pgs 20-24, I told Judge Shubow in my testimony that I needed to state on the record that I was never given the opportunity to ask any questions or provide a statement concerning my Deposition. You allowed the Agency, not me.

Vol 5, pgs 93-111—On the final day of the hearing, August 18, 2016, I stated that I never signed the Deposition. I never had a chance to read or make changes. I never received a form, approved or validated anything written in my Deposition. I cannot authorize the validity of the Deposition because I don't remember what I said because I took Oxy. At the start of the Deposition, pgs 7& 8, I stated that I took Oxy at 7:10 a.m. I stated because of Oxy, I experienced racing thoughts and confusion. At that moment I was feeling drowsy, but decided to proceed. I state on pg 115 that I was not comfortable because my hands were not elevated enough and the burning sensation was occurring. I also stated that I did not want to waive my rights and on pg 117, "I would like the opportunity to read it before I sign."

The second requirement in the Rules and Regulations Across the States, Maryland's Notary Commission Requirements states, "Be of known good character, integrity and abilities." My ability to testify was compromised because of Oxy and the side effects. I remember crying, being uneasy, disoriented, in pain, and confused that day. Mr. Weld knew I took Oxy and anyone reading the Deposition can clearly detect my confused state of mind. I truly believe Mr. Weld was

trying to take advantage of my situation and should have rescheduled the Deposition.

See Rule 2-415, Deposition Procedure. The Agency did not produce a certified copy of my signature agreeing or confirming the validity of the Deposition. Also, since there is no copy of my signature, the Agency would have had to produce the officer signing the transcript, certifying the date that the transcript was submitted to me with the required notice stating that the transcript was not signed and returned within the time allowed. HHS did not produce any signatures verifying the validity, therefore, the Deposition cannot be used as a legal document.

4. Vol 3, pgs 195-200, I told David/HHS about problems with my accoms, etc. I also talked to David about excerpts in the ADA, etc. Judge Shubow kept insisting that I needed to prove this by showing him emails or something in writing. I told him that talking was my evidence and why did I have to provide something in writing that no one else is asked to provide. Did he think I was lying? I showed Judge Shubow an email from Anita Pinder, OEO dated April 10, 2008, that states, "If you are requesting work-at-home, talk with your first-line supervisor." Talking to David is also checked on my Request form in ROI, Ex 20.1. I told Judge Shubow that I followed the same protocol that all Federal employees had to follow. Michele Lenkiewicz, EEO Specialist, also testified to the fact that emails are not needed when reporting a problem concerning accoms, etc. I told Judge Shubow in my closing that there is no law or regulation that states that I or anyone in the Federal Government needs to document in writing or email about a problem they may be having. Judge Shubow implied at the hearings that I needed emails as proof, something no other Federal

employee is asked to provide. This is discrimination. Earlier in the day, Vol 3, pgs 47 & 48, and you may call me cynical, but I feel Judge Shubow talked to David and asked him to testify and not recall getting emails or updates on what Denise and I were doing so he could lead into what I stated above.

5. Judge Shubow kept saying that the subject line in Dr. Garg's letter (Ex 5, pg 3) was the main reason that David denied my Request. I told him that no one should ever make a crucial decision by reading the subject line. The letter explains in detail what was needed and why. Also, the fact that I discussed this Request in detail with both David and HHS before submitting. I told him, if David or HHS had any questions, they should have asked me before denying my Request. Also, Michele stated in her testimony that reading the subject line alone and seeing Friday, consultation-only is not reason enough to deny someone's reasonable accommodation. The entire document and all material submitted should be considered when a reasonable accommodation is submitted.

6. I am very upset, uncomfortable, and disturbed with the line of questioning in the transcripts in Vol 3, pgs 419-421. Judge Shubow and I were discussing consultation and he was trying to get me to agree with him that my "regular work is not consulting." He said something in Latin that means, the thing speaks for itself. I kept stressing my views and stated "what I'm saying is not Latin . . . fact that David and CMS, Michele Lenkiewicz . . . were informed of the consulting services that I'm talking about." Then Judge Shubow states "Why would they lie?" I stated, "Why would I lie?" We both kept saying this several times. Judge Shubow was inappropriate with that line of questioning. Why is Judge Shubow who is suppose

to be fair questioning me and trying to provide HHS' burdens of proof? This is the job of HHS' lawyer, not Judge Shubow.

7. I provided David with a workable solution and backup solutions that would have accommodated all concerned if he approved my Request. When I posed that question, Judge Shubow would not allow David to respond and goes on to deflect David from answering the question. I asked David a similar question in pgs 418&419 about providing him a workable solution and again Judge Shubow would not allow David to answer. Judge Shubow said I had to skip the questions that he said were irrelevant and anything that dealt with 2009, pg 310. Judge Shubow would not allow me to ask pertinent questions that would have exposed David's discrimination.

The above, the question portion, the text portion of the Petition is evidence that Judge Shubow showed bias towards the Agency. There are so many more examples. I feel that I have highlighted above, many that support my burdens of proof on the complaint in my Civil Suit and that my Civil Rights were violated due to the fact that the "Hearings Were Unfair and Judge Shubow Showed Biased Towards the Agency."

EXAMPLES OF VERBAL, MENTAL, & PHYSICAL ABUSE AND DISCRIMINATION

Government Laptop—David and I went to mediation around March 2009. The mediator informed David that allowing me to work at home one day a week would be the right thing to do. On the walk back to our office David stated that he would be approving Wednesdays work at home and implied that it is the same thing that I requested, only a different day. About a day or two later OEO sent me papers stating the agreement reached by David and I and wanted me to sign off on my discrimination case. I refused to sign off and stated that I am still proceeding with the discrimination case. I informed OEO that David allowing me to work at home was over a year from my Request. I told them that as a result of David denying my Request, I was suffering severe nerve pain, etc. I was depressed every day and taking Oxy which made me suffer side effects. I was suffering needlessly and all because David denied my Request. I was forced to perform repetitive motion, etc., due to the ineffectiveness of the accoms/mods, especially the ineffectiveness of Dragon.

I noticed after that call with OEO, David became more distant and whenever we had interactions, he always seemed agitated with me. I waited for about three days after talking with OEO and telling them I was not going to drop my discrimination case. I called David to see when I could start working from home. He was upset and stated that I had to wait until I received my government laptop. Everyone in the Agency were receiving new government laptops. The laptop was in addition to our already existing computer at our work station. These laptops were mobile and would have all

the information that was at our work station. We were encouraged to use them when traveling and working from home.

I told David during that call that I could use my personal laptop until I received the government laptop. I reiterated that I was in daily severe chronic pain and had increased my Oxy, etc., and the side effects were bad and I was depressed daily. David repeated that I should wait. I mentioned to him that Ed Zeller and Denise, that David supervised also, (Denise testified to this in Vol 4, pgs 198&199) were already working at home using their personal equipment for about a year. He stated that I had to wait.

I don't think Ed Zeller was disabled and Denise disclosed at the hearing that she wasn't disabled. I don't know why, but David has an issue with me being disabled. He was also upset because I didn't stop the discrimination action. I had to wait 3 additional months (approved June 2009) to work from home all because David said so! There was no other reason that he provided me. Denise and Ed were working at home using their personal equipment but he said I could not. This is discrimination! This is also physical and mental abuse! David knew I was in daily chronic pain and taking Oxy, etc.

Emails/Handwritten Log—David can not claim he wasn't aware of my pain, my drug usage and the side effects because I would send him emails almost daily. HHS is also aware and have copies of a few of the emails sent to David in the ROI—1.16-1.19 (9/12/08, 7:35 AM—"In a lot of pain today. Had to take my pain med. Will be going to HU (health unit) soon." 9/10/08, 1:12 PM—"Going to health unit. FYI—Took pain med. at lunch and feeling dizzy and having a hard time focusing." 9/03/08, 8:25 AM—"FYI—I am

in a lot of pain today. Will try to do the least amount of keyboarding today and go to the health unit. I completed this survey." 8/22/08, 7:15AM—"FYI—I am in a lot of pain today. Will try to limit movement and go to health unit in a.m."

HHS also included my handwritten daily log (log) in the ROI—1.31-1.45 (daily writings from July 15th thru September 12th 2008.) I kept this log that I started on July 15, 2008, until my retirement in 2010. I established this log for background and proof and it became like therapy for me. David and HHS kept ignoring my complaints about my disability, the pain, the ineffectiveness of the mods/accoms, my drug usage and the side effects, etc. These short entries are my raw feelings and describe what I went thru each day and my difficulties and obstacles. HHS included parts of the log in the ROI. David denies ever receiving a copy of the ROI but I am almost positive that he did. Judge Shubow wouldn't allow me to pursue that line of questioning with David or any other witness. David and HHS were aware of all my difficulties and problems. They had emails and my log and they included this in the ROI. Did anyone read or consider this information in the ROI? Reading this puts me back in that same space and it is only documenting 2 months. It got a lot worse. HHS put this information in the ROI for a reason. This log is me shouting for David and HHS to please hear me. I am an abused person establishing my record. David nor HHS ever approached me to discuss a resolution or to even discuss the problems that I was having.

I was taking Oxy, etc. that left me with terrible side effects. I felt alone and scared and the depression was devastating. I felt like no one at HHS understood or cared. Writing down my daily feelings made it real. I

really feel that David and HHS don't see the problem, therefore, they feel it is not real and maybe it is all fake. The letter dated August 26, 2008, from Robert A. Smith, M.D., ROI—8.6-8.9, pg 2, 3rd paragraph, he states "Examination of the upper extremities reveals no visible deformity." David and HHS couldn't see no visible problem so they didn't believe there was a problem. It still doesn't excuse them from educating themselves. Ignoring my needs, concerns, problems, disability, etc. is still discrimination. Ignorance in this case is not bliss, it is discrimination!!!

Ed Zeller's Award—Ed Zeller (Ed) received an award on October 8, 2008, for "monitoring and processing CMSO's (Center for Medicaid and State Operations) contracts." Ed and I were both supervised by David. Ed monitored and processed Survey and Certification and CLIA contracts and the POs (about 10) that Ed worked with were also supervised by David. I monitored and processed the remainder of the contracts and worked with over 30 POs in my Center. Ed received the award at a CMSO Award Ceremony. After the Ceremony, I received many calls from numerous POs and CMSO staff. They asked questions like, why didn't you receive an award and is this David's way of saying Ed is taking over your job? I had to inform the callers that I still monitor and process CMSO contracts except for S&C and CLIA, as always. Since David testified that he had no problem with my work and I did a good job, why not at least an acknowledgement or a "thanks" at the Ceremony, just recognizing me as his staff member that also monitored contracts. He didn't have to give me an award. The right thing to do, was for David to specify the award was for the contracts that Ed monitored. It was insensitive of David to give Ed Zeller an award for something that POs

and CMSO staff know that I am also responsible for processing and monitoring in the Center. This was embarrassing and harassing. Another one of David's jabs at my character!

Verbal Abuse—After I submitted my request for accommodation, I had meetings with David. I would ask the status of my request. There was one time when I asked, he stated that he “felt like a moving target.” I started crying and held my hands up with my palms facing me and said, how do you think I feel? I then left because I was so upset. Knowing I was upset, he never talked to me about it or apologized to me and never approached me to explain what he meant by that statement. That statement upset me and was devastating. It was discrimination and verbal abuse!!!

Pgs 385-388—The following analogy supports my claim that David didn't read past the top of pg 1 of my PD, Ex 6, where David made his handwritten changes to reflect that I was transferred to his staff. I asked him the question, can you agree that I was CMSO's “lead analyst” in managing, reviewing, and monitoring all projects, except for the projects that Ed monitored. His answer was that he didn't believe, ***I was the lead analyst***. I abruptly asked, then who else did it? Denise testified to the fact that I was the lead analyst in my Center and the only accomplished expert that could do my job (Vol 4, pg 188). His condescending statement is discriminating and demeaning.

I created, monitored, updated, and revised, etc. the information and funding in my acquisition charts that contained such accounts as: Administrative, Research, Admin IT, Ticket to Work, Healthy Start, Grow Smart (hereafter HSGS), etc. The HSGS contract, I also served as the lead PO creating and enforcing that contract. I was the management analyst that

managed way over 1 billion dollars of funding since 1998 until my retirement in 2010. So, to say I was the lead analyst is correct, no one else in my Center performed this function. In my PD, 14.3, 1st para, 4th line, states, "The incumbent serves as a project leader and senior analyst responsible for the evaluation and analysis of interrelationship of the center's program operations, management, and budget," and it goes on. Also, refer to 14.5, Factor 3, next to last line, the management analyst depends on her reputation as an accomplished expert in specialty areas and affords the respect to commensurate with the position. I called myself a lead and got that reaction from David. Can you imagine if I said I was an expert? I know my PD. I performed all the major duties and responsibilities in my PD. David was totally oblivious to my job duties, my responsibilities, and my PD. What would possess him to make that statement? All David cared about was that all was well in the contract world. I completed all my assignments and met all my due dates. No one ever complained or had issues with my work. His statement alluded that I was less than what I said I was, the lead analyst! The way he sees me is revealed in his own testimony. David sees me as less than what is actually in my PD. His perception of me is sad and uncomfortable.

Ratings—David was told by the Center Director that I would be joining his staff. He was told that I was the only person in CMSO that handles contracts, etc., except for S&C and CLIA contracts, that Ed handles. I never, that I can recall in the history of my Government career, received any rating but "Outstanding," and the highest monetary awards, acknowledgements, etc., except for when David was my supervisor. He always gave me "Fully Successful,"

and minimal awards. I know for a fact that almost everyone on his staff received higher awards and ratings. David stated at the first rating meeting that he had no problems with my work. He also stated that to receive a higher award, I would have to take on more and new responsibilities. I told him due to my disability, I couldn't take on new or additional work. This, of course, is discrimination, but I was already in chronic pain every day, etc., and fighting a discrimination case already and couldn't even think about fighting another discrimination case.

My excellent reputation preceded me. My BCCTS was accepted as an occupational disease by DOL in March 2005. David became my supervisor in late 2005. The entire budget function (myself and another employee), including my contract work, etc., was transferred to his staff. I am assuming my previous supervisor didn't tell David about my disability because when I met with him to discuss, he seemed overwhelmed. I told him my difficulties, provided him with doctor's notes, etc., to educate him.

EXCERPTS FROM THE ADA, ETC.

1.—In EGRA—ADA—Excerpt—39—**Must an employer provide a reasonable accommodation that is needed because of the side effects of medication or treatment related to the disability, or because of symptoms or other medical conditions resulting from the underlying disability?** Yes. The side effects caused by the medication that an employee must take because of the disability are limitations resulting from the disability. Reasonable accommodation extends to all limitations resulting from a disability. Similarly, any symptoms or related medical conditions resulting from the disability that cause limitations may also require reasonable accommodation.

2.—(EGRA—ADA)—Excerpts 34—**Does an employer have to allow an employee with a disability to work at home as a reasonable accommodation?—An employer must modify its policy concerning where work is performed if such a change is needed as a reasonable accommodation.”**

3.—Excerpt 32—**If an employer has provided one reasonable accom, does it have to provide additional RAs requested by an individual with a disability?** The duty to provide RA is an ongoing one.

4.—The ADA states, “An employer may switch the marginal functions of two or more employees in order to restructure a job as a reasonable accommodation.

5.—**THE AGENCY IS NOT REQUIRED TO PROVIDE COMPLAINANT’S PREFERRED ACCOM-**

MODATION, SO LONG AS THE AGENCY PROVIDES AN EFFECTIVE ACCOMMODATION. SEE EEOC COMPLIANCE MANUAL: ENFORCEMENT GUIDANCE: REASONABLE ACCOMMODATION AND UNDUE HARDSHIP UNDER THE ADA, ETC.

6.—The following was stated on GMA and I wholeheartedly agree and support this statement: A study from the Oregon University that says early retirement might not be as relaxing as you thought. In fact, those who retire early are of a higher risk of dying earlier. Researchers studied retirees over the course of 18 years, concluding those who worked longer lived longer. Working, they say is an important part of one's identity and going from working 40 hours a week to nothing leads to depression and anxiety and the stress of wondering what you should be doing with your life. I relate so much to this study and if I were given the accommodation that I requested, I would still be working today.

7.—CDC now offers research on pain medications, "CDC is trying to battle the worst public health drug crises in decades with new guidelines on how pain killers should be prescribed . . . Enormous problems in 2013 . . . 249 million prescriptions written, that's 1 for every adult . . . 40 deaths every day of overdose from these drugs . . . 1 in 4 who take long-term will be addicted . . . CDC is setting new guidelines for chronic pain . . . prescription pain killers . . . not a first-line therapy . . . not very effective. CDC is saying that doctors have to change their way of treating chronic pain. CDC is trying to find new solutions to chronic pain so those needs are met that don't have the problems with addiction." I could have been one of those statistics.

8.—In *US Airways, Inc. v. Barnett*, 535 U.S., 122 S. Ct. 1516 (2002), the Supreme Court laid out the burdens of proof for an individual with a disability (plaintiff) and an employer (defendant) in an ADA lawsuit alleging failure to provide reasonable accommodation. The “plaintiff/employee (to defeat a defendant/employer’s motion for summary judgment) need only show that an ‘accommodation’ seems reasonable on its face, i.e., ordinarily or in the run of cases. Once the plaintiff has shown that the accommodation s/he needs is “reasonable,” the burden shifts to the defendant/employer to provide case-specific evidence proving that reasonable accommodation would cause an undue hardship in the particular circumstances.”

9.—Health Alert on Fox News—November 20, 2017—The cost of the opioid epidemic was 594 billion dollars in 2015. This is according to the White House’s Counsel on Economic Advisors. That is 6 times larger than the previous estimate. The Government says 100 die per day from opioid drug abuse. Many deaths are not reported. President declared this a National Health Emergency.

10.—*Brady v. Maryland*, 373 U.S. 83 (1963) was a landmark United States Supreme Court case in which the prosecution had withheld from the criminal defendant certain evidence.

All this information on the opioid epidemic is frightening and sad. My family physician and I tried to preempt my major drug problems by submitting my Request. This was the main reason I submitted my Request. The Agency and David did not care about me or my disability. They were oblivious to my disability and all my problems and this was not due to lack of knowledge. Ignoring everything they knew is blatant and hateful discrimination.

FAIR LABOR STANDARDS ACT (FLSA)

See Ex 19. I am stating violation of the FLSA after I retired and during the hearings by the Agency and Judge Shubow. CRS-30, Worker and Employer Testimony, James Gashel, speaking for the NFB argued, management is "empowered to gather all of the facts and make all of the decisions which end up justifying their determinations." My arguments in this Petition reference prime examples of this violation. Another example, is the expert medical opinions that supported my Request from Dr Garg and Dr. Apostolo, my surgeon (Ex 5, copies in ROI also 20.4-20.6 & 23.1&.2). They both examined me numerous times. HHS has never had a physician examine me. The only medical opinion that the Agency provided was from Dr. Presant (Ex 13). Dr. Presant's entire decision was based on 3 short paragraphs. The Agency relied on Dr. Presant's "medical viewpoint," alone and used this as the only medical opinion to deny my Request. Dr. Presant never examined me in order to obtain his own findings and his own medical opinion. He stated that he couldn't reach Dr. Garg but made his decision anyway to deny my Request. Why didn't he reach out to me if he needed further information. Dr. Presant did not "gather all of the facts" that he stated he needed. Instead, David and HHS made a life changing decision to deny my Request.

I had many questions for Dr. Presant and he was scheduled to testify for HHS at the hearing, but did not. The Agency should have provided or ask me to provide Dr. Presant with the information that he was requesting. Therefore, Dr Present's findings were incomplete and his opinion should not be allowed as evidence to support the Agency. Judge Shubow not

allowing me to ask relevant questions at the hearings is not gathering all the facts and is violating FLSA.

CRS-31—In testimony from Donald Elisburg who had been Assistant Secretary in the late 1970s was in 1994 an attorney in private practice. The structure, he seemed to suggest was stacked against the aggrieved person with a disability. I felt this all thru the hearing process. Vol 4, pg 341, Judge Shubow makes a statement and leads the witness, Michele Lenkiewicz, EEO Specialist, in Vol 4 pg 341. "Is it basically the physician — what they write, how they write it, and whether that magic language is in there, that the Agency can hang their hat on." Michele, of course, agrees. "Stacked against" is further proved when Judge Shubow states in his decision on the last page of Ex 7, "Even with the evidence viewed in the light most favorable to complainant." And then in the same sentence finds in favor of the Agency. Judge Shubow was bias to the Agency and excluded valid and truthful evidence in his decision-making.

Time constraints was another serious problem. Elisburg states that Congress attempted to assure prompt adjudication of complaints that he "viewed as an illusion." The hearings were held in the summer of 2016. OFO issued their decision dated December 3, 2014, Ex 15, granting me the hearing and the hearing took place 18 months later. Also, the fact being, that my complaint was filed in 2008 and it took 8 years to get a hearing.

It is further stated that "the administrative law judge would be required to assess the validity of the evidence put forth by the employer." This was not done. For example, HHS and Judge Shubow knew David committed perjury but neither addressed the issue and didn't act on the evidence that I provided.

CRS-35—Congress in 1966 judged it to be and to “structure work and rehabilitation . . . to meet specific needs of the disabled clients and/or employees.” I have already described in this Petition that this was not done. For example, the ineffectiveness of the accommodation, etc., my needs were not met as a disabled employee. Also, my pain and drug problems were never addressed and completely ignored. Therefore, David should have approved, or at least considered my Request that my doctors stated would be effective. They both addressed the job-related difficulties due to my disability. My request would have allowed me to keep my dignity and attain an “equal” level of achievement, opportunity, and participation. The Agency did not send me to be evaluated or examined by any doctor and they don’t have any medical evidence from any doctor that indicates my Request would be ineffective.