

No. 17-8098

IN THE SUPREME COURT OF THE UNITED STATES

HAROUTYUN KARABAJAKYAN - Petitioner,

v.

NANCY A. BERRYHILL

Acting Commissioner of the

Social Security Administration – Respondent.

ON WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PETITION FOR REHEARING

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PETITION FOR REHEARING

Petitioner respectfully petitions this Court for rehearing of its May 14, 2018 order denying the writ of certiorari in this case. This corrected petition for rehearing is presented pursuant to Rule 44.2.

GROUND FOR REHEARING

Grounds for rehearing are substantial grounds not previously presented, namely two types of fraud on the court: false statements regarding material facts of the case and a fraud by omission.

INTRODUCTION

Just a little statement, since the petition for the writ of certiorari was missing three pages. It was sent the very last day and a strange thing happened in Office Depot's copy center while making copies before sending. Right at the middle of petitioner's workload the worker told that a technician arrived for a routine checkup of the copy machines and she had to leave the two "full service " big machines to the technician and will continue the petitioner's workload on "self-service" small machines in the lobby. No explanation as to why the perfectly working copy machine should be

checked up and why the technician could not wait 10-15 minutes or at least start checking the other of two big machines while the workload was finished. The petitioner found out about missing pages a month later. On April 5, 2018 around 3:50 P.M. Eastern time, the petitioner called the Clerk's office. The lady who answered the phone said that the petitioner's question can be answered by the Clerk only and connected with the Clerk. Before the petitioner would finish his question, the phone was hanged up on him. Considering that it could not be the clerk hanging the phone, the petitioner called again. After same polite explanation of the lady that she has to connect with the Clerk, this time an answering machine was turned on. So petitioner left a message for the Clerk that if according to Rule 14-5 it is possible to send three missing pages or a new set of a complete petition, petitioner would like to do so. That message never was answered and the petitioner is attaching the three missing pages now to the petition for review, since strangely enough the missing pages were chosen just as "randomly" as the ALJ, then the Magistrate judge of the District Court and the very panel of judges of the Court of Appeals. Petitioner is also attaching the copy of the Magistrate judge's answer to Motion 59 which was answered as Motion 56, since the Appendix E containing the copy of it for whatever reason was not included at your website in the docket. One of the missing three pages (page 8) was just the explanation of the fact as to how the Motion 59 was answered as Motion 56.

Without taking any more of your time on such things, petitioner argues that the Court erred in denying the writ of certiorari in this case. The petitioner was expecting that the Court residing in the building with "EQUAL JUSTICE UNDER LAW" words on it, would not deny a petition where the petitioner have asked the Court of Appeals to have at least the modified version of Equal Justice and if for everybody else a single legal error of the ALJ is enough to reverse or remand the case, to consider over a dozen of legal errors of the ALJ supplied to the Court of Appeals. And this fact was stated on the second of three missing pages (page 12) in the writ of certiorari. As it turned out, not only the real Equal Justice was denied to this petitioner, but disproportionately modified form of it too. As if that was not enough, "the copy machine" "randomly" took that page out of the writ of certiorari.

The Rule 10 of this Court explains that a writ of certiorari is not a matter of right, but of judicial discretion and provides the reasons although neither controlling nor fully measuring the Court's discretion. Most, if not all, of the writs of certiorari are filed with the Court with one or at most two of the reasons for consideration. Hardly ever this Court has received a petition for the writ of certiorari that has a combination of all reasons that the court considers for granting the writ. Not only the Court of Appeals in this case has entered a decision in conflict with the decisions of all United States Courts of Appeals, but also has so far departed from the accepted and usual course of judicial proceedings, and sanctioned such a departure

by a lower court, as to call for an exercise of this Court's supervisory power. Besides, did it not just in one but in three different issues I (A) - the treating physician rule, I (B) - The Listings; I (C) - The fifth step of sequential evaluation. Seems like only this should have been enough for granting the writ of certiorari. Yet besides this the Court of Appeals has made a decision in conflict with relevant decision of the Supreme Court, while as an appellate court knowing well about binding power of the precedent from higher Court. Seems like this too, just alone would have been enough for granting the writ of certiorari. Then the presence of the circuit split regarding the boilerplate expressions, at the time when the petitioner's issue raised to the Court of Appeals - if the boilerplate sheer disbelief can constitute a substantial evidence, was not answered at all.

Let me tell you that the circumstances of this case were such, that the decision whether or not to grant a writ of certiorari cannot be left to discretion. Violations of the Constitution and the Laws in this case are not leaving a room for discretion whether to grant or deny the writ but are calling for the duties to first of all stand up for the Constitution and then exercise the very supervisory powers.

Reversal of the Court of Appeals' decision is simply warranted by the Constitution, warranted by the Laws of the land, also by Supreme Court precedent.

ARGUMENT

A: FALSIFICATION OF MATERIAL FACTS

This case is a fraud upon the court from the very beginning of it to the very end of it. The only question is if not you then who can correct criminal wrongdoings of the second highest court. The three judge panel of the 9th Circuit Court of Appeals have lied under the oath, committed a perjury (18 U.S.C. §§ 1621 and 1623). If right after their decision it could not be classified as such, it has no other explanation after their denial of the petition for panel rehearing and rehearing en banc. If initially it could be a mistake or a result of negligence, by refusing to correct it, by their reckless disregard for the truth, they have proved that it was an intentional lie and a deceit. In social security proceedings the ALJ is required to include the claimant's not severe impairments into his hypothetical question to Vocational Expert. This issue is one of the most frequent reasons for reversing or remanding ALJ decisions in all District Courts and all Courts of Appeals without any circuit split. The panel of the 9th Circuit Court of Appeals claims on page 6 of their decision as if the petitioner's hemorrhoids issue was not in the case record. In his petition to review, the petitioner did include four page references (AR18, AR64, AR190, AR283) from the record proving their claim to be erroneous or maybe a result of negligence. The fact that the panel denied the review and did not care to correct their claim, makes it an intentional lie under the oath, since that single issue is enough to reverse the case as

it is done over and over by every other Circuit Court. Besides, on the same page the Court of Appeals claims as if the symptoms of limitations that ALJ has discounted he did not need to incorporate those limitations in the RFC or in the hypothetical question and the Court of Appeals uses 20 C.F.R. 404-1545(a) as a reference to their claim. The truth is that 20 C.F.R. 404 –1545(a) reads: "We will consider all of your medically determinable impairments of which we are aware, including your medically determinable impairments that are not "severe"". On the very same page the panel claims: "the functional limitations identified by the ALJ in the RFC for light work were supported by the medical evidence the ALJ credited". The truth is that from four page references provided by petitioner the one on AR18 shows that the ALJ in his second step of evaluation did credit the petitioner's hemorrhoids' issue by just considering it to be not a severe impairment. He was supposed to include that not severe impairment into his hypothetical question to Vocational Expert. That is the demand of regulations and that is the reason why so many cases are reversed or remanded for a failure to do so. 20 C.F.R 404-1545(a); 20 C.F.R. 404-1523(c) and SSR 96-8p, which states:

"In assessing RFC, the adjudicator must consider limitations and restrictions imposed by all of an individual's impairments, even those that are not "severe." While a "not severe" impairment(s) standing alone may not significantly limit an individual's ability to do basic work activities, it may--when considered with limitations or restrictions due to other impairments--be critical to the outcome of a claim".

The Federal false statement statute 18 U.S.C. § 1001(a) is about knowingly and willfully falsifying, concealing or covering up material facts and about making materially false, fictitious, or fraudulent statement. The panel of the Court of Appeals is familiar with this statute right? They are also familiar with SSA regulations that they falsified right? They were also petitioned to correct their "mistakes" right? It shows the intent and the deceit in their reckless disregard for the truth. Not to mention that according to judicial Canons each of them is responsible to report when the other one does such things.

B: FRAUD BY OMISSION

The other carefully planned scheme by the panel was omission of equaling the Listings. Concealing or suppressing material facts of the case is a Fraud by Omission. It is not the petitioner's hemorrhoids issue that is not in the record, what is not in the record of this case after 8.5 years, is the issue whether the petitioner's impairment is medically equal to the Listings. You cannot find anywhere neither in Court of Appeals' decision nor in District Court's decision a word about whether the petitioner's impairment is medically equal to the Listings or no.

Conditions contained in the "Listing of Impairments" are considered so severe that they are irrebuttably presumed disabling, without any specific finding as to the claimant's ability to perform his past relevant work or any other jobs. Claimants are

conclusively disabled if their condition either meets or equals a listed impairment.

20 C.F.R. § 404.1520(d).

The ALJ, having no reason for not accepting that the petitioner's condition meets the Listings, used a trick "not being on the regimen of a prescribed treatment" (the introductory part of 20 C.F.R. Pt. 404, Subpt. P, App.1, Listing 4.02) in violation of the rules for the Listings and in violation of 20 C.F.R. 404.1530; SSR 82-59.

Not being on a regimen of prescribed treatment – even if it was true, it applies only to meeting the Listings and does not apply to equaling the Listings.

20 C.F.R.404.1525(d). To meet a listed impairment, a claimant must establish that he or she "satisfies all of the criteria of that listing, including any relevant criteria in the introduction." 20 C.F.R. §§ 404.1525(c)(3), 416.925(c)(3). To equal a listed impairment, a claimant must establish symptoms, signs, and laboratory findings "at least equal in severity and duration" to the characteristics of a relevant listed impairment.

20 C.F.R. § 404.1526. If you have an impairment that is described in appendix 1, but you do not exhibit one or more of the findings specified in the particular listing. Your impairment(s) is medically equivalent to a listed impairment in appendix 1 if it is at least equal in severity and duration to the criteria of any listed impairment.

ALJ's decision had a vacuum for equaling the Listings – not considered, not articulated, just claimed neither meets nor equals.

What the panel of the Court of Appeals did was completely taking off the equaling the Listings part. This issue was raised to the Court of Appeals in petition for panel rehearing and rehearing en banc and stated that the very important issue – a material issue - is missing from the Court of Appeals' decision. The fact that the Court of

Appeals denied the review is a simple proof that the issue is not just missing because of an error or negligence but the issue is missing deliberately, the proof of the intent for deceit of the fraud, which seriously affects the integrity of the normal process of adjudication.

This case is just like the history of this world – someone creates a big lie then everybody else is toiling hard to introduce that big lie as the truth. Everything has started from ALJ's lying under oath when he claimed as if he never saw the petitioner's request to ALJ for a cardiology Consultative Examination and he never saw the attorney's repeated letters for OTR – On The Record decision. This ALJ's lies, misinterpretations, a decision not having a single objective medical evidence to support it, a decision based only on boilerplate disbelief of treating physician's reports and even disbelief to the very results of the objective medical evidence provided by treating and consulting doctors – something reserved for a Medical Expert only, whom ALJ never consulted - are not all. This ALJ was requested to disqualify himself which he refused to do.

Both the District Court and the Court of Appeals have turned this issue into a bias issue and claimed as if the bias was not proved by the petitioner. Yet this is a manipulation of legal system since the Courts have repeatedly held that positive proof of the partiality of a judge is not a requirement, only the appearance of partiality. *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 108 S.Ct.

2194 (1988) (what matters is not the reality of bias or prejudice but its appearance); United States v. Balistreri, 779 F.2d 1191 (7th Cir. 1985) (Section 455(a) "is directed against the appearance of partiality, whether or not the judge is actually biased."). The District Court's and the Court of Appeals' manipulation in this issue are the parts of the same "Unconscionable" schemes to deceive or make misrepresentations through the court system.

The SSA regulations are clear, once the condition either meets or equals the Listings there is no need for ALJ hearing, much less District Court or Court of Appeals' reviews and much less for the Supreme court review.

Whether a claimant's impairment equals the Listings is a medical judgment, and the ALJ must consider an expert's opinion regarding the Medical Equivalence to a Listing (20 C.F.R. § 404.1526(d), SSR 96-2 and SSR 96-6), which he never did.

This is why the issue of equaling the Listings cannot be found anywhere neither in Court of Appeals' nor in District Court's decisions. They cannot defend the ALJ on this issue – the ALJ does not have the Medical Expert's opinion on this and did not articulate based on what the petitioner's impairment does not equal the Listings (even if assuming that ALJ's falsified trick on articulation regarding meeting the Listings to be correct). The ALJ simply denied the justice to petitioner by simply ignoring the OTR request without even getting the Medical Expert's opinion on it.

Adding to this fraud on the court the fact of ALJ's refusal to disqualify himself shows another deliberate denial of justice since there was no need for any hearing at all. It was deliberately planned and carefully executed scheme. This case should have been decided OTR without going to any hearing.

The Court of Appeals' and the District Court's Fraud by Omission of the issue of equalizing the Listings, to say the least, all amounts to violation of the Due Process Clause of the U.S. Constitution. In reality it is a fraudulent and criminal fanatical denial of justice with reckless disregard for the truth in violation of their oath of office, and it is a war against Constitution. That's why they stamped the case not for publication.

This brings us to the maxim that "the fraud vitiates every transaction into which it enters".

As stated in Hazel-Atlas Glass Co. V Hartford-Empire Co.: "Every element of the fraud here disclosed demands the exercise of the historic power of equity to set aside fraudulently begotten judgments".

Rule 60(d)(3) does not limit a court's power to entertain an independent action to set aside a judgement for fraud on the court.

With all due respect to your positions and your age and if you feel the petitioner owes an apology then please accept upfront apology, but please consider whether or

not your denying the writ after knowing all this does not constitute a Misprision of felony under 18 USC §4.

Now it is all up to you, either you can prove to deserve working in the building with "EQUAL JUSTICE UNDER THE LAW" words on it, either you can prove as Justice Jackson described the Court: "We are not final because we are infallible, but we are infallible only because we are final.", either you can prove to be the guardians of US Constitution or not. And quite frankly you can save the face of American judicial system in the international arena, because if justice is not served in this case, this petitioner will start looking for international tribunals in search of justice. And even if no international tribunal can handle this case at least all without exception human rights organizations of the entire world will learn about this case (and much more than just details of this case). Maybe then, under their pressure, some will comprehend what they have done to Thomas Jefferson's America: "This institution [the University of Virginia] will be based on the illimitable freedom of the human mind. for here we are not afraid to follow truth wherever it may lead, nor to tolerate any error so long as reason is left free to combat it". - Jefferson to William Roscoe. And what they have done to Abe Lincoln's America who was able to reach the president's position without belonging to judeo-masonic mafia, while now the demand of the mafia is not let people to even have a simple job or even get their unquestionable disability approved... Maybe then some will comprehend after

almost twice four score and seven years later (always wondered why Abe Lincoln would refuse to pronounce number 87 – which is the same 56 or 7 times 8, and he was killed in 1865 at the age of 56) the axiomatic essence of the truth: “You can fool all the people some of the time and some of the people all the time, but you cannot fool all the people all the time.”. Maybe then, after international pressure of human rights organizations, some will comprehend that it is not the petitioner's fault that democracy and secrecy are incompatible, that mafia's rules and equal justice and equal rights and opportunities are incompatible, that Medieval Inquisition's terrorism and US Constitution are incompatible. Maybe then they will comprehend what they have done to this once wonderful country after all considering themselves to be smart ones by fanatical and criminal refusal to understand simple things...

Totalitarianism is the evil, regardless whether it is an atheist totalitarianism or a religious one.

CONCLUSION

For the foregoing reasons, and for the reasons stated in the petition for writ of certiorari, petitioner respectfully requests that this Court grant rehearing of the order of denial, vacate that order, grant the petition for writ of certiorari, and set aside fraudulently begotten decision of the Court of Appeals.

Respectfully submitted,

A handwritten signature in black ink, reading "Haroutyun Karabajakyan". The script is cursive and fluid, with the first name and last name clearly distinguishable.

Haroutyun Karabajakyan

June 25, 2018.

CERTIFICATE OF COUNSEL

I hereby certify that this petition for rehearing is presented in good faith and not for delay and that it is restricted to the grounds specified in Rule 44.2, namely other substantial grounds not previously presented.

A handwritten signature in black ink, reading "Haroutyun Karabajakyan". The script is cursive and fluid, with the first name and last name clearly distinguishable.

Haroutyun Karabajakyan

**Additional material
from this filing is
available in the
Clerk's Office.**