

Case No. 20-5581

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

TATYANA E. DREVALEVA,

Petitioner,

vs.

- 1) THE UNITED STATES OF AMERICA
- 2) THE U.S. DEPARTMENT OF VETERANS AFFAIRS

Respondents

*On Petition for Writ of Certiorari to the U.S. Court of Appeals for the Federal Circuit
The U.S. Court of Appeals for the Federal Circuit, Appeal No. 2020-1671*

*The U.S. Court for the Federal Circuit, case No. 1:20-cv-00153,
The Hon. Judge Thomas Wheeler*

*The U.S. District Court for the Northern District of California,
case No. 3:18-cv-03748-WHA
The Hon. Judge William Alsup*

PETITION FOR REHEARING

Tatyana E. Drevaleva, Petitioner Pro Se
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Grounds for granting a Petition for Rehearing.

Read the October 13, 2020 Order, "...the petitioner has repeatedly abused this Court's process, ..."

This is not true. All my lawsuits, Motions, Pleadings, and Petitions are valid. The only person who repeatedly abused the Court's process and who needs to be impeached and indicted for obstruction of justice and tampering with the evidence is the Hon. Judge William Alsup.

I am presenting the material facts of the case.

Fact 1. The Raymond G. Murphy VAMC was aware of my infertility and of my long time attempts to have a child. The VAMC was also aware that I was taking hormonal pills that were prescribed by my Russian OB/GYN, that were available only in Russia, and that were not available in the United States. I was taking one pill a day, and I couldn't afford to miss a pill.

See Dunkelberger's report of Contact dated April 18, 2017 (**ER Vol. 1; 286**), "Tatyana Drevalova told me that she needs to go to Russia in a few months for 4~6 weeks to "make an embryo." She stated she only had a few months worth of medication she needed to be on to help her to be able to "make an embryo." Then, after she has saved up enough money she would need to go back to Russia as she would be hiring a surrogate to have a child for her."

See Dunkelberger's Report of Contact dated May 16, 2017 (**ER Vol. 1, 289**), "Tatyana Drevaleva came to my office on 5/25/17 [*the date 5/25/2017 was a typo. In fact, the correct date was probably 5/15/17 –T.D.*] to speak about her need to go to Russia. She stated that since Russia offers a one time invitro fertilization (IVF), she wanted to try this before she made an "embryo" as previously discussed. She went on to explain that she made a mistake and only has 5 pills left (that are required to help with IVF) and that she thought she had more. These pills were prescribed by her doctor in Russia and can only be obtained in Russia."

Also, see an EEO testimony of Assistant Manager Mr. Johnson (**ER, Vol. 1, 218-219**), "The complaintant came into the office, after business hours, on May 17, 2017 stating s/he had one pill left and was flying to Russia the next day to have Invitro Fertilization done. The complaintant also stated his/her age to be 50 and that slhe had always wanted to have children and "this may be my last chance"."

Therefore, the VAMC knew that I was 50 yo, that I had a long time history of fighting with infertility, that I had just a few hormonal pills left, that these pills were in aid of my IVF procedure, and that I urgently needed to go to Russia to refill a prescription of the hormonal pills and to perform an IVF attempt.

Fact 2. On May 17, 2017, Johnson verbally allowed me to take a time off to go to Russia to perform an In-Vitro Fertilization procedure. See (ER Vol. 1, 218-219), "I handed the complaintant the OPM71 paper work and stated that this must be filled out and supporting documentation in English from the doctor must also be supplied. At this

time I stated to the complainant that I could not approve Leave Without Pay but I would turn in the documentation and if this was that important then s/he should go.”

However, during the litigation at the District Court, Defendants argued that I had been fired for my failure to take the proper steps to obtain a Leave without Pay and for subsequent absence without leave. See Defendants’ Opposition to my Motion for Preliminary Injunction (**ER, Vol. 2, page 454, lines 1-2**), “... her dismissal was due to her violation of leave procedures”

See a Declaration of Carla Dunkelberger (**ER Vo.2; 461**), “I am informed and believe that Ms. Drevaleva was terminated effective June 30, 2017 due to her being absent without leave since May 21, 2017.”

See an EEO testimony of Dunkelberger (**ER Vol. 1; 232**), “The complainant's AWOL [*Absent Without Leave* - T.D.] status negatively impacted patient care and delayed completion of the complainants orientation. Staff morale is negatively affected as a result of a coworker not showing up for scheduled tours.”

Despite Johnson verbally allowed me to go to Russia for the purpose of refiling a prescription of my hormonal pills and undergoing in Iv-Vitro Fertilization attempt (**ER Vol. 1; 219**), “if this was that important then s/he should go”, the Agency improperly placed me on the AWOL status since May 21, 2017 (**ER Vol. 1; 297-299**) and fired me for “attendance issues”, see the June 30, 2017 Termination Letter (**ER Vol. 1; 293-294.**) See page 293, “Your termination is due to attendance issues.”

In his July 11, 2019 Order, Alsup wrote, page 5, “She went absent without leave. That is why she was terminated. She failed to obtain permission to leave her job. The reason she wanted to go to Russia was not the cause of her termination. Rather, it was her failure to obtain approval.”

Because Alsup failed to consider an EEO testimony of Johnson that he had allowed me to go to Russia, see (ER Vol. 1; 219), “if this was that important then s/he should go”, the July 11, 2019 Judgment shall be reversed.

Fact 3. During my conversations with Dunkelberger on April 18, 2017, she informed me that, in order to obtain a leave without pay for the purpose of going to Russia and performing an IVF procedure, I needed to submit my medical documentation. See Dunkelberger’s Report of Contact dated April 18, 2017 (ER Vol. 1; 286), “In order to request eave she would need to complete an OPM 71 and provide supporting medical documentation. She stated her doctor was in Russia and that she could ask him to write a letter for her but it would be in Russian. I explained to her that the documentation should need to either written in English or be translated from Russian to English. I also talked to her about possibly finding a doctor in town that may be able to provide her with medical documentation and medication in the event she was not able to get m approved leave of absence until later.”

See Dunkelberger’s Report of Contact dated May 16, 2017 (ER Vol. 1; 289), “I reminded her at this time she would need to complete an OPM 71, provide supporting medical documentation to request any time off, and that it had to be approved by Dr.

Prince, Associate Director of Patient Care Services prior to leaving; that I could not approve her request.”

Also, see Declaration of Carla Dunkelberger (ER Vol. 2; 460, lines 20-22), “I reminded her that she would need to complete a leave request form, provide supporting medical documentation, and receive approval from Dr. Prince prior to taking leave.”

On May 18, 2017, I provided the VAMC with my medical documentation on Russian language (ER Vol. 1; 29-30.) The VAMC intentionally didn’t provide an EEO Investigator with my medical documentation on Russian language, It was done for the purpose to mislead the EEO Investigator and to lie that I didn’t provide my medical documentation.

During the litigation of the lawsuit No. 3:18-cv-03748-WHA, Defendants’ Attorney Ms. Robinson confirmed that on May 18, 2017 I emailed my medical documentation on Russian language to both Dunkelberger and Johnson. See “DEFENDANTS’ OPPOSITION TO PLAINTIFF’S MOTION FOR A PRELIMINARY INJUNCTION” at (ER Vol. 2; 451, lines 3-5), “The same day, she emailed a copy of a document from her Russian OB/GYN written in Russian to Ms. Dunklerger and Mr. Johnson.”

Despite I provided both Dunkelberger and Johnson with my medical documentation on Russian language on May 18, 2017 at 9.02 AM, see (ER Vol. 1; 29-30), and despite Johnson verbally allowed me to go to Russia, see (ER Vol. 1; 219), “if

this was that important then s/he should go”, Johnson lied in his May 18, 2017 letter to Nursing Director Dr. Tina Prince that I hadn’t provided my medical documentation, and Johnson didn’t recommend Prince to approve my Request for LWOP. See Johnson’s May 18, 2017 letter to Prince (**ER Vol. 1; 288**), “Tatyana was also told that medical documentation, in English, would be needed prior to approval of Leave Without Pay. On the morning of May 17, 2017 Tatyana informed the 5D management team that she was leaving to Russia on Thursday May 18, 2017 for six weeks. On May 17, 2017 an OPM 71 was given to Tatyana and she filled it out providing no supporting medical documentation.

At this time, I do not recommend approval of Tatyana Drevaleva's request for Leave Without Pay.”

Therefore, Johnson’s May 18, 2017 letter was an indirect evidence of discrimination because this letter contradicted the fact that I provided the VAMC with my medical documentation on Russian language on May 18, 2017 at 9.02 AM, and this letter contradicted Johnson’s own EEO testimony where he confirmed that he had verbally allowed me to go to Russia (**ER Vol. 1; 219**), “if this was that important then s/he should go”,

On May 30, 2017, I submitted my medical documentation on English language to both Johnson and Dunkelberger, see (**ER Vol. 1; 32-33**), also see (**ER Vol. 1, 264 and 266** – the same document which is a translated from Russian into English medical

document; see page 265 – confirmation that both Dunkelberger and Johnson received this document in May 30, 2017.)

However, despite I can prove by the preponderance of the evidence that I submitted my medical documentation on both Russian (**ER Vol. 1; 29-30**) and English (**ER Vol. 1; 32-33**) languages to the VAMC, and despite the VAMC received it, Dunkelberger claimed in her June 12, 2017 letter to me that she hadn't received my medical documentation on English language, and she demanded me to provide her with my medical documentation on English language. See (**ER Vol. 1; 290**), "You did not submit the required medical documentation, in English, prior to your departure to Russia." However, Dunkelberger actually received my medical documentation on English language on May 30, 2017, see (**ER Vol. 1, 265.**) Therefore, Dunkelberger's June 12, 2017 letter where she claimed that I hadn't provided my medical documentation (**ER Vol. 1; 290**) was an indirect evidence of discrimination.

Also, see a Declaration of Carla Dunkelberger that she made during the litigation of my lawsuit No. 3:18-cv-03748-WHA, see (**ER Vol. 2; from page 460, lines 26-28 to page 461, line 1**), "I was on leave on May 17 and May 18, 2017. I believe that Phillip Johnson was the Acting Nurse Manager of my unit on those dates. When I returned to the unit, I learned that Ms. Drevaleva had submitted a request for LWOP for May 18, 2017 through July 7, 2017 without any supporting medical documentation and that the request had been denied by Dr. Prince."

During the litigation of the lawsuit No. 3:18-cv-03748-WHA, Defendants' Attorney Ms. Cormier confirmed that on May 30, 2017 the VAMC received my medical documentation. See a "[PROPOSED] ORDER GRANTING DEFENDANTS' MOTION TO DISMISS AND GRANTING LIMITED LEAVE TO AMEND" at (ER Vol. 2; 414, lines 15-16), "While in Russia, plaintiff got the medical document translated and she emailed it to her supervisor on May 30, 2017."

Despite Dunkelberger actually received my medical documentation on English language on May 30, 2017, see (ER Vol. 1, page 265), she didn't write in her November 1, 2018 Declaration that she submitted to the District Court that she had actually received my medical documentation on English language on May 30, 2017. This is what she wrote to the Court, see (ER Vol. 2; 461, lines 4-7), "9. On or about June 9, I signed a letter to Ms. Drevaleva advising her that her leave request had been denied and requesting certain information from her. I am informed and believe that the letter was mailed to her home of record on or about June 12, 2017. A true and correct copy of the letter, minus the noted enclosures, is attached hereto as Exhibit F." However, in Exhibit F she requested my medical documentation on June 12, 2017 (ER Vol. 2; 474) despite she actually received it in May 30, 2017 (ER Vol. 1; 265.) Therefore, in her Declaration that Dunkelberger submitted to the District Court (ER Vol. 2, 459-461), she misled the Court and withheld the fact that she received my medical documentation on both May 18, 2017 and May 30, 2017. In her Declaration, Dunkelberger substituted the words "medical

documentation” by the words “certain information”, see **(ER Vol. 2; 461, line 5.)** It was an indirect evidence of discrimination.

Read Alsup’s July 11, 2019 Order, page 2, lines 17-19, “Allegedly believing she had verbal permission, plaintiff filled out the form without any medical documentation, slipped it under her assistant supervisor’s door, and left for Russia the following evening.”

Because Alsup failed to take into his consideration the fact that I emailed my medical documentation to Dunkelberger on Russian language on May 18, 2017 **(ER Vol. 1; 29-30)** and on English language **(ER Vol. 1; 32-33)**, and despite the fact that Dunkelberger actually received my medical documentation on English language on May 30, 2017 **(ER Vol. 1; 265)**, **(ER Vol. 2; 414, lines 15-16)**, **(ER Vol. 2; 451, lines 3-5)**, and because Alsup believed Dunkelberger’s Declaration where she wrote “without any supporting medical documentation” **(ER Vol. 2; from page 460, line 28 to page 461, line 1)** and where she declared under the penalty of perjury that all foregoing was true and correct, see **(ER Vol. 2; 461, lines 18-19)**, Alsup concluded that I didn’t provide my medical documentation to the VAMC.

Also, Alsup erred by asserting that I was supposed to provide the VAMC with my medical documentation prior to my departure to Russia. Pursuant to 5 C.F.R. § 630.1207(g), the Agency had a mandatory obligation to grant me with a provisional leave during the pendency of my medical certification from my health care provider, “(g) If the employee is unable to provide the requested medical certification before leave begins, or

if the agency questions the validity of the original certification provided by the employee and the medical treatment requires the leave to begin, the agency **shall grant provisional leave** pending final written medical certification.”

Also, see 5 C.F.R. § 630.1207, “(j) At its own expense, an agency may require subsequent medical recertification on a periodic basis, but not more than once every 30 calendar days, for leave taken for purposes relating to **pregnancy**, chronic conditions, or longterm conditions, as these terms are used in the definition of serious health condition in § 630.1202.”

Also, on July 14, 2017 I emailed both Dunkelberger and Johnson a second medical document on English language, and I requested an extension of time to stay in Russia, see (ER Vol. 1; 40-41), also see (ER Vol. 1; 263.) Therefore, the Agency received three medical documents from me – one on Russian language and two on English language. The Agency recklessly disregarded these documents, placed me on the AWOL, fired me, and lied about the reasons of the termination of my employment. Therefore, Alsup’s July 11, 2019 Judgment shall be reversed.

Fact 4. In my Original June 25,2018 Complaint, I explained that the VAMC mailed Dunkelberger’s June 12, 2017 letter to my home postal address in Albuquerque, NM, see (ER Vol. 1; page 10, lines 16-20), “Ms. Dunkelberger said that the Hospital mailed Dr. Prince's decision **to my home postal address in Albuquerque, NM**, and I didn't respond. Ms. Dunkelberger said that because I went to Russia without a permission, because I didn't respond to Dr. Prince's letter that was mailed **to my horn**

postal address in Albuquerque, NM, and because I didn't return back to work, I was fired on June 30, 2017.”

See the OPM 71 form that was denied by Dr. Prince on May 18, 2017 at (ER Vol. 1; 287.) See Dunkelberger's June 12, 2017 letter that she mailed to my home postal address in Albuquerque, NM at (ER Vol. 1; 290.)

Notice that Defendants confirmed the fact that the June 12, 2017 letter was mailed to my home postal address in Albuquerque, NM and was not emailed to me. See Ms. Cormier's “[PROPOSED] ORDER GRANTING DEFENDANTS’ MOTION TO DISMISS AND GRANTING LIMITED LEAVE TO AMEND” at (ER Vol. 2, page 414, lines 16-17), “Meanwhile, plaintiff's request for leave without pay had been denied and a letter to that effect was sent to her mailing address, but not emailed to her.”

Because in June 2017 I was in Russia, there was no way I could receive the June 12, 2017 letter and to respond. Defendants knew that I would not be able to receive the June 12, 2017 letter, and they knew that I wouldn't be able to respond. The June 12, 2017 letter was unclaimed and was returned back to the VAMC (ER Vol. 1; 291.) However. Alsup never paid attention to the fact that the June 12, 2017 letter was mailed to my home postal address in New Mexico and was not emailed to me, so I could view it in Russia. In both December 03, 2018 and July 11, 2019 Orders, Alsup's never described the fact that the June 12, 2017 letter was mailed to my home postal address in New Mexico and was not emailed to me. The VAMC's failure to email this letter to me triggered a disparate

impact discrimination theory. Because Alsup failed to consider the disparate impact discrimination theory in his both Orders, his Judgment shall be reversed.

Reasons for Granting the Writ.

I am suffering from the irreparable harm. I am 54 yo, and I need to have a chance to continue a treatment of my infertility. My reputation is severely damaged. Currently, I can't obtain a job in my professional field as a result of defamation.

CONCLUSION.

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

s/ Tatyana Drevaleva



Tatyana
Drevaleva



Petitioner Pro Se

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Date: October 24, 2020

VERIFICATION.

I, a Pro Se Petitioner Tatyana Drevaleva, am a Party to this action. I have read the foregoing Petition and know its contents. The facts alleged in the Petition are within my own knowledge and I know these facts to be true.

I declare under the penalty of perjury and under the Federal laws and under the laws of the State of California that all foregoing is true and correct. Executed at San Francisco, CA on October 24, 2020.

Respectfully submitted,

s/ Tatyana Drevaleva

Petitioner-Appellant Pro Se

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Date: October 24, 2020.

 Tatyana
Drevaleva


CERTIFICATE OF COMPLIANCE.

I used 12 pages and 2,998 words.

I declare under the penalty of perjury and under the laws of the State of California that all foregoing is true and correct. Executed at San Francisco, CA on October 24, 2020.

Respectfully submitted,

s/ Tatyana Drevaleva

Petitioner-Appellant Pro Se

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Date: October 24, 2020.

 Tatyana
Drevaleva


Certificate of an unrepresented Party Tatyana Drevaleva.

Rule 44(1.)

I, Petitioner Pro Se Tatyana Drevaleva certify that I present my Petition for Rehearing in good faith and not for the purpose of delay.

VERIFICATION.

I, a Pro Se Petitioner Tatyana Drevaleva, am a Party to this action. I have read the foregoing Petition and know its contents. The facts alleged in the Petition are within my own knowledge and I know these facts to be true.

I declare under the penalty of perjury and under the Federal laws and under the laws of the State of California that all foregoing is true and correct. Executed at San Francisco, CA on October 24, 2020.

Respectfully submitted,

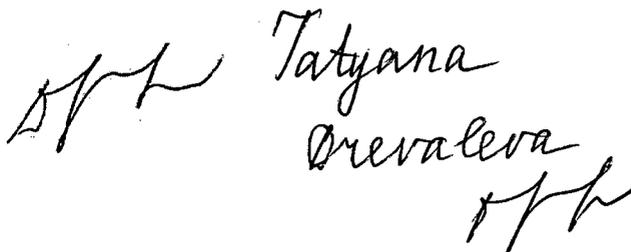
s/ Tatyana Drevaleva

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Date: October 24, 2020.

 Tatyana
Drevaleva


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