No.

IN THE

Supreme Court of the United States

SHARON FINIZIE ET AL.,

Petitioners

v.

DEPARTMENT OF VETERANS AFFAIRS

Respondent

On Petition for Writ of Certiorari
to the United States Court of Appeals for the Federal Circuit Affirming the Judgment of the Merit Systems Protection Board

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1) Did the decisions/opinions of the United States Court of Appeals for the Federal Circuit and the Merit Systems Protection Board constitute erroneous factual findings, misapplications of law, and inappropriate personal attacks on the appearance of the Petitioners?

LIST OF PARTIES

Sharon Finizie, Petitioner

Florence Kocher, Petitioner

Department of Veterans Affairs, Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Petitioners Sharon Finizie and Florence Kocher respectfully ask that a Writ of *Certiorari* issue to review the Judgment and Opinion of the United States Court of Appeals for the Federal Circuit, filed on November 3, 2021.

OPINIONS BELOW

The Judgment of the United States Court of Appeals for the Federal Circuit, issued November 3, 2021, is attached hereto as Appendix "A." The Court's Opinion in support of the said Judgment is attached hereto as Appendix "B."

The Initial Decision of the Merit Systems Protection Board, issued September 30, 2020, is attached hereto as Appendix "C."

JURISDICTION

The Jurisdiction of this Court is invoked under 28 U.S.C § 1253. The decision of the United States Court of Appeals for the Federal Circuit was issued on November 3, 2021. This petition is filed within ninety (90) days of the decision of the United States Court of Appeals for the Federal Circuit, under Rules 13.1 and 29.2 of this Court.

CONSTITUTIONAL PROVISIONS, STATUES, AND POLICIES AT ISSUE

5 U.S.C. § 2302(a)(2)(A)-(B), 5 U.S.C. § 2302(b)(8), and 5 U.S.C. § 7703 (c) (all of which are are attached hereto as Appendix "D."

STATEMENT OF THE CASE

Petitioner Florence Kocher (hereinafter "Kocher") is employed by the Department of Veterans Affairs (hereinafter "Agency") as a Patient Safety Manager in the Quality Management Department (hereinafter "QMD") at the Corporal Michael J. Crescenz Veterans Affairs Medical Center. Petitioner Sharon Finizie (hereinafter "Finizie") was employed as a Quality Management Specialist at the same Medical Center, but retired on or about October 31, 2018.

On October 5, 2016, Kocher and Finizie (hereinafter collectively the "Petitioners") had an alarming experience when their coworker, Patricia Simon (hereinafter "Simon"), Administrative Officer for the QMD, began acting in an erratic and intimidating matter. On that same day, Petitioners made a complaint to Robert LaPointe (hereinafter "LaPointe"), Interim Director of the QMD, regarding Simon, as they believed her conduct had serious workplace safety implications. Specifically, that morning, when Kocher asked Simon about the status of a report that was due, Simon responded erratically—screaming multiple expletives at Kocher

and gesticulating wildly. This incident was witnessed by Kocher's coworker Finizie, who was sitting nearby. Given Simon's shocking behavior, Finizie took contemporaneous notes to document the incident. Before this incident, neither of the Petitioners had any interactions with each other outside of the workplace.

Several hours later, Petitioners met with LaPointe. Petitioners told LaPointe about that morning's event in order to alert him to the possible safety implications of Simon's behavior and the creation of a hostile workplace. At LaPointe's direction, Petitioners co-wrote and submitted a statement that documented Simon's behavior. This written statement marks the beginning of a seriously strained professional relationship between Petitioners and Agency officials, which derived from Petitioners repeatedly beseeching agency officials to take their complaints of workplace misconduct seriously, and Agency officials responding with hostility, contempt, false accusations that Petitioners conspired to create a false narrative, initiating unsupported disciplinary proceedings against Petitioners, and retaliating against Petitioners.

Agency officials, whether by intent, or because they were unwittingly used as pawns by QMD staff taking out their personal vendettas against Petitioners, did not act in a fair and impartial manner in investigating the complaints, and retaliating against Petitioners.

On October 6, 2016, Kocher emailed LaPointe to ask whether he notified the Agency's Police Department about this event. LaPointe simply responded that he would be in touch with Kocher about the next steps. Finizie then notified the Agency's Police Department of the event and submitted another copy of the statement that she co-wrote with Kocher.

Shortly afterwards, Petitioners were involved in two other incidents that had serious workplace safety implications and which evidenced acts of workplace harassment. On October 17, 2016, Finizie was approached by Patient Safety Manager Peter Leporati (hereinafter "Leporati"). At the time this occurred Finizie had a good working relationship with Leporati. Leporati told Finizie a crude sex joke and massaged her shoulders without her consent.

On October 18, 2016, Stacey McCollum (hereinafter "McCollum") told Kocher that LaPointe had designated her as a "fact finder" to investigate the October 5, 2016 incident between her and Simon. The fact-finding interviews conducted by McCollum were one-sided and designed (to punish Kocher for making her October 5 Complaint. As part of the aforesaid investigation, Kocher asked McCollum whether LaPointe had provided her with the notes that Finizie took on the morning of October 5. Her response was no. Kocher later made a copy of these notes and provided them to McCollum. McCollum then asked Kocher a single question, which was whether the incident had been witnessed by Kocher's

coworker and Co-Patient Safety Manager, Leporati.

On October 19, 2016, Kocher was delivering work-related papers to LaPointe. While in LaPointe's office, Kocher saw Leporati standing outside of the office doorway, approximately three (3) feet away. Leporati made eye-contact with Kocher and pantomimed firing a gun at her with both of his fingers. Leporati has a police and military background and collects or possesses guns. Shocked and afraid for her safety, Kocher exited LaPointe's office. LaPointe was not in the office again until October 25, 2016 and on that date both Petitioners made their respective complaints to LaPointe regarding Leporati's behavior on October 17 and October 19—alleging that they were victims of harassment and intimidation.

On December 13, 2016, LaPointe issued Kocher a written counseling, a form of disciplinary corrective action, following the conclusion of the fact-finding investigation by McCollum. *See* 5 U.S.C. § 2302(a)(2)(A)(iii) (characterizing disciplinary corrective action as a "personnel action" for purposes of an individual right of action (i.e.: "IRA") appeal). McCollum's report did not reach conclusions, but LaPointe reached them on his own. LaPointe concluded that Petitioners' complaints of workplace harassment were unfounded yet incongruously issued Kocher an informal written warning about her lack of professionalism due to her involvement in the October 5 incident with Simon, and also issued Leporati written counseling for misconduct for

precisely the behavior and allegations raised by Petitioners that he deemed "unfounded."

Given the number of complaints that were being made by staff of the QMD, Medical Center Director Daniel Hendee convened an Administrative Investigative Board panel (hereinafter "AIB") consisting of Valerie Boytin, Toni Germain-Tudgay and Terry Milbrodt to investigate. The AIB conducted interviews for several days in February, 2017, including those of Petitioners, who provided truthful testimony regarding the acts of harassment that they recently witnessed.

In March 2017, the AIB issued its findings. While the AIB dismissed Petitioners' previous complaints about Leporati as isolated incidents and off-color jokes, the AIB concluded that Kocher was responsible for creating a hostile work environment against Leporati. Incredibly, the AIB—with no evidence—concluded that Petitioners collaborated in making untrue allegations against Leporati and others within the QMD—supposedly because Petitioners retained the same attorney during the investigation. Finally, the AIB concluded that leadership changes within the QMD contributed to the instability within the QMD.

As a result of the above described disclosures – which Petitioners assert are protected disclosures pursuant to the Whistleblower Protection Act (5 U.S.C. § 2302 *et seq.)* as described below - Petitioners became subject to unlawful adverse personnel

actions.

On March 27, 2017, LaPointe issued Kocher her performance evaluation for the review period of October 2015 through October 2016. *See* 5 U.S.C. § 2302(a)(2)(A)(viii) (characterizing performance evaluations as a "personnel action" for purposes of an IRA appeal). In addition to being issued five month's late, this performance evaluation dropped Kocher's overall rating to a "Satisfactory" for the first time in her career. *See Ormond v. Department of Justice*, 118 M.S.P.R. 337, ¶ 13 (2012) (finding that six (6) months between a disclosure and a personnel action was sufficiently proximate to allow a reasonable person to conclude that the disclosure was a contributing factor in the personnel action). Tellingly, the performance evaluation criticized Kocher's supposedly poor interpersonal skills. As a result of this evaluation, Kocher was also denied a $1,000 monetary bonus for achieving a National Certification for Health Care Quality.

Concurrently, Bruce Boxer (hereinafter "Boxer") was in the process of assuming the position of Director of the QMD from LaPointe. As part of the transition process, Boxer collaborated with LaPointe in issuing Kocher her negative evaluation. Once Boxer fully transitioned into the position of Director of QMD he was responsible for implementing the AIB's recommendations. Boxer implemented every recommendation that the AIB made in its findings and conclusions, with the exception of the conclusion that "leadership changes created instability" that led

to issues within the QMD.

On April 27, 2017, Petitioners met with Boxer to discuss the AIB's findings. During this meeting, Boxer treated Petitioners in a rude, threatening, and intimidating manner. No one else was present at this meeting, and Boxer refused to permit either of the Petitioners to review the AIB's report.

In violation of the Whistleblower Protection Act (as mentioned above and described below), Petitioners became subject to an unlawful adverse personal when Boxer, without evidence, accused Petitioners of engaging in collusion with each other in order to harm Simon. Boxer told Kocher that she would be required to meet with Leporati on a weekly basis to engage in "marriage counseling." Boxer also ordered Finizie to move to a smaller, partially enclosed workspace—which was not located in an area that was relevant to her work responsibilities. *See* 5 U.S.C. § 2302(a)(2)(A)(xii) (characterizing a significant change in working conditions as a "personnel action" for purposes of an IRA appeal). Furthermore, this new office space was immediately adjacent to Leporati's workspace, and it was Leporati who Finizie contended had previously assaulted her on October 17, 2016. Boxer's actions effectively forced Finizie to be alone with Leporati several times throughout the day, creating a hostile work environment for her.

On June 22, 2017, Boxer proposed that Kocher receive an official reprimand. *See* 5 U.S.C. §

2302(a)(2)(A)(viii). The basis of the reprimand was Kocher's alleged conduct during a June 13, 2017 meeting in which Kocher was allegedly unprepared; however, given the temporal proximity between the issuance of the official reprimand, and Boxer's previous hostility towards Kocher, the official reprimand was clearly in retaliation for her earlier protected activity.

On February 6, 2018, Boxer placed Kocher on a Performance Improvement Plan (hereinafter "PIP"). *See* 5 U.S.C. § 2302(a)(2)(A)(iii). The PIP directed Kocher to improve her work performance on several metrics that were never addressed as deficiencies in any of Kocher's previous evaluations. Accordingly, Kocher's placement on the PIP was yet another transparent effort to retaliate against Kocher for having engaged in protected activity.

In addition, on April 27, 2018, Quality Management Director Boxer issued to Finizie an overdue and lowered Proficiency Report and Competency Assessment for the rating period June 5, 2016 through June 5, 2017. This was done in retaliation against Finizie by Boxer, relating to her testimony and involvement in the AIB proceeding in February, 2017. Boxer included the negative AIB findings against Finizie in both the lowered Proficiency Report and the lowered Competency Assessment. Also, Boxer mentioned Kocher by name in the narrative portion of the Proficiency Report.

Furthermore, Boxer held Finizie to standards

which were not in effect during this rating period, and rating and evaluating her on the Proficiency Report and Competency Assessment for the rating period June 5, 2016 through June 5, 2017 on factors that were not applicable, not informing Finizie of specific work assignments and then criticizing her for allegedly failing to carry out the assignments, placing unreasonable work demands on Finizie in extremely short time frames, and imposing obligations on her that have not been imposed upon her similarly situated colleagues.

As a result of these acts of reprisal, Petitioners experienced significant embarrassment and stress. Finizie felt compelled to retire from the Agency. While Kocher remains employed by the Agency, although her professional reputation has been unfairly damaged. Furthermore, Kocher experienced a heart attack while at work in her office—which she believes to have been caused by the Agency's unrelenting acts of retaliation and the resulting stress. Regrettably, Petitioners have been forced to suffer through these indignities simply because they brought Simon's shocking behavior to light on October 5, 2016.

On February 9, 2018, Finizie timely filed an individual right of action (hereinafter "IRA") appeal under the Whistleblower Protection Act (hereinafter "WPA") and Whistleblower Protection Enhancement Act in which she alleged that the Agency had retaliated against her as a result of her whistleblowing activities. Subsequently, on March

20, 2018, Kocher timely filed an IRA appeal in which she alleged that the Agency had retaliated against her as a result of the same whistleblowing activities.

Due to the fact that the underlying claims were related, by order dated May 10, 2018, these appeals were consolidated for purposes of judicial economy. In order to afford the parties an opportunity to complete discovery, the consolidated appeal was dismissed without prejudice by initial decision dated November 26, 2018. The appeal was automatically refiled by the Northeastern Regional Office of the Merit Systems Protection Board (hereinafter "Board") on January 31, 2019 after the government shutdown ended. The requested hearing was held on March 10 and 11, 2020 and oral closing arguments were received on March 17, 2020; that same date, Petitioners also filed the written version of their closing argument.

The Board ultimately ruled against Petitioners, prompting an appeal to the United States Court of Appeals for the Federal Circuit (hereinafter the "Circuit Court"). The Circuit Court ultimately affirmed the Board's decision, prompting the instant petition.

REASONS WHY *CERTIORARI* SHOULD BE GRANTED

I. Review is warranted because the Decisions/Opinions of the United States Court of Appeals for the Federal Circuit and the Merit Systems Protection Board[1] constitute erroneous factual findings, misapplications of law, and inappropriate personal attacks on the appearance of the Petitioners.

Review is warranted because the Opinions of the Circuit Court and the Board constitute erroneous factual findings and the misapplication of rule of law. It is understood that the Supreme Court disfavors granting petitions of certiorari based on erroneous factual findings and/or misapplication of rule of law by the trial court. In this case, however, clear errors and/or gross abuse of discretion must be reviewed.

Pursuant to 5 U.S.C. § 7703(c) "[i]n any case filed in the Circuit Court, the court shall review the record and hold unlawful and set aside any agency action, findings, or conclusions found to be— (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) obtained without procedures required by law, rule, or

[1] Even though the Circuit Court conducted a *de novo* review of the instant matter, their findings and rationale were virtually identical to those of the Board. Because the Opinion of Board goes into much greater detail than does the Opinion of the Circuit Court, we refer to both when discussing why Certiorari should be granted.

regulation having been followed; or (3) unsupported by substantial evidence." While this review is *de novo* per 5 U.S.C. § 7703(c), "the standard is not what the court would decide in a de novo appraisal, but whether the administrative determination is supported by substantial evidence on the record as a whole." *Parker v. United States Postal Serv.*, 819 F.2d 1113, 1115 (Fed. Cir. 1987).

The Circuit Court / Board erred in ruling against Petitioners. The evidence in the instant matter clearly reveals that Petitioners were retaliated against for protected activity (*i.e.*: whistleblowing) contrary to applicable law.

Pursuant to 5 U.S.C. § 2302(b)(8), "[a]ny employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority— take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of (A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences; (i) any violation of any law, rule, or regulation, or (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs." The "personnel action[s]" specifically

prohibited by 5 U.S.C. § 2302(b)(8) include, inter alia, "an action under chapter 75 of this title or other disciplinary or corrective action," "a performance evaluation under chapter 43 of this title or under title 38," and, any other significant change in duties, responsibilities, or working conditions." *See* 5 U.S.C. § 2302(a)(2)(A)(iii), (viii), and (xiii). The above specifically applies to so-called "covered position[s]" which includes "any position in the competitive service." *See* 5 U.S.C. § 2302(a)(2)(A) and (B).

Pursuant to the above cited statutes and applicable cases, protected whistleblowing occurs when an appellant makes a disclosure that she reasonably believes evidences a violation of law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health and safety. *Mudd v. Department of Veterans Affairs*, 120 M.S.P.R. 365, 369 ¶ 5 (2013); *Mason v. Department of Homeland Sec.*, 116 M.S.P.R. 135, ¶ 17 (2011).

The proper test for determining whether an employee had a reasonable belief that her disclosures were protected is whether a disinterested observer with knowledge of the essential facts known to, and readily ascertainable by, the employee, could reasonably conclude that the actions evidenced a violation of a law, rule, or regulation, or one of the other conditions set forth in 5 U.S.C. § 2302(b)(8). *Mudd*, at 369, ¶ 5. *See also Chambers v. Department of the Interior*, 515 F.3d 1362, 1367 (Fed. Cir. 2008)

To prevail on a claim under the WPA, an appellant must prove by preponderant evidence that her protected disclosures were a contributing factor in a personnel action. *Wadhwa v. Department of Veterans Affairs*, 110 M.S.P.R. 615, ¶ 12, *aff'd*, 353 F. App'x 435 (Fed. Cir. 2009). The most common way of proving the contributing factor element is the "knowledge/timing" test. *Id.* Under that test, an appellant can prove the contributing factor element through evidence that the official taking the personnel action knew of the whistleblowing disclosure and took the personnel action within a period of time such that a reasonable person could conclude that the disclosure was a contributing factor in the personnel action. *Id. See, e.g., Id.*, ¶ 13 (a six-month interval was "well within the range of time" required to meet the knowledge/timing test).

The evidence in the instant matter shows that Petitioners made several protected disclosures. A reasonable belief exists if a disinterested observer—such as Petitioners—with knowledge of the essential facts known to and readily ascertainable by them could reasonably conclude that the actions of the government evidence one of the categories of wrongdoing listed in Section 2302(b)(8)(A). *Lachance v. White*, 174 F.3d 1378, 1381 (Fed. Cir. 1999). Petitioners need not prove that the matter disclosed actually established one of the types of wrongdoing listed under Section 2302(b)(8)(A); rather, they must show that the matter disclosed was one which a reasonable person in their position would believe evidenced any of the situations specified in 5 U.S.C. §

2302(b)(8). *Schnell v. Department of the Army*, 114 M.S.P.R. 83, ¶ 19 (2010). Under this standard, Petitioners each made several "protected disclosures" that became the basis of personnel actions that the Agency took against them.

As can be seen from a review of the November 4, 2020 final decision entered by the Board, the Administrative Law Judge (hereinafter "ALJ")—as compared to the recitation of the facts listed below—completely misapprehended misinterpreted the facts and evidence presented at the March 10, 2020 and March 11, 2020 hearings. Petitioners provided clear and unambiguous testimony and evidence as to the underlying events giving rise to their claims. Instead of appropriately assessing and weighing the facts and evidence presented at the aforesaid hearings, the ALJ included inappropriate, unprofessional, and perhaps defamatory remarks as to Petitioners' physical characteristics, such as the way Kocher chewed her gum and/or the way she looked at various witnesses. It is clear from the ALJ's decision that it was too focused on attempts to assess Petitioners' demeanor as opposed to the quality of the testimony and evidence presented.

"[T]he inquiry into whether a disclosed danger is sufficiently substantial and specific to warrant protection under the WPA is guided by several factors, among these: (1) the likelihood of harm resulting from the danger; (2) when the alleged harm may occur; and (3) the nature of the harm, i.e., the potential consequences." *Chambers*, at 1376.

The first protected disclosure occurred on October 5, 2016 when Petitioners reported the incident with Simon. In submitting their signed statement to LaPointe, Petitioners were making a good faith report about an incident that they reasonably believed evidenced a violation of Agency policy, and which constituted a specific danger to public health or safety. The incident involving Simon was alarming. Before this incident, neither Kocher nor Finizie had any sort of interaction with each other outside of the workplace. Additionally, neither Petitioner had any sort of negative experience with Simon in the past. Yet they both were alarmed enough by Simon's behavior that they thought that they should notify LaPointe. While LaPointe believed that the incident was serious enough to refer Simon to an employee assistance plan, and while Simon took an extended medical leave, nothing else was done.

The second incident occurred on October 17, 2016 when Leporati harassed Finizie by making a rude and sexual joke and massaged her shoulders without her consent. Again—Finizie reported this incident because she reasonably believed that Leporati's conduct violated the Agency's rules against workplace harassment and sexual harassment, and was aberrant from his prior conduct towards her.

The third incident occurred on October 19, 2016 when Kocher reported Leporati for threatening

her by pointing his fingers at her, as if he were aiming a gun in her direction. Again, Kocher reasonably believed that his actions constituted a threat of workplace violence, particularly given his military and police history, and his gun ownership—so she did the appropriate thing and notified LaPointe. When LaPointe refused to get involved, Kocher filed a written incident report with the Agency Police Department.

Rather than treating Petitioners with respect after they made the disclosures, the Agency responded with contempt and hostility. In February 2017, the Agency convened an AIB in order to investigate the QMD. During the AIB's investigation, both Petitioners gave sworn statements in which they again complained about incidents in the workplace that they believed evidenced violations of Agency policy or violence in the workplace.

Despite addressing the issues, the AIB was dismissive of Petitioners' concerns, and instead solicited evidence that caused irreparable damage to their professional reputations and diminished their personal integrity. For instance, according to the Preliminary Statement, the AIB received a document from Leporati that contained a litany of his complaints against Kocher, but when Kocher submitted documents (which included one hundred and five (105) emails) to the AIB during her deposition, the AIB failed to include them in its eventual findings, and during further investigation denied ever seeing them. The fact that these

documents are missing, and were likely not read or considered by any or all of the AIB members, on its own, raises a serious due process argument on whether the AIB was biased in its consideration of the evidence, and the conclusions it reached.

The AIB eventually reached some startling conclusions. For instance, while the AIB concluded that Kocher may have created a hostile work environment for Leporati—the AIB concluded that Finizie's complaints about Leporati did not amount to his creating a hostile work environment for her. The AIB also brazenly declared that Petitioners collaborated with one another—on the flimsy basis that they shared an attorney and because they submitted a joint statement (requested by La Pointe) regarding Patty Simon's conduct. The AIB members also testified that because they saw Petitioners speak with their attorney after they testified, that this automatically indicated that they collaborated on their testimony. This is a patently ridiculous and unsupported assumption. The AIB also concluded that leadership changes created instability in the QMD. We believe that this conclusion embarrassed the leadership within the Agency and QMD and prompted the Agency to take retaliatory action against Petitioners.

All told, we believe that the Agency took several personnel actions that constitute retaliation. The Agency must show by clear and convincing evidence that these personnel actions would have been taken absent the whistleblowing activity. The

Agency cannot meet its burden, as illustrated below.

In determining whether an agency has shown by clear and convincing evidence that it would have taken the same personnel action in the absence of whistleblowing, the relevant factors to consider are: the existence and strength of any motive to retaliate on the part of the agency officials who were involved in the decision; and, any evidence that the agency takes similar actions against employees who are not whistleblowers but who are otherwise similarly situated. *Carr v. Social Sec. Admin.*, 185 F.3d 1318, 1323 (Fed. Cir. 1999); *See Whitmore v. Department of Labor*, 680 F.3d 1353, 1376 (Fed. Cir. 2012) (the administrative judge erred in failing to give serious consideration to the fact that the appellant's whistleblowing marked the beginning of seriously strained relationships with agency officials).

First, the Agency issued Kocher a written counseling on December 13, 2016. In this counseling, Kocher was admonished for using "disrespectful language" towards a coworker, even though there was no evidence that Kocher treated Simon in a disrespectful manner, and there is considerable evidence that Simon profusely used the "f---" word on the morning of October 5, 2016. While the Agency claims that Simon was similarly admonished, it has been unable to produce a copy of the counseling that Simon supposedly received. *Johnson v. Department of Health and Human Servs.*, 93 M.S.P.R. 38 (2002) states that discipline does not have to be placed in an employee's personnel file for it to be considered a

"corrective" action for the purposes of proving a WPA claim.

Second, the Agency issued Kocher a diminished rating on her Proficiency Rating on March 27, 2017. Kocher's previous Rating was highly complementary of her performance, and was by Susan Blake, the prior QM Director, who everyone who testified for the Agency seemed to respect; however, this subsequent Rating, which was issued by both LaPointe and his replacement, Boxer, chastised Kocher for supposedly acting in an unprofessional manner and dropped Kocher's proficiency ratings from "outstanding" and "highly satisfactory" to merely "satisfactory." Unfortunately, this drop also caused Kocher to be denied a bonus for achieving a National Certification for Health Care Quality.

Third, Boxer began treating Petitioners in an abusive and humiliating manner. Boxer met with Petitioners and chastised them for allegedly collaborating with each other against others within the QMD. He then moved Finizie out of the office space that she shared with others, and moved her to a much smaller office—in close proximity to Leporati—a man who she had only recently accused of sexual harassment. Boxer also began responding to Kocher in a rude and dismissive manner and shouted at her for taking time off for jury duty.

Fourth, on July 31, 2017 Boxer issued Kocher a proposed written reprimand; the AIB report was

attached to the reprimand, which shows that Boxer was intending to send Kocher a punitive message about her previous whistleblowing conduct.

Fifth, on February 6, 2018, Boxer issued Kocher a PIP. This PIP contained a number of allegations about Kocher's deficiencies in the workplace—which were never previously documented. This PIP was so egregious and without merit, that it was later rescinded, but its issuance again demonstrates that Boxer intended to harass Kocher for making protected disclosures.

All of this treatment has caused Petitioners a tremendous amount of embarrassment, professional harm, and emotional anguish. Both Finizie and Kocher testified that they feel as if their professional reputations have been completely ruined. Finizie testified how this conduct prompted her to retire earlier than when she had planned. Kocher testified how she experienced a heart attack in the workplace, and how she believed this conduct was the cause of the heart attack. Petitioners were inflicted with these harms simply because they notified their supervisor when they had good cause to believe that workplace regulations had been violated. At the very least, the Agency should protect individuals who make these whistleblowing reports, so that they feel safe in doing so, and so the Agency can better itself. Instead, the Agency systematically retaliated against Petitioners, and sent a message to them and similarly situated individuals to remain quiet in the future.

CONCLUSION

Based on the foregoing, Petitioners respectfully request that this Court grant their Petition for Writ of *Certiorari*.

Dated: 1/24/2022

Respectfully submitted,

Faye Riva Cohen, Esquire
Counsel for Petitioners