

FILED
AUG 25 2023
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 23-192

In the
Supreme Court of the United States

AISHA TRIMBLE,

Petitioner,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Federal Circuit

PETITION FOR WRIT OF CERTIORARI

AISHA TRIMBLE,
Pro Se

PO BOX 540261
DALLAS, TEXAS 75354
(214) 962-8398
aisha1776@yahoo.com

(i)

QUESTIONS PRESENTED FOR REVIEW

The questions presented are:

- 1) When a qualified preference eligible seeks initial appointment under an open competition announcement, does Congress allow federal agencies to deny and violate that veteran's statutory right to preference if the announcement is also open to status candidates seeking merit promotion?
- 2) When a federal agency publishes an open competition announcement and hires federal employees they already know, after emailing instructions to consider them first while naming other employees to consider irrespective of interviews, does that prove pre-selection activity, granting of unfair advantages and denial of a qualified preference eligible's right to compete for initial appointment?
- 3) Under an open competition announcement and legislation that requires one Certificate to be issued, does Congress allow federal agencies to issue several Certificates causing a preference eligible seeking initial appointment to be segregated, illegally ranked and denied their statutory right to have extra points added to their score?

(ii)

PARTIES TO THE PROCEEDING

The Petitioner is Aisha Trimble, and she acts Pro Se under this matter.

The Respondent is the Department of Veterans Affairs, a federal agency.

CORPORATE DISCLOSURE STATEMENT

The Petitioner is not a corporation under this matter; therefore, a corporate disclosure statement isn't required under Supreme Court Rule 29.6.

RELATED PROCEEDINGS

The following proceedings are directly related to this matter:

1) *Trimble v. DVA*, No. 23-1307, U.S. Court of Appeals Federal Circuit. Opinion and Judgment entered June 30, 2023.

TABLE OF CONTENTS

Questions Presented for Review i
Parties to the Proceeding..... ii
Corporate Disclosure Statement ii
Related Proceedings..... ii
Table of Contents iii
Table of Cited Authorities vi
Opinions and Orders Below 1
Jurisdiction..... 1
Constitutional Laws Involved 1
Federal Statutes Involved 1
Federal Regulations Involved 1
Statement of the Case 2
Argument..... 11
 I. Undecided Questions of Federal Law 11
 II. Matter of National Significance 12
 III. Judiciary Departure from Standards..... 13
 IV. Use of *Joseph* is Indefensible 15
 a) *Devon Joseph was a federal employee seeking merit promotion, and Aisha Trimble is a preference eligible seeking initial appointment under an open competition announcement.* 15, 16
 b) *Congress doesn't prohibit veterans from realizing their legal right to preference when seeking initial appointment.*..... 16
 V. Conflicts with Similar Case Rulings..... 16
 1) Conflicts with *Brown v. DVA*..... 16
 2) Conflicts with *Kirkendall v. Army*..... 17
 3) Conflicts with *Gingery v. DOD*..... 18

4) Conflicts with <i>Lazaro v. DVA</i>	18
Conclusion	19
Appendix Table of Contents	1a
Appendix A - Rehearing Denial, Fed. Cir., 23-1306, <i>Trimble v. DVA</i> (Aug. 8, 2023)	2a
Appendix B - Judgment, Fed. Cir., 23-1306, <i>Trimble v. DVA</i> (Jun. 30, 2023)	4a
Appendix C – Opinion, Fed. Cir., 23-1306, <i>Trimble v. DVA</i> (Jun. 30, 2023)	5a
Appendix D – Final Decision, MSPB, DA-3330-22-0254-I-1, <i>Trimble v. DVA</i> (Dec. 20, 2022)	18a
Appendix E – Closure Letter, DOL, LA-2022002VPH (Apr. 8, 2022).....	33a
Appendix F – Legal Text Involved.....	36a
Constitutional Laws Involved	36a
U.S. Const., Amend. 1 & 5	36a
U.S. Const., Art. II., S3.3.1	36a
Federal Statutes Involved	36a
5 USC § 2108(1)a(3)(a)(c)	36a
5 USC § 2302(b)(6)	36a
5 USC § 2302(b)(11)(a-b)	37a
5 USC § 2303(e)(1).....	37a
5 USC § 3304(f)(1)(2).....	38a
5 USC § 3309(1).....	38a
5 USC § 3311(2).....	38a
5 USC § 3313(1)(2)(a)	39a
5 USC § 3317(a)(b)	39a
5 USC § 3318(a),(c)(1-2)	40a

(v)

5 USC § 3330a(a)(1)(b)	41a
5 USC § 3330a(d)(1)(b)	41a
5 USC § 3330c(a-b)	42a
5 USC § 7701(a)(1)	42a
5 USC § 7703(b)(1)(a)	42a
5 USC § 7703(c)(1-3)	43a
18 USC § 241	43a
18 USC § 242	43a
28 USC § 1254(1)	44a
28 USC § 1295(a)(9)	44a
38 USC § 4214(a)(1)	44a
38 USC § 4214(b)(1)(a)	44a
38 USC § 4311(a)	45a
Federal Regulations Involved	45a
5 CFR 211.102(d)(6)	45a
5 CFR 212.301	45a

TABLE OF CITED AUTHORITIES

Cases

Bolling v. Sharpe, 347 U.S. 497 (1954) 14

Brown v. DVA 00-314, Fed. Cir. (2001)..... 3, 10, 16

Champion v. TN Valley Authority
21 M.S.P.R. 561 (1984)..... 9

Gingery v. DOD, 2007-3292, Fed. Cir. (2008) .. 13, 18

Joseph v. FTC, 2007-3073, Fed. Cir.
(2007) 2, 4, 7, 15, 16

Kirkendall v. Army, 2008-3342, Fed. Cir.
(2009) 14, 15, 17

Lazaro v. DVA 2011-3190, Fed. Cir. (2012) 10, 18

Trimble v. DVA 23-1306, Fed. Cir.
(2023) 2 -12, 14, 16, 19

Trimble v. DVA 23-1307, Fed. Cir. (2023)..... 3, 6, 19

Constitutional Provisions

U.S. Const., Amend. 1 11

U.S. Const., Amend. 5 1, 9, 14

U.S. Const., Art. II, S3.3.1 1

Federal Regulations

5 CFR 211.102(d)(6) 4

5 CFR 212.301 3, 4

Federal Statutes

5 USC § 2108(1)a(3)(a)(c) 3
5 USC § 2302(e)(1) 2, 14, 15
5 USC § 2302(b)(6) 6
5 USC § 2302(b)(11)(a-b) 7, 9
5 USC § 3304(f)(1) 2, 4, 6, 7, 8, 14, 15
5 USC § 3304(f)(1-2) 2, 9
5 USC § 3309(1) 1, 5
5 USC § 3311(2) 6, 7
5 USC § 3313(1)(2)(a) 5
5 USC § 3317(a) 4
5 USC § 3317(b) 5
5 USC § 3318(a) 4
5 USC § 3318(c)(1-2) 7, 18
5 USC § 3330a(a)(1)(b) 7, 8
5 USC § 3330a(d)(1)(b) 8, 9
5 USC § 3330c(a-b) 9, 10
5 USC § 7701(a)(1) 8, 9
5 USC § 7703(b)(1)(a) 1
5 USC § 7703(c)(1-3) 14
18 USC § 241 9, 14
18 USC § 242 9, 14, 15
28 USC § 1254(1) 1
28 USC § 1295(a)(9) 1
38 USC § 4214(a)(1) 7
38 USC § 4214(b)(1)(a) 2, 4, 6, 16
38 USC § 4311(a) 8

OPINIONS AND ORDERS BELOW

U.S. Court of Appeals for the Federal Circuit (“Fed. Cir.”) Denial, Judgment and Opinion recorded at 23-1306 and reproduced at Appendices A, B and C. Merit Systems Protection Board (“MSPB” or “Board”) Decision recorded at DA-3330-22-0254-I-1 and reproduced at Appendix D. U.S. Dept. of Labor (“DOL”) Closure recorded at LA-2022002VPH and reproduced at Appendix E.

JURISDICTION

5 USC 7703(b)(1)(A) and 28 USC 1295(a)(9) grants Fed. Cir. jurisdiction, after MSPB Final Decision Dec. 20, 2022.

Fed. Cir. Opinion and Judgment issued Jun. 30, 2023. Petitioner submitted Petition for Rehearing Jul. 22, 2023. Fed. Cir. denied rehearing on Aug. 8, 2023.

Per 28 USC 1254(1), U.S. Const. ArtII.S3.3.1, Rules 10(a)-(c) and 13.3, Supreme Court holds jurisdiction.

CONSTITUTIONAL LAWS INVOLVED

U.S. Const. Amend. 1 & 5; and ArtII.S3.3.1

FEDERAL STATUTES INVOLVED

5 USC §§ 2108, 2302, 3304, 3309, 3311, 3313, 3317, 3318, 3330a, 3330c, 7701, 7703; 18 USC §§ 241, 242; 28 USC § 1295; 38 USC § 4214

FEDERAL REGULATIONS INVOLVED

5 CFR §§ 211, 212

STATEMENT OF THE CASE

My name is Aisha Trimble, and I am being deprived of my veterans preference rights while seeking initial appointment to federal jobs.

Federal agencies frequently treat public employment hiring like a private, “members only” club, and they violate Congressional laws governing veterans preference¹ and right to compete² throughout the process.

On Nov. 15, 2021, Dept. of Veterans Affairs (“DVA”) posted one Competitive Service, open competition³ announcement offering six Executive Assistant jobs⁴. DVA allowed veterans who had never worked for the federal govt. to apply stating, “...*this announcement does not obligate management to fill ...vacancies by promotion. The position may be filled by change to lower grade... appointment, or reinstatement...*”

On Nov. 16, 2021, I applied as a qualified candidate seeking initial appointment under 5 USC § 3304(f)(1)(2) and 38 USC § 4214(b)(1)(a).

¹ 5 USC § 2302 e(1)

² 5 USC § 3304(f)(1)

³ See *Joseph v. FTC* 2007-3073 Fed. Cir. 2007 “...open competitive is used for employees seeking to join the competitive service and for reviewing applicants outside the agency.”

⁴ See www.usajobs.gov/Job/622150700; and *Trimble v. DVA* 23-1306 Fed. Cir. 2023, Entry 5, Tab 11, p 102

I am a preference eligible per 5 USC § 2108(1)a(3)(a)(c). As a preference eligible with over 15 years of Executive Assistant work experience, I was entitled to veterans preference when I applied to the vacancy⁵.

Six Selecting Officials (“Hiring Managers”) hired five federal employees with status⁶ to fill the positions. The sixth position is unfilled. Hiring Managers were Christopher Santoro, Nina Tann, Silas Darden, Robert Scharnberger, Thomas Rodrigues, and Tamia Gordon. One or more of them work(ed) at the DVA via Presidential appointment.

The Selectees are Carolyn Colley, Maria Braswell, Deborah Moutinho, Carly Wright, and Voncell James,⁷ and none of them were eligible for veterans’ preference⁸. SF-50 records for Colley, Moutinho and Wright prove they are not veterans and are non-preference eligible⁹. MSPB leans on DD-214 records as proof of their military service; however, SF-50 records conflict with the potentially fake DD-214’s.¹⁰

⁵ See *Brown v. DVA* No. 247 Fed. Cir. f. 3d 1222 2001 “...veterans’ pref. applies to initial employment, not movement of an employee from one job to another within an agency...”

⁶ 5 CFR 212.301

⁷ See *Trimble v. DVA* 23-1306 Fed. Cir. 2023, Doc. 9-2, p 68

⁸ See *Brown v. DVA* No. 247 Fed. Cir. f. 3d 1222 2001 [“...veterans’ preference does not apply to an employee’s transfer or other intra-agency movement...”]

⁹ See *Trimble v. DVA* 23-1306 Fed. Cir. 2023, Doc. 9-2, p 59 and *Trimble v. DVA* 23-1307 Fed. Cir. 2023, Entry 8, Tab 25, pp 15, 18, 19 & 21

¹⁰ See Appendix D

I am not a status candidate per 5 CFR 212.301, and 5 CFR 211.102(d)(6) does not pertain to me. To date, I have never been appointed to a federal job. Promotion, transfer or reassignment actions can't be used to hire me under any announcement. The *appointment* action¹¹ must be used.

DVA only hired people they knew¹², treating the process like a private club that grants access to "its own."

On December 10, 2021, DVA emailed me confirming I was referred to the Hiring Manager¹³. DVA followed its own rules when Human Resources employee, Kenneth Bixler illegally split the entire pool of applicants and issued three¹⁴ Certificates of Eligibles that segregated me, instead of creating one Certificate per 5 USC § 3317(a).

He violated my right to compete under 5 USC § 3304(f)(1) when he told the Hiring Team, "...*you must consider internal applicants first...*"¹⁵

¹¹ 38 USC 4214(b)(1)(a)

¹² During the Related Proceeding Hearing, DVA stated they knew all Selectees before posting the vacancy.

¹³ See *Trimble v. DVA* 23-1306 Fed. Cir. 2023, Entry 5 Tab 11 pp 41, 43

¹⁴ See *Joseph v. FTC* 2007-3073 Fed. Cir. (2007) "...*applicants are given a numerical rating and placed on a list qualified for appointment.. applicants with the three highest ratings are submitted to the appointing official, who is ordinarily required to select one of them... 5 U.S.C. § 3318(a)*"

¹⁵ See *Trimble v. DVA* 23-1306 Fed. Cir. 2023, Doc. 9-2, p 15

The time stamp at the bottom of the Certificates shows selection choices were entered on Dec. 10, 2021 at 11:04 EST¹⁶. While the Memorandum dated January 31, 2022¹⁷ lists Selectee choices after purported interviews, substantial evidence shows the selections were made on Dec. 10, 2021¹⁸.

DVA violated my rights under 5 USC § 3313(1),(2)(a) and 5 USC § 3309(1), by illegally listing me in alphabetical order on the Certificate titled "Ranking List" and omitting 10 additional points from my score. The words "transfer," "agency employee", and "reinstatement" are excluded from my row because DVA knew I sought initial appointment. I am listed on page 63, and my name is oppressively redacted¹⁹.

DVA violated my rights under 5 USC § 3317(b) when they failed to give me advance notice of discontinuance of certification, before entering "*not selected*" next to my name. The unsigned "Ranking List" Certificate contains non-statutory wording, "*Exclude Veterans Points*" at the top right of each page²⁰.

I now inform the Supreme Court that MSPB Administrative Judge, Theresa Chung Ordered DVA

¹⁶ See *Trimble v. DVA* 23-1306 Fed. Cir. 2023 Doc. 9-2, p 21

¹⁷ See *Trimble v. DVA* 23-1306 Fed. Cir. 2023 Doc. 9-2, p 68

¹⁸ See *Trimble v. DVA* 23-1306 Fed. Cir. 2023 Doc. 9-2 pp 70, 72

¹⁹ See *Trimble v. DVA* 23-1306 Fed. Cir. 2023 Entry 5 Tab 11 pp 57-100

²⁰ See *Trimble v. DVA* 23-1306 Fed. Cir. 2023, Entry 5, Tab 11, pp 57-100

Attorney, Joan Green to redact the Selectees' names on all three Certificates during my Appeal proceedings²¹. This is one of many actions Chung took to oppress and intimidate my pursuit for justice and deprive me of Constitutional and statutory rights as I legally sought public, non-sensitive material facts, corrective action and remedy under my Appeal.

On or before Dec. 10, 2021, selections were entered on all three time-stamped, unsigned Certificates. Santoro and Tann emailed the other Hiring Managers on Dec. 28 & 30, 2021, stating Braswell, Colley and Wright should be selected "*irrespective of interview.*" Santoro and Tann also added the names of Moutinho, Colley, Wright and James under areas designated as "yes" for interviews. These emails²² prove DVA gave unfair advantages to the Selectees, in violation of 5 USC § 2302(b)(6).

DVA violated my rights under 38 USC § 4214(b)(1)(a), 5 USC § 3311(2) and 5 USC § 3304(f)(1) when Santoro listed me as "*maybe*"²³ for interview²⁴. After highlighting and uploading this evidence to Fed. Cir., an extra yellow mark redacted my legible highlights. Nevertheless, the legible text is viewable under the *Related Proceeding*²⁵. DVA also violated my rights

²¹ See *Trimble v. DVA* 23-1306 Fed. Cir. 2023 Entry5 Tab10 p1

²² See *Trimble v. DVA* 23-1306 Fed. Cir. 2023 Doc. 9-2 pp 70,72

²³ Merriam Webster's definition for maybe is **perhaps**.
<https://www.merriam-webster.com/dictionary/maybe>

²⁴ See *Trimble v. DVA* 23-1306 Fed. Cir. 2023, Doc. 9-2, p 70

²⁵ See *Trimble v. DVA* 23-1307 Fed. Cir. 2023 Entry 8 Tab25, pp 26 & 28

under 5 USC § 2302(b)(11)(a-b), when the other Hiring Managers failed to credit my experience, properly adjudicate my veterans' preference and consider me for initial appointment. Granting unfair advantages and non-statutory preference to the Selectees violated my right to compete under 5 USC § 3304(f)(1).

On February 9, 2022, DVA violated my rights under 5 USC § 3318(c)(1-2), passing me over for non-preference eligibles without appointing me or allowing me to object²⁶. "*...If a veteran has the highest rating on the list, the agency **must appoint** that individual, unless the agency seeks and receives.. written authority to appoint someone ranking below*" [*Joseph v. FTC* 2007-3073 Fed. Cir. (2007)] I emailed a Reconsideration Request to DVA.

On March 11, 2022, DVA again violated my rights under 38 USC § 4214(a)(1) and 5 USC § 3311(2), under the final response to my Request stating, "*...other candidates demonstrated more apparent ability or experience...*"²⁷

On March 17, 2022, I exercised my rights under 5 USC § 3330a(a)(1)(b) and filed a veterans preference complaint with DOL. I provided evidence of the open competition announcement, and DVA provided all unredacted Certificates to DOL proving my veterans'

²⁶ See *Trimble v. DVA* 23-1306 Fed. Cir. 2023, Entry 5 Tab 11 p 45

²⁷ See *Trimble v. DVA* 23-1306 Fed. Cir. 2023 Doc. 9-2, p 74

preference rights via initial appointment were violated²⁸. Based on the evidence, DOL should have legally resolved this matter in my favor and eliminated the unnecessary financial expenses and mental stress I face appealing beyond DOL.

On April 8, 2022, DOL violated my rights under U.S. Const. Amend. 5, and 18 USC § 242, when Jonathan Narcisse deprived me of my right to due process and remedy under 5 USC § 3330a(a)(1)(b). Without citing any federal law pertaining to initial appointment, Narcisse pretended I was a federal employee seeking promotion and dismissed my complaint stating, “... *applicants don't receive veterans preference points... under merit promotion...*” See Appendix E

On April 20, 2022, I exercised my rights under 5 USC § 3330a(d)(1)(b) and 5 USC § 7701(a)(1) and submitted a VEOA²⁹ Appeal to MSPB, requesting a Hearing. MSPB also docketed a companion USERRA Appeal, *initial appointment* discrimination [38 USC 4311(a)].

MSPB learned that I am not a status candidate³⁰, and DVA Attorney, Joan Green provided evidence proving I am not a federal employee³¹.

²⁸ *Trimble v. DVA* 23-1306 Fed. Cir. 2023 Entry 5, Tab 11, p 47

²⁹ 5 USC § 3304(f)1

³⁰ See *Trimble v. DVA* 23-1306 Fed. Cir. 2023 Doc. 9-2, p 46

³¹ See *Trimble v. DVA* 23-1306 Fed. Cir. 2023 Entry 5, Tab 11 pp 7, 21

I submitted multiple pleadings for Chung to recuse herself due to her conduct under my proceedings³². I explained how DVA didn't credit my experience, with evidence showing all Selectees had less Executive Assistant experience³³.

Chung abused her discretion, oppressed and intimidated me saying she would likely throw out my Appeal. My right to Hearing³⁴ and equal protection³⁵ under veterans preference laws were violated by Administrative Judge Theresa Chung.

On Nov. 15, 2022, Chung issued a Decision violating 5 USC § 2302(b)(11)(a), 5 USC § 3304(f)(1),(2) and 5 USC § 3330c(a)(b). Unsupported by substantial evidence, it allows DVA to violate my rights with impunity. *See Appendix D*

MSPB violated my right to due process under 5 USC § 3330a(d)(1), U.S. Const. Amend. 5, 18 USC § 242 and 18 USC § 241.

Under false pretenses, MSPB conspired in lockstep with DOL to injure my rights to remedy and corrective action. Without citing any Decisions³⁶ or

³² See *Trimble v. DVA* 23-1306 Fed. Cir. 2023 Entry 5, Tab 21,23,30

³³ See *Trimble v. DVA* 23-1306 Fed. Cir. 2023 Doc. 9-2, pp 41-44

³⁴ 5 USC 7701(a)(1)

³⁵ See *Champion v. TN*, 21 M.S.P.R. 561, 562 1984 "...veterans receive preference only when "seeking initial appointment..."

³⁶ See *Champion v. TN*, 21 M.S.P.R. 561, 562 1984 "...veterans receive preference only when "seeking initial appointment..."

Opinions³⁷ relevant³⁸ to my Appeal, Chung arbitrarily pretended that I sought promotion stating, “...an employee is not entitled to veterans preference in the merit promotion process...” See Appendix D

On December 22, 2022, I petitioned Fed. Cir. to review MSPB’s Final Decision. My Brief provides a clear statement saying, “I wasn’t a former or current federal employee when I applied to the vacancy. I didn’t apply seeking merit promotion...”³⁹.

On June 30, 2023, Fed. Cir. issued its Opinion and mirrored MSPB’s actions to conspire against my rights and deny me equal protection and due process. Fed. Cir. denied my rights to corrective action and remedy under 5 USC § 7703(c)(1-3) and 5 USC § 3330c(a-b).

In an alternative way of saying, ‘We don’t care,’ Fed. Cir. pretended I was a federal employee seeking promotion and affirmed MSPB’s erroneous Decision stating, “The job posting sought to promote Federal employees or employees who had status... this reaffirms the role was to be filled through merit promotion.” See Appendices B, C

³⁷ See *Brown v. DVA*, No. 247, Fed. Cir. f. 3d 1222 (2001)

³⁸ See *Lazaro v. DVA* 2011-3190 Fed. Cir. 2012 “...the Board has jurisdiction to determine whether VA properly determined Lazaro was not qualified.”

³⁹ See *Trimble v. DVA* 23-1306 Fed. Cir. 2023 Doc. 9-1, pg. 2, answer #3

On July 22, 2023, I petitioned Fed. Cir. for rehearing on this initial appointment issue.⁴⁰

On August 8, 2023, Fed. Cir. denied my Informal Petition for Panel Rehearing. I have exhausted all legal remedies below the Supreme Court. See Appendix A

ARGUMENT

I exercise my rights under the US Const., 1st Amend. to reveal this to the Supreme Court, with no intent for contumacious conduct.

I bring this forth non-frivolously, in the interest of Justice for qualified veterans being denied their right to preference for initial appointment.

The federal government constantly steals job opportunities from qualified veterans seeking initial appointment. I speak from experience.

I. Undecided Questions of Federal Law

The Supreme Court has never issued Opinions settling questions presented herein, and Fed. Cir. never submitted Certified Questions requesting the Supreme Court's supervisory assistance for this case.

Important, unanswered questions of law have not been, but should be, settled by this Court.

⁴⁰ See *Trimble v. DVA* 23-1306 Fed. Cir. 2023, Doc. 19-1 p 6, statement viii(1) and p 13, statement 28

II. Matter of National Significance

The merits and outcome of this matter impacts millions of employable veterans having statutory protections for preference, when applying for initial appointment with the federal government.

The false pretense of me seeking "*promotion*" stands to deceive and confuse the legal diaspora, and future veterans bringing similar grievance. This deception dominates the Fed. Cir. Opinion, and a high probability exists for future, deceptive citation of *Trimble v. DVA 23-1306*, Fed. Cir. (2023) by the Fed. Cir. and the Board. This requires immediate correction.

Every fiscal year, Congress approves funding for the federal jobs posted on USAJobs.gov. Their Facebook⁴¹ posting reveals millions of Americans apply for federal jobs on a monthly basis saying, "*In January, we had 2,204,840 applications pass through USAJOBS alone!*"

Millions of honorably discharged veterans qualify for federal jobs. On a consistent basis, federal hiring teams steal many of these job opportunities from qualified preference eligibles seeking initial appointment. I speak from experience.

Job security positively impacts a person's wellbeing

⁴¹ <https://www.facebook.com/USAJOBS/posts/have-you-ever-wondered-just-how-many-people-apply-to-federal-jobs-in-january-we-/10150126547419721/>

and provides a means to obtain housing, transportation, childcare, clothing, food and healthcare. Employment is a powerful remedy for employable veterans experiencing homelessness or chronic homelessness.

III. Judiciary Departure from Standards

I believe Fed. Cir. is playing dirty games under this matter, taking actions far removed from statutory compliance, justice and fairness, and abandoning its usual course for VEOA initial employment violations.

The central issue and elephant in the room is *initial appointment* for a qualified preference eligible. Fed. Cir. has a history of treating the central issue of a case with integrity, and concurring under Opinions to avoid violating a Petitioner's legal rights, saying under *Gingery*⁴²:

...the court has not treated the central issue of this appeal, an issue that can have a larger effect on Mr. Gingery's legal rights. This deprived him of important veterans' preference rights that apply to competitive service positions...the issue was fully and fairly raised on this appeal, and has a direct impact on this petitioner, for the veteran states that he is deprived of his statutory additional points of rating. The issue is before this court, and it should be discussed and resolved.

⁴² See *Gingery v. DOD*, 2007-3292, Fed. Cir. (2008)

Fed. Cir. violated U.S. Const., Amend. 5, 18 USC § 241 and 18 USC § 242, and abandoned its duties under 5 USC § 7703(c)(1-3), upon issuing the *Trimble*⁴³ Opinion. See Appendix C.

Fed. Cir. affirmed the Board's Decision, and that Decision was unsupported by substantial evidence and issued without following procedures required by law and regulation. Fed. Cir. conspired with MSPB and DOL actions to injure, oppress, intimidate and deny full exercise of my rights secured under 5 USC § 2302 e(1) and 5 USC § 3304(f)(1).

Fed. Cir. treated me differently by neglecting its duties under 5 USC § 7703(c)(1-3), denying my right to equal protection⁴⁴ and failing to remand my matter back to the Board for corrective action like *Kirkendall*⁴⁵.

Fed. Cir. violated 18 USC § 241 and willfully played the unethical MSPB and DOL game of "Ignore & Pretend," that falsely views me as a *federal employee seeking promotion*. This uniform trickery deliberately

⁴³ See *Trimble v. DVA* 23-1306 Fed. Cir. 2023

⁴⁴ See *Bolling v. Sharpe*, 347 U.S. 497 (1954) "... the 5th Amend. does not contain an equal protection clause as the 14th.. it would be unthinkable that the same Const. would impose a lesser duty on the Federal Government.."

⁴⁵See *Kirkendall v. Army*, 2008-3342, Fed. Cir. (2009) "*The board abuses its discretion when it rests its decision on factual findings unsupported by substantial evidence.*"

disregards the central issue and allows DVA hiring misconduct and violations to go unchecked.

Fed. Cir. violated 18 USC § 242 and denied my rights under the color of 5 USC § 2302(e)(1) and 5 USC § 3304(f)(1). Fed. Cir. willfully played an oppressive game of “getting the issue wrong” because it is a deceptive detour around granting me due process and equal protection under the color of these laws.

Fed. Cir. mirrored the Board and conspired alongside the Board to mock my pursuit for justice and take oppressive official actions that denied me equal protection⁴⁶ under matters concerning veterans preference and right to compete violations, and remedy against those violations. Affirmation of the Board Decision prohibits corrective action, allowing DVA to deny my rights under all veterans preference statutes cited herein, in violation of 18 USC § 242.

This is not an issue of Fed. Cir. misapplying a properly stated rule of law. No laws exist prohibiting a preference eligible from utilizing veterans preference while seeking initial appointment; therefore, Fed Cir. was unable to cite any.

IV. Use of *Joseph* is Indefensible

Reliance on *Joseph v. FTC*, 2007-3073, Fed. Cir. (2007) is indefensible. Devon Joseph applied to a merit promotion announcement, with Fed. Cir.

⁴⁶ See *Kirkendall v. Army* 2008-3342, Fed. Cir. 2009 “...The board has experience crafting remedies for VEOA violations...”

clearly informing the public that Mr. Joseph was, "...a veteran employed by another federal agency..."

I am currently unable to apply to merit promotion announcements⁴⁷. Under *Trimble v. DVA*, 23-1306, Fed. Cir. (2023), Fed. Cir. irrelevantly states, "...An applicant "is not entitled to veterans' preference in the merit promotion process." Veterans are guaranteed only the right to apply and an opportunity to compete for a merit promotion position..." See Appendix C

Reliance on *Joseph v. FTC*, 2007-3073, Fed. Cir. (2007) is indefensible because I applied to an open competition announcement seeking initial appointment, and "...VEVRAA, like the VPA, accords veterans' preference only for initial employment. Congress specifically limited the preferences provided by 38 § USC 4214(b)(1) to "appointments..."⁴⁸

V. Conflicts with Similar Case Rulings

1) Conflicts with *Brown v. DVA*.

Under *Brown v. DVA*, No. 247, Fed. Cir. f. 3d 1222 (2001), several federal employees tried to utilize veterans preference for promotion. Fed. Cir. held: "The scope of veterans' preference cannot be enlarged by the fiction of treating within-agency movement as

⁴⁷ See *Joseph v. FTC*, 2007-3073, Fed. Cir. (2007) – "...merit promotion process is used when the position is to be filled by an employee of the agency or by an applicant from outside the agency who has "status" in the competitive service..."

⁴⁸ See *Brown v. DVA*, No. 247, Fed. Cir. f. 3d 1222 (2001)

initial employment... preference only applies to initial employment... not to an employee moving from one job to another within an agency."

Under my matter, Fed. Cir. ignores DVA hiring misconduct and the non-statutory preference given to to promote, reassign and transfer the respective federal employees.

2) Conflicts with *Kirkendall v. Army*

Under *Kirkendall v. Army*, 2008-3342, Fed. Cir. (2009), a disabled veteran sought initial appointment and filed grievance regarding his experience not being credited, and VEOA violations. Fed. Cir. remanded his case back to the Board, saying:

Mr. Kirkendall presents the same undisputed facts and clear statute, both of which the board overlooked. We can barely imagine a stronger case of violation of a veteran's preference rights." If required info regarding experience was not stated in the "application," Tolliver would reject the application as "incomplete." Kirkendall is a disabled veteran, entitled under VEOA to certain procedural rights and to ten additional points on his score...

This position conflicts with my case because evidence I provided was surely ignored by the Board, and DVA never viewed my application as incomplete or lacking required experience **before** referral.

3) Conflicts with *Gingery v. Dept. of Defense*

Under *Gingery v. DOD*, 2007-3292, Fed. Cir. (2008), a preference eligible seeking appointment was passed over for two non-preference eligibles, without allowing Stephen Gingery to object.

Like Mr. Gingery, I applied for initial appointment. I provided evidence proving DVA violated my rights under 5 USC § 3318(c)(1-2), yet Fed. Cir. made a conflicting decision under my case after holding this position under Mr. Gingery's:

...Through § 3318, Congress spoke on procedures an agency should follow when it passes over a preference eligible and selects a non-preference eligible. There is no question the requirements of § 3318 were not met in this case...

4. Conflicts with *Lazaro v. DVA*

Under, *Lazaro v. DVA*, 2011-3190, Fed. Cir. (2012), Mr. Lazaro argues that he has qualifying experience that was never considered by DVA, and Fed. Cir. held:

...the AJ concluded that Lazaro's appeal raised an issue the Board lacked jurisdiction to review.. we conclude the Board has jurisdiction to determine whether the VA properly determined that Lazaro was not qualified for the position.. an agency must comply with special statutes and regulations when it determines

whether a veteran is qualified for a given position...

DVA rejected my Reconsideration Request⁴⁹. The rejection conflicts with a statement DVA employee, Lesley Bonham made saying, "*She qualified but they didn't select her.*"⁵⁰ Fed. Cir. ignores this evidence, and its conflicting position under Mr. Lazaro's case, stating, "*...It is not up to the MSPB, in a VEOA case, to decide which of the applicants are most qualified for this position...*"⁵¹ – See Appendix C

CONCLUSION

I declare under penalty of perjury that the foregoing is true and correct. I prayerfully request the Supreme Court to grant this Petition for Writ of Certiorari.

Respectfully submitted,

/s

Aisha Trimble, Pro Se

⁴⁹ *Trimble v. DVA* 23-1306 Fed. Cir. 2023 Doc. 9-2, p 74

⁵⁰ *Trimble v. DVA* 23-1307 Fed. Cir. 2023, Entry 8, Tab 25, p 32

⁵¹ *Trimble v. DVA* 23-1306 Fed. Cir. 2023