

No. _____

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 REHEARING

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(i)

QUESTIONS PRESENTED FOR REVIEW

Under multiple cases, the U.S. Supreme Court has clearly held that honorably discharged, preference eligible veterans are protected by Veterans' Preference Act of 1944 ("VPA") statutes involving crediting qualifying experience, ranking, selection, passover, appointment and granting preference throughout the federal employment hiring process.

Additional federal questions and new facts presented herein concern violations under the scope of rights granted by Congress through the VPA.

The additional federal questions presented are:

4) Is the Court of Appeals for the Federal Circuit ("Fed. Cir.") split against itself, in error, and in conflict with this Court's relevant rulings by stripping me of my VPA rights and failing to wholly analyze the Act and all record evidence showing I am a preference eligible who sought initial appointment under open competition procedures?

5) Was I entitled to the status of preference eligible under the provisions of VPA, and did the Act allow Department of Veterans Affairs ("DVA") to discredit my qualifying experience, improperly rank me, deny my right to object to passover, fail to provide me advance notice and refuse appointment to me when I applied to the job announcement?

(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 U.S. Supreme Court Rule 29.6.

RELATED PROCEEDINGS

The following proceedings are directly related to this matter:

- 1) *Trimble v. DVA*, No. 23-192, U.S. Supreme Court (2023), Certiorari denied October 16, 2023.
- 2) *Trimble v. DVA*, No. 23M28, U.S. Supreme Court (2023), docketed September 28, 2023.

OPINIONS AND ORDERS BELOW

U.S. Supreme Court Denial recorded at 23-192 and reproduced at Appendix A.

JURISDICTION

Per Rule 44.2, U.S Supreme Court holds jurisdiction.

FEDERAL STATUTES INVOLVED

5 USC §§ 2108, 3309–3320

STATEMENT OF GROUNDS

I, Aisha Trimble, come before the U.S. Supreme Court to present this Petition for Rehearing as an honorably discharged, qualified preference eligible¹.

Question Five herein has already been accepted² by this Court. Under *Brannan*, this Court held:

[“...We granted certiorari because of the obvious impact of these issues on federal employment policies...”]

ARGUMENT

DVA violated my rights under the following laws, and evidence is sufficient to state a cause of action:

5 USC § 3309(1);
5 USC § 3311(2);
5 USC § 3313(1)(2)(a);
5 USC § 3317(a)(b); and
5 USC § 3318(a)(c)(1-2).

DVA violations of VPA statutes under this matter caused me to be deprived of initial federal appointment after applying to the job announcement.

I. Conflicts with U.S. Supreme Court Rulings

¹ “...Veterans’ preference rights are defined by VPA.” – See *Patterson v. Department of the Interior*, 424 F.3d 1151, 1155 (Fed. Cir. 2005).

² See *Brannan v. Elder*, 341 U.S. 277 71 S.Ct. 685, U.S. Supreme Court (1951), certiorari granted.

a.) Conflicts with *Brannan v. Elder*

Under *Brannan v. Elder*, 341 U.S. 277 71 S.Ct. 685, U.S. Supreme Court (1951), this Court held:

[“...honorably discharged veterans are concededly entitled to whatever benefits the Act affords... preference eligibles are placed on the appropriate lists in accordance with their respective numerical ratings... which are augmented by 10 points in the case of disabled veterans... the appointing officer may pass over a veteran in favor of a nonveteran, but if he does so he must file in writing his reasons.... no appointment shall be made from an examination register, except of 10-point preference eligibles... when there are three or more names of preference eligibles on any appropriate... list for the position to be filled.”]

b.) Conflicts with *Mitchell v. Cohen*

Under *Mitchell v. Cohen*, 333 U.S. 411 68 S.Ct. 518, U.S. Supreme Court (1948), this Court held:

[“...The VPA was adopted creating special preference and protection for veterans at every stage of federal employment... that establishes preference in government employment for ‘those who have served on active duty... and have been separated under honorable conditions..”]

The Fed. Cir. three-judge panel failed to examine the intent of VPA as a whole, and its ruling conflicts with U.S. Supreme Court's historical VPA rulings.

II. Compelling Facts

Fed. Cir. is the **only** court below the U.S. Supreme Court having jurisdiction over VPA federal employment cases like this one.

In a historic split against itself, and for the first time in history, Fed. Cir. denied a qualified veteran their legal right to preference for initial appointment under VPA and failed to remand a non-frivolous, initial appointment case back to the Merit Systems Protection Board ("MSPB").

When issuing the Opinion under this matter, Fed. Cir. couldn't cite similar case rulings because no Fed. Cir. rulings existed that denied veterans preference to a qualified veteran seeking initial appointment!

III. Intervening Circumstances

Denial of my Petition for Writ of Certiorari will cause irreparable legal harm and a gross miscarriage of justice against me. The merits and outcome of this case have a substantial intervening effect on four active, non-frivolous VPA cases I have pending before Fed. Cir. and MSPB:

Trimble v. DOJ, 23-1277, Fed. Cir. (2023)

Trimble v. DHS, 23-1279, Fed. Cir. (2023)

Trimble v. IRS, DA3330-23-0146-I-1, MSPB (2023)

Trimble v. FAA, DA3330-23-0118-I-1, MSPB (2023)

On July 6, 2023, MSPB cited this unfinished case and its companion case, under a recent Decision³. MSPB's public statement is deceptive, as MSPB surely denied me due process for a hearing and equal protection for violations of my rights under VPA!

The granting of this Petition has a substantial effect on federal employment policies and hiring practices. I humbly beseech this Court to treat this matter with the same justice provisioned under *Brannan* and *Mitchell*.

CONCLUSION

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

Respectfully submitted,

/s

Aisha Trimble, Pro Se

³ *See*

www.mspb.gov/decisions/case_reports/Case_Report_July_7_2023_2047493.pdf

CERTIFICATE OF PETITIONER

I hereby certify that this Petition for Rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.

Aisha Trumble

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Appendix A

No. 23-192

Aisha Trimble, Petitioner
v.
Department of Veterans Affairs

Docketed: August 29, 2023

Lower Ct:
United States Court of Appeals for the Federal
Circuit

Case Numbers: (2023-1306)
Decision Date: June 30, 2023
Rehearing Denied: August 8, 2023

Aug 25 2023
Petition for a writ of certiorari filed. (Response due
September 28, 2023)

Sep 18 2023
Waiver of right of respondent Department of Veteran
Affairs to respond filed.

Sep 27 2023
DISTRIBUTED for Conference of 10/13/2023

Oct 16 2023
Petition DENIED.

Appendix B

Federal Statutes Involved

5 USC § 2108(1)a(3)(a)(c) - 1) “veteran” means an individual who— (A)served on active duty in the armed forces during... a campaign or expedition for which a campaign badge has been authorized; (3) “preference eligible” means, except as provided in paragraph (4) of this section or section 2108a(c)— (A)a veteran as defined by paragraph (1)(A) of this section; (C)a disabled veteran;

5 USC § 3309(1) - A preference eligible who receives a passing grade in an examination for entrance into the competitive service is entitled to additional points above his earned rating, as follows— (1)a preference eligible under section 2108(3)(C)–(G) of this title—10 points;

5 USC § 3311(2) - In examinations for the competitive service in which experience is an element of qualification, a preference eligible is entitled to credit for all experience material to the position for which examined, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether he received pay therefor.

5 USC § 3313(1)(2)(a) - the names of applicants who have qualified in examinations for the competitive service shall be entered on appropriate registers or

lists of eligibles in the following order — (1) for scientific and professional positions in GS-9 or higher, in the order of their ratings, including points added under section 3309 of this title; and (2) for all other positions — (A) disabled veterans who have a compensable service-connected disability of 10 percent or more, in order of their ratings, including points added under section 3309 of this title;

5 USC § 3317(a) - The Office of Personnel Management shall certify enough names from the top of the appropriate register to permit a nominating or appointing authority who has requested a certificate of eligibles to consider at least three names for appointment to each vacancy in the competitive service.

5 USC § 3317(b) - When an appointing authority, for reasons considered sufficient by the Office, has three times considered and passed over a preference eligible who was certified from a register, certification of the preference eligible for appointment may be discontinued. However, the preference eligible is entitled to advance notice of discontinuance of certification.

5 § USC 3318(a) - The nominating or appointing authority shall select for appointment to each vacancy from the highest three eligibles available for appointment on the certificate furnished under section 3317(a) of this title, unless objection to one or more of the individuals certified is made to, and

sustained by, the Office of Personnel Management for proper and adequate reason under regulations prescribed by the Office.

5 USC § 3318(c)(1-2) - if an appointing authority proposes to pass over a preference eligible on a certificate to select an individual who is not a preference eligible, such authority shall file written reasons with the Office. The Office shall make the reasons presented by the appointing authority part of the record of the preference eligible and may require the submission of more detailed information from the appointing authority in support of the passing over of the preference eligible. The Office shall determine the sufficiency or insufficiency of the reasons submitted by the appointing authority, taking into account any response received from the preference eligible under paragraph (2) of this subsection. When the Office has completed its review of the proposed passover, it shall send its findings to the appointing authority and to the preference eligible. The appointing authority shall comply with the findings of the Office. In the case of a preference eligible who has a compensable service-connected disability of 30 percent or more, the appointing authority shall at the same time it notifies the Office under paragraph (1) of this subsection, notify the preference eligible of the proposed passover, of the reasons therefor, and of his right to respond to such reasons to the Office within 15 days of the date of such notification. The Office shall, before completing its review under paragraph (1) of this subsection, require a demonstration by the

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appointing authority that the passover notification was timely sent to the preference eligible's last known address.