

24-6^{No}206 ORIGINAL

In the Supreme Court of the United States

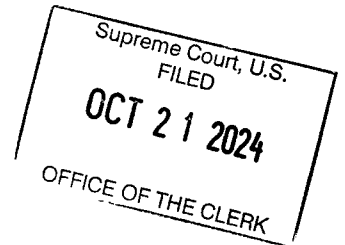
Anthony Bowden,

Petitioner,

Office of Personnel Management

Respondent.

Petition for Writ of Certiorari



Anthony Bowden respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit in this case 2023-2377.

Anthony Bowden

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202-399-3999

QUESTION(S) PRESENTED

1. Was Federal Appeals Court opinion to confirm the Merit System Protection Board (MSPB) decision in the Bowden vs. OPM case discrimination against a person with a disability?
2. Was Mr. Bowden taken advantage of due to his mental disability by Federal Appeals Court by his arguments being disregarded and ruled as being non persuasive?
3. Was Mr. Bowden given any accommodations due to his mental and physical disability cause by federal on-the-job injuries?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

Merit System Protection Board

Anthony Bowden, Sr, v. Office of Personnel

DC-0831-23-0285-1-1

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IN THE
SUPREME COURT OF THE UNITED STATES PETITION FOR
WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Attachment A to the petition and is

reported at _____; or, has been designated for publication but is not yet reported; or, is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or, has been designated for publication but is not yet reported; or, is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or, has been designated for publication but is not yet reported; or, is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or, has been designated for publication but is not yet reported; or, is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 24, 2024.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: October 23, 2024, and a copy of the order denying rehearing appears at Appendix G.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. §1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____ . A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date:

_____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____.

The jurisdiction of this Court is invoked under 28 U. S. C. §1257(a).

STATEMENT OF THE CASE

I, Mr. Anthony Bowden was placed on the incorrect retirement plan by his employing agency the Smithsonian Institution in 1987. Prior to being hired by the Smithsonian Institution I had worked for 4 different federal agencies over a course of 4.5 years. When I was hired by SI in 1984, I already had a total of 4.5 creditable years of service which should have qualified me to receive retirement coverage upon being hired by SI.

However, SI did not have my records from my previous federal positions and place him on Federal Employee Retirement System (FERS) in 1987. In 2007, I was asked if I wanted to stay on FERS or be moved to Civil Service Retirement System (CSRS). I elected to be placed on CSRS since I knew I did not belong on FERS. Unbeknownst to me I was placed on CSRS Offset which was not explained to me at the time of election.

I am mentally and physically disabled from the ramification of being racial discriminated against and harassed and physically assaulted on the job. I suffer from anxiety, depression, insomnia and post-traumatic stress disorder which affects my ability to make sound decisions. I had no awareness of CSRS Offset so when I asked, and I elected to be moved from FERS what I was informed was just CSRS not CSRS Offset. I wasn't formally made aware of being on CSRS Offset until after I reached the age of 62 and was eligible for social security old age retirement. When I made choice, I was always under the understanding that I was covered under CSRS Act which was the only CSRS retirement system I knew existed other than FERS. I was surprised to find out I was on what OPM

called CSRS Offset and that resulted in my OPM Civil Service retirement pension being offset at age 62. OPM claim that a letter was sent to post my retirement in December 2015, that my pension would be offset at 62, but I never received any correspondence regarding the offset from OPM until January 2022 after I became eligible for old age retirement social security. I don't believe OPM and if true, why was notified after I retired. I should have been made aware of the offset prior to my retirement.

When I called OPM upon being notified that my pension would be reduced /offset I was informed that if I've been working for the government since 1979, the only way I should be placed on CSRS Offset retirement is if I had a break in service for a 1 year or longer. I never had a break in service that lasted 1 year or longer.

I was advised to send a letter to OPM requesting that OPM investigate which retirement system I belonged on, and the offset be removed, because I didn't believe I belonged on CSRS Offset but should have been on CSRS. I submitted this request to OPM via the Honorable Congresswoman Eleanor Holmes Norton.

I received a response from OPM dated July 11, 2022, that the offset was being removed and his pension had been recalculated not to include the offset. After waiting and then calling OPM for status as well as my Congresswoman office calling and we received no response, two months later I received another later dated July 11th, 2022, stating the offset would stand. I received two conflicting letters dated the same day but

communicated different messages. The 2nd letter I received was postmarked September 1st: however letter back dated to July 11th, 2022, which was blatant dishonesty. Later, OPM sent the 2nd letter again dated October 31st.

I submitted a request for reconsideration on November 25th to OPM and requested for OPM to honor their decision in the 1st letter I received that they were removing the offset and had recalculated my annuity from \$3574 to \$5113. OPM responded on January 20th that they confirm their decision stating I didn't qualify for CSRS retirement due to my temporary service until July 15th, 1987, appointment; however, I accepted a permanent position with Smithsonian Institution in July 1984. However, I was not place on a retirement system until July 14th, 1987. I already had 4.5 years of creditable service when I started with SI which should have been a permanent position, I should have been given retirement coverage upon his arrival to SI since the qualification for federal retirement coverage is you must have at least 3 years of creditable service which I had upon starting with SI in 1984. I had been placed on retirement in 1984, I would have qualified for CSRS since FERS did not go into effect until January 1987.

I appealed OPM decision to Merit Systems Protection Board, OPM didn't participate in any of the hearing proceedings and the MSPB threaten OPM with sanctions; however never imposed the sanctions. The MSPB judge proceeded with case although I, Mr. Bowden objected. MSPB Judge represented OPM during all the proceeding and was not neutral. MSPB Judge ruled in OPM favor, showing bias and favoritism. The MSPB

Administrative Judge should have applied the default judgement in the case and ruled in my favor due to OPM not showing up for any of proceedings.

I was not given the opportunity for discovery in the MSPB proceeding and hearing process. The MSPB Admin Judge never made discovery available. Me not being able to conduct discovery and OPM not showing up for any of proceedings put me at a disadvantage. I filed a Motion in the Federal Court of Appeals for discovery to obtain my personnel records. The Federal Court of Appeals denied my motion stating they do not conduct discovery at their level, they stated discovery should have been done at the lower court with MSPB. The MSPB hearing process was a Kangaroo trial/hearing. OPM did not participating in any of proceeding, no discovery and MSPB judge not being neutral yet biased showed favoritism in representing OPM in their absence, this all put me at disadvantage.

I have suffered with mental and physical disabilities due to on-job-injuries and no accommodation were made for Mr. Bowden when he was asked in 2007 to plan regarding his retirement coverage. SI Human Resources Representative never explained to Mr. Bowden that he was being placed on CSRS Offset which Mr. Bowden and at the time he allegedly elected CSRS Offset was only aware of CSRS (CSRS) Act, no CSRS Offset. Mr. Bowden was asked by HR Representative do you want to stay on FERS or be placed on CSRS, there was no mention of "offset" nor any explanation or ramifications of CSRS

Offset. I wasn't made aware of CSRS Offset until he was notified upon turning age 62 of his annuity was being offset.

REASONS FOR GRANTING THE PETITION

United States of Court of Appeals for Federal Circuit opinion was discriminatory to affirm MSPB and OPM decision. I am disabled and mentally and physically handicap federal retiree. My disabilities were cause my on-the-job injuries.

The Court of Appeals confirm MSPB and OPM decision. The Court of Appeals stated I, Mr. Bowden other arguments were non persuasive. MSPB had demonstrated bias, favoritism, and negligence by not ruling in this case the default judgement because OPM did not participate at all in the proceeding.

MSPB just threaten sanction; however, did not impose any sanctions on OPM for not participating in any of MSPB proceedings which was disrespectful to the court and to me. However, the Court of Appeals affirmed OPM and MSPB decision not to remove the offset and that I, Mr. Bowden was properly placed on CSRS Offset.

I was discriminated against by both MSPB and the Federal Court of Appeals due to my mental disability and race. Both upheld OPM deception, lies, fraud. Federal Court of Appeals ignore all my arguments and simply stated in their opinion that I, Mr. Bowden arguments were non persuasive.

The lower court MSPB and US Federal Court of Appeals failed me, I was not afforded the opportunity of fair trial/hearing. MSPB affirmed OPM decisions showing bias, favoritism. There was no opportunity for discovery with MSPB and OPM, OPM was not

present for any proceedings and did not respond to any of the request of MSPB Judge. The MSPB Judge was not neutral, the judge represented OPM and then ruled in OPM favor. OPM did not show up for any of proceedings; therefore, default judgement law should have been applied. MSPB was proceeding were Kangaroo court.

Court of Appeals simply stated in their opinion, "Mr. Bowden other arguments were considered non persuasive," which was discriminatory. They provided no explanation as to why any of my arguments were non persuasive. I, Mr. Bowden discussed in my brief that I was mentally disabled and cried out for help with my case.

Included in opinion of the Federal Court of Appeals made me aware that I was in a temporary position from 1984-1987, when I had applied for a permanent position with Smithsonian Institution (SI),

The position I applied for at the SI in 1984 was a permanent position. The announcement number MPA-83-487-F is stated on the SF-50 but the actual job announcement is not included in my personnel files. However, I recall I applied and was hired for permanent position with SI, not a temporary position. The announcement is binding contractual agreement and upon acceptance of the position, the employee and hiring agency is in a binding agreement. Where is the job announcement as well as the SF-171 application for the position Mr. Bowden applied for and was hired by SI in July 1984.

Further review of my SF-50s I became career on July 15th, 1987, after being temporary from July 16, 1984- July 15, 1987, per SF-50. This was never heard of going from a temporary position to a permanent position. The general rule an employee is to complete a 1-year probationary period and a total of 3 years creditable service to be converted from career conditional to career. However, I was converted career from a temporary appointment. We must wonder if a mistake was made, and SI attempted to cover up the mistake by allowing me to go from being temporary employee to career employee tenure. This deserves investigating because other federal employees could be impacted by such an error.

I pointed out to Federal Court of Appeals the discriminatory, deceptive, fraudulent behavior by the SI, OPM and MSPB. I brought awareness to the discrepancies to MSPB Judge attention regarding the SF-50 and OPM final decision not including FERS; however again the Judge said it was okay that the SF-50 was backdated, she stated, "they can do that." *See Attachment K for copy of the SF 50.* The MSPB Judge saw nothing wrong with SI backdating the SF 50 or OPM omitting my time on FERS in their decision letter. In other words, the Judge ignored the fact that I was on FERS and OPM trying to hide it. I stated "I had to tell the Judge on numerous occasions before she understood me. She said that it doesn't matter". MSPB Judge informed me that SI and OPM, the agencies can back date documents and send conflicting letters

The Judge should have taken in consideration the fact that OPM did not provide any of the requested written information and did not attend any of the oral proceedings put me at a disadvantage. The process of discovery was not afforded to me, which was my right, to request information such as personal files, ask questions to get clarification on OPM analyses and findings, dates of retirement coverage, and tenure status etc. These proceeding in MSPB was a modern-day lynching through a Kangaroo court.

OPM did not attend the court proceedings, but the Judge communicated on behalf of OPM which was unfair and unjust to me. The Judge spoke at the conferences and hearings not as a Judge but as representative for OPM, showing bias and favoritism. The Judge should have been a neutral party.

MSPB Judge stated in Order and Summary of Status Conference that she find the agency waived the bar against ex parte communications and we proceeded without the agency. However, she didn't uphold the ex parte communications law she because she represented OPM and used information they provided to defend their position.

OPM failure to appear should have resulted in a default judgement, but instead the Judge affirmed OPM decision. The Judge actions lead me to believe although OPM didn't participate, the Judge clearly had been in contact with OPM stealthily. US Federal Court of Appeals ignored the fact the MSPB didn't consider the fact that OPM lied to Congress. OPM responded to letter I sent to OPM dated February 7, 2022, see *Attachment C* via my

US Congresswoman Eleanor Holmes Norton office requesting OPM investigate which retirement system I belonged on. OPM responded via Congresswoman office with a letter dated July 11, 2022, stating that I, Mr. Bowden annuity had been recalculated to not include the offset, *see attachment D*. They provided what my new annuity amount would be as well as my back pay. Approximately two months later I received another letter dated July 11, 2022, *see Attachment E* stating that the I was correctly on CSRS offset and the offset would remain. This was deceitful and unethical OPM back dating a contradictory letter stating the opposite of the initial July 11th letter. The second contradictory letter was postmarked September 1, 2022, *see Attachment F*. They lied to Congress and to me by saying that they had recalculated my annuity to not include an offset. I can only wonder what OPM saw to initially agree to remove the offset but not being able to conduct discovery I was able to get the answer.

The MSPB Judge didn't apply the default judgement law; A default judgment is a ruling by a judge in favor of a plaintiff if the defendant fails to show up for a civil trial/hearing. The Judge should have ruled OPM was in default and ruled in my favor and ordered the removal of the offset. However, the Judge proceeded with proceedings and represented OPM at every phase as if she was their attorney instead of being neutral. She questioned me as though she was a representative for OPM and not the judge.

The Judge did not apply the sanction law. OPM did not obey the request of the Judge for written responses nor the order to appear at the hearings. Sanctions should have been imposed and Judge threaten to impose sanctions, but she never followed through. The Judge not imposing sanctions and defending OPM decisions were bias and corrupt.

The Federal Court of Appeals confirming the decisions of MSPB and OPMI feel was all of agencies working together against me. Simply, the default judgement should have been applied when an agency doesn't participate in proceedings. I feel as though they forfeited their rights, and the case should have been ruled in my favor and the offset removed,

CONCLUSION

For the foregoing reasons, this Court should grant this Petition for Writ of Certiorari:

The Federal Appeal Court upheld the decision of lower court and I Mr. Bowden was not afforded a fair trial; I was taken advantage of and disregarded due to my handicap and disability.

I, Mr. Bowden became disabled as result of on-the-job injuries and was forced to retire by the Smithsonian institution and The United States Department of Labor In 2015. I have cases pending in the United States Labor Department workers comp for the ongoing reasons in which I believe is retaliation and discrimination due to my ongoing case against OPM.

I would like to say that I feel that The US Court of Appeals totally ignored the issue that I brought before them when I mentioned that I am mentally disabled due to the racism and being bullied in my workplace at the Smithsonian institution that started in early 1990s to present. This was a result of being subject to a discriminatory and hostile working environment at the Smithsonian Institution. I believe that the lower courts should have known about this. I was asked by the U.S. Court of Appeals had I ever filed a federal court case, and I answered "yes".

I have not been the same since that time. The early 1990s I filed numerous EEO complaints regarding my despaired treatment by my white coworkers. Which included

racism in my workplace things such as having a hangman's noose hang in my workplace. Not to mention being called niggles, coons, told that black people suffered with sickle cell because of them licking food stamps, black people only come to school for free lunch, I was told by a white coworker after I stated that it was cold after I had come from outside, that I needed to go back to Africa, physically being struck in the back of the head by one of my white coworkers with a floodlight bulb. I was threatened by a white coworker who see it that if I keep filing EEO complaints that he carried a gun to work every day and that he was going to shoot me between the eyes.

I had loss so much weight my coworkers begin to tease me by saying that I had AIDS. I had asked to be transferred to another departments due to excessive harassment. I was seeing the employee's assistance therapist as well as the ombudsman for psychological assistance. This is just a small fraction of things that I went through doing my career at the Smithsonian Institution. As a part of the settlement between my attorney and Smithsonian Institution was approved by the federal court, I was given reasonable accommodations for my mental disorders that I developed from the workplace.

This claim for my psychological disability was accepted by The US Labor Department in 1993. I found it mysterious that suddenly when I filed my complaint due to being put on the wrong retirement plan by SI and OPM that suddenly Smithsonian institution and Workers Compensation began harassing me about my psychological medication that had been paying for since 1993. I had to start paying for my medication out

of pocket, which was close \$1000 a month. OWCP try to use an excuse to say that I was being investigated by them.

OWCP told me to try 25 different medications that would be cheaper the generic brands. Smithsonian said that they don't understand why I was still on the psychological medication because I'm no longer work for them; therefore, I should not have still have psychological problems due to workplace stress. OWCP also begin to harass my psychiatrist asking her to write letters and fill out documents explaining why I was on the brand name medication Xanax as well as Ambien CR. When they figure it out that my doctor was not going to change my medications, they then took it upon themselves to cut off the medication but not paying for it and began harassing me about taking a choice between 25 different medications to see what would work for me. Some of the medications I had tried before getting to the two medications that they stop paying for that side effects that made me even sicker than what I already was when I was suffering with the mental illness. I don't understand while someone would do something like this just out of nowhere.

OWCP cutting off payment of psychological medication was dangerous and hazard to myself and to others. It caused me setbacks and hardship why they so-called were investigating me along with SI. I had to go months without the proper dosage of medication which made me ill and was financial burden.

I also filed a workers compensation claim through the US Labor Department and the claim was accepted for automobile accident. I had an on-job-injury where I was struck from

behind driving to a meeting along with another coworker in which I sustain injuries to my cervical spine and lumbar spine in which I had to have 2 surgeries on the cervical spine, in which caused me to have physical disabilities. This on-the-job injury was reported to SI and a worker's comp claim was filed on this on-the-job injury as well. I was forced out of my job and my workers compensation.

Workers' compensation payments were cut off which resulted in having to retire on disability due to my injuries. I find it strange that after filing the case that I'm bringing before the courts as what I feel is retaliation against me by OPM, SI and OWCP due to my handicaps and disabilities, OWCP abruptly discontinued paying for my medication; I had to we filed another complaint against OWCP for the despair treatment. All of this happen but then the same timeframe of me asking for OPM to investigate my retirement plan and place me appropriately on CSRS without the offset.

Basically, US Federal Court of Appeals is saying that me being mentally disabled is non persuasive not to mention the physical disabilities that I inherited doing my 35-year tenure, so my question is how do you as a judge or judges take advantage of a person that's mentally and physically disable. I've been on medication for my mental disability before 1993 and I am still presently on mental disability medication. Shortly, after retirement in 2015 I suffer a heart attack and a stroke.

There are so many questions that I put before the Appeals court that should have been answered. It took 75 days for you to come back to me and say that my questions were non persuasive. I was taught and raised that there is not a such thing as a dumb question. less more than a question/argument. Would be consider it as non-persuasive! This is why I feel as though that I am being taking advantage of due to my mental handicap. Do you think that because I have mental problems that I am dumb? Is this the way that you treat other tax paying handicapped individuals across this country whether it's mental or physical? All the citizens of the United States at some point are going to become mentally and physically disabled at some point in their life if they live long enough No matter what color, religion, or creed.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Anthony Bowden

Date: 12/19/24

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