

Supreme Court, U.S.
FILED
FEB 21 2018
OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JINGYUAN FENG — PETITIONER
(Your Name)

vs.

SHEENA KOMENDA, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jingyuan (July) Feng
(Your Name)

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(City, State, Zip Code)

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QUESTION(S) PRESENTED

1. Whether the falsified employment performance statements are pretexts or legitimate reasons for the employment decisions.
2. Whether exceptionally placing an employee into discipline, not following employer's own discipline policy, is an equal and fair employment in a claim for discrimination under Title VII of the Civil Rights Act of 1964.
3. Whether the negative employment decision to start a discipline pathing to termination, based on the falsified/downgraded performance statements only 10 days after employee's verbal complaints and opposition to unequal employment treatments, is an adverse employment action in a claim for retaliation under Title VII of the Civil Rights Act of 1964.
4. Whether the employment termination, again based on the falsified performance statement, after employee's multiple complaints for the escalated unfair/unequal treatments due to discrimination and retaliation, is an adverse employment action in a claim for retaliation under Title VII of the Civil Rights Act of 1964.

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:

Sheena Komenda	- Respondent
Rockwell Collins, Inc.	- Respondent
Mr. Kelly R. Baier	- Attorney for Respondents

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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 Appendix 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 is unpublished.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 C, D 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 OCTOBER 25, 2017.

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: NOVEMBER 27, 2017, and a copy of the order denying rehearing appears at Appendix B.

An extension of time to file the petition for a writ of certiorari was granted to and including APRIL 29, 2018 (date) on FEBRURY 28, 2018 (date) in Application No. US A P9 No.17-1286

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. A _____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

I believe the common sense of that civil rights and actions should be justified based on truth and facts, only facts and the whole facts, not partial facts, not alternative facts, not falsified facts or statements, not lies or frauds. Due to my limited legal knowledge and resources, I searched but did not find one as constitutional and statutory provisions, and/or common laws.

STATEMENT OF THE CASE

I, Jingyuan Feng, Petitioner, was employed by Rockwell Collins, Inc., (hereafter "the Company"), in June 2008. From 2008 to 2012, both of my two former managers evaluated my performance at "Successful" level (rating of 3) in 8 performance reviews in 4 consecutive years.

In September 2012, Sheena Komenda, (hereafter "Komenda"), became my new manager. In October 2012, Komenda demoted my performance to "Basic" level (rating of 2) for the "reason" (pretext) of that I was "not ready for promotion". Practically Komenda negatively treated my 4-years consistent "Successful" performance (rating of 3) as the other employee's "Basic" performance (rating of 2).

On or before April 30, 2013, Komenda used 6 cases negatively evaluated that my 2013 mid-year overall performance "is minimally meeting expectations", which means my performance at "Basic" level (rating of 2); see evidence in Appendix H (H1, H3).

During the performance review meeting on or about April 30, 2013, I complained and opposed Komenda for unfair and unequal treatments in some cases, challenged Komenda why she solely criticized me for the team work deficiencies and why not equally my white coworkers.

After the meeting, I talked to a friend about my complaints and opposition. My friend's immediate response was that "How dare you talk back to your boss? She will fire you!" On May 8, 2013, feared of retaliation, I wrote an email to Komenda to clarify my reasons for complaints and apologized for me opposition; see evidence in Appendix H (H4).

On May 10, 2013, only 10 days after my complaints and opposition, Komenda placed me into the 60-day PRP discipline with the "reason" stated as: "You are currently not meeting the performance expectations for your position as detailed below" (referring to the same 6 cases with

negative evaluations), with the warning of that “if performance does not meet all expectations, termination may occur”, see evidence in Appendix H (H5).

The given “reason” for the 60-day PRP discipline is a BIG lie of Komenda by subtle twisting her own wording from “minimally meeting expectations” to “not meeting expectations”.

In plain English language, “minimally meeting expectations” and “not meeting expectations” may mean the same or similar thing. But in the Company language defined for performance evaluation, they mean totally different level of performance. Performance “not meeting expectations” means “Unsatisfactory” level (rating of 1), which mandates 60-day PRP discipline. Performance “minimally meeting expectations” means “Basic” level (rating of 2), which does NOT mandate any discipline including PRP; see evidence in Appendix H (H1, H2).

Later I repeatedly asked Komenda and HR to correct the false performance statement “not meeting expectations” and requested them to replace it with the real performance statement “minimally meeting expectations” to be the real “reason” for the 60-day PRP discipline. Komenda and HR refused, and never gave a reason why not.

The real unspoken reason is that the Company’s discipline procedure is the only possible legal path to fire employee. In my case, only the falsified performance statement can “legalize” the “reason” to place me into the 60-day PRP discipline, see evidence in Appendix H (H2).

On June 5 and September 27, 2013, I wrote emails to the Company HR, Ombudsmen and leaders complaining that I experienced unfair and unequal employment treatments due to discrimination and retaliation. The Company failed to take any action to protect me, but practically observed, tolerated and supported Komenda’s escalated discriminative and retaliatory acts against me from the start to the end of the 60-day PRP discipline.

Throughout the 60-day PRP discipline, Komenda took all possible means and methods to build up the total negative evaluations of all my 6 tasks. Eventually Komenda made up a “poor performance” story so that I had no skills to accomplish any single task in 60 days. The facts and the tracking records show that I had accomplished hundreds similar tasks in the past 4 year.

During the 60-day PRP discipline, Komenda purposely limited my work resources, hid information and assigned higher level tasks to me. After the facts all my work tracked plan and schedules, met and exceeded all Komenda’s predefined “expectations” and “measurement criteria”, Komenda randomly used ambiguous statements (such as “not detail enough”, “all factors not considered”, “significant facts not considered”) negatively evaluated my tasks as “unsatisfactory”. Komenda even evaluated my 99.7% accuracy work as “unsatisfactory” only for the “reason” of that I did not find my coworker’s hidden formula error. On the contrary, Komenda had no problem with my coworker who completed the similar work with the same 99.7% accuracy. Later Komenda promoted my worker, who created the formula error in the first place and failed to find the error in multiple reviews.

My weekly reports and email chains recorded the facts of that I completed all my tasks on time per plan. In the end of the 60-day PRP, Komenda lied again; stated one task was “not completed by deadline”. Relied on this obvious lie, Komenda falsified the performance statement again and therefore “legalized” the final termination of my employment; see evidences in Appendix H (H6, H7, and H8).

In summary, Komenda relied on the first obvious lie started the 60-day PRP discipline to “legalize” the path to termination, and again relied on the second obvious lie concluded the 60-day PRP discipline and therefore “legalized” the final employment termination.

REASONS FOR GRANTING PETITION

As recorded in Komenda's own documents for the 60-day RPR discipline, the only given "reasons" for the employment decisions (discipline and termination against me) are Komenda's 2 obvious lies (the falsified performance statements) and Komenda's various unreasonable negative performance evaluations of all 6 my tasks during the 60-day PPR discipline.

I repeatedly asked Respondent why Komenda insisted using 2 lies (falsified performance statements) for the employment decisions but refused to use the real ones. I also asked tens of questions about Komenda's self-contradictory statements related to her unreasonable negative evaluation of all 6 tasks. The respondents always dodged my questions, but changed subjects to alternative facts which are not the same "reasons" given for the 60-day RPR discipline.

I also repeatedly begged the district court to consider the fundamental facts of that Komenda relied on 2 obvious lies "legalized" the 60-day PRP-based termination. However, the district court ignored my reasoning and my facts, but accepted Respondent's reasoning based on the unrelated alternative facts, therefore justified and concluded that the given (falsified) performance statements are the "legitimate reasons" for the employment decisions.

Refer to Appendix E/F/G, I appealed to the Court of Appeals for two fundamental issues. (1) District Court's interpretations of the equal employment laws conflict to the ones quoted in the EEOC Enforcement Guidance on Retaliation and Related Issues, dated August 25, 2016. (2) District Court's proceedings inappropriately ignored and bypassed the facts Komenda relied on 2 obvious lies for the employment decisions to hide the real unspoken reasons involved discrimination and retaliation. However, the Court of Appeals affirmed District Court's decision based on one single legal case, which (1) is totally unrelated to the equal employment laws, and (2) involved no decision or action based on lies or falsified statements. Therefore I believe that the opinion of the Court of Appeals did not address my 2 appealing issues at all.

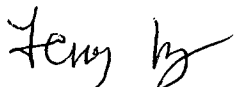
In summary, based on common sense, lies and the falsified statements should never and could never be justified to be “the legitimate reasons”. I strongly believe the lower courts’ decision is erroneous, because it’s interpretations of law conflict to the EEOC Enforcement Guidance and it conflicts to the very basic common sense.

In 2017, EEOC received 41,097 charges for workplace retaliation. The trend shows this number is increasing every year. It is common and no secret to public that many employers often use the falsified and unreasonable negative performance evaluation as the “legal tool” for employment decisions to hide their real unspoken “reasons”. Personally I know 2 victims in the Company who experienced similar discrimination and retaliation. They chose to keep silent and go away. I chose lawsuit seeking for justice, but suffered 4+ years long financial and emotional stress. Frequently I also heard from news about some similar victims chose violent revenges. So the real number of victims is much larger. Therefore I believe this petition is not only important to me, but equally important to public. I pray this honorable court to hear my case and grant this petition to help reducing the numbers of the similar victims and similar petitions.

CONCLUSION

Based on the above reasons, I believe and respectfully pray this honorable court that
The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: MARCH 30, 2018

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