

ORIGINAL

24-698

No. ~~23~~

IN THE
Supreme Court of the United States

ROSE ANN KIMBLE-DAVIS,
Petitioner,

FILED
JUN 30 2024
OFFICE OF THE CLERK
SUPREME COURT, U.S.

v.

OFFICE OF PERSONNEL MANAGEMENT
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

ROSE ANN KIMBLE-DAVIS, Pro Se
1037 Culvert Street
Reading, PA 19602
484-599-0126
Rosedavis121660@gmail.com

QUESTION PRESENTED

I have been trying for years to receive from OPM the documentation from Mr. Kimble's file regarding his designation of me as the beneficiary for his retirement annuity. At all levels without any evidence to the contrary, OPM and the Courts have continued to tell me that Mr. Kimble did not make any elections regarding the annuity. I provided numerous instances and evidence which supported that Mr. Kimble designated me as a beneficiary. Yet the Court did not look into or allow me access to Mr. Kimble's OPM file despite an Order by the Administrative Law Judge telling them to provide me with the documentation.

What kind of precedent would this matter establish if OPM can selectively send its representative documents, be told by a court to go look through the OPM file and then only have to certify that "I reviewed the file provided to me by OPM and all responsive documents were provided." I asked the Administrative Law Judge for the recorded telephone conversation I had with OPM on March 15, 2017 where I was informed by OPM that I was listed on Mr. Kimble's CSF Number as a beneficiary and was asked if I received a 1099-R. Yet despite my pleas OPM was not ordered to produce the recording of this call. How am I supposed to meet my burden when OPM has the evidence and won't provide it to me! How are other potential beneficiaries supposed to appropriately receive benefits if they are not allowed access to the appropriate documents?

The Questions Presented are:

1. Whether an agency/court can determine an individual is not a designated beneficiary without providing the claimed beneficiary with the appropriate documentation?
2. Whether OPM should have determined an individual was the designated beneficiary where evidence was submitted which illustrated the individual was designated as a beneficiary?

TABLE OF CONTENTS

QUESTION PRESENT.....i
TABLE OF AUTHORITIES iv
PETITION FOR A WRIT OF CERTIORARI 1
OPINIONS BELOW 1
JURISDICTION 1
STATEMENT 1
REASONS FOR GRANTING THE WRIT2
CONCLUSION4
APPENDIX A, Court of Appeals Decision 1a
APPENDIX B, Agency Decision 9a
APPENDIX C, Board Decision 17a
APPENDIX D, Appeals Denial of Rehearing.....26a
APPENDIX E, Documentation Showing I was
Harvey Kimble’s Designated Beneficiary
(Exhibits 1-4).....28a

TABLE OF AUTHORITIES

Cases

Simpson v. Office of Personnel Management,
347 F.3d 1361 (Fed Cir. 2003) 3

Wood Office of Personnel Management,
241 F.3d 1364 (Fed Cir. 2005) 3

Constitution and Statutes
29 USC. §1254 1

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit.

OPINIONS BELOW

The opinions below are all attached as Appendix

JURISDICTION

The Federal Circuit entered judgment on March 18, 2024 and denied rehearing on June 3, 2024. The Court has jurisdiction under 28 U.S.C. §1254(1).

STATEMENT

On January 19, 2014, Harvey Kimble, a federal employee passed away. Despite numerous documents showing and illustrating I was his designated beneficiary for benefits, the Agency and Courts below continued to ignore the evidence and wrongfully deny me benefits.

A divorce does not affect a designation of beneficiary that was filed at some earlier time. An employee or retiree who has designated a now former spouse to receive life insurance or retirement lump sum benefits must file a new designation to change the beneficiary. Despite the Judge Requiring a certification for same no one from OPM ever certified that I was not a designated beneficiary.

I provided evidence and asked for reasonable discovery including recordings of telephone conversations I had with OPM employees where I was verbally told I was a designated beneficiary but was never given this information.

Ultimately, the agency representative was able to circularly argue that the file they received did not contain any additional information without having to actually look back into the file.

REASONS FOR GRANTING THE WRIT

This is a case that will establish the rights for designated beneficiaries everywhere and prevent agencies from picking winners and losers when a individual governed by OPM dies.

I believe I submitted enough documentation to illustrate that I was the designated beneficiary and by allowing this type of agency behavior it will allow agencies to secretively make determinations as to whom they wish to be beneficiaries and not whom actually should be the beneficiary.

I provided documentation showing I was listed in OPMs records as a designated beneficiary (attached hereto as Appendix E, Exhibit 1). Further, I enclose VA forms which illustrate funds were transferred to OPM with a Spousal Master indicated. (I attached these as Appendix E Exhibit 2).

According to a LumpSum Face Brief (attached hereto as Appendix E Exhibit 3) the CSF number for Mr. Kimble's benefits was designated 355115W. Per OPMs own publications (attached hereto as Appendix E Exhibit 4) the W at the end of the

CSF Number and coupled with the lack of certification that I was not the designated beneficiary by OPM leads to the conclusion that OPM made a mistake and distributed the funds to the surviving daughter and not to myself as the designated beneficiary.

What kind of precedent would this matter establish if OPM can selectively send its representative documents, be told by a court to go look through the OPM file and then only have to certify that "I reviewed the file provided to me by OPM and all responsive documents were provided." I asked the Administrative Law Judge for the recorded telephone conversation I had with OPM on March 15, 2017 where I was informed by OPM that I was listed on Mr. Kimble's CSF Number as a beneficiary and was asked if I received a 1099-R. Yet despite my pleas OPM was not ordered to produce the recording of this call. How am I supposed to meet my burden when OPM has the evidence and won't provide it to me!

In numerous matters regardless of the divorce status if there is evidence of record that a federal employee seeks to elect a former spouse as a beneficiary for

retirement benefits, the intent of that employee prevails. See *Wood v. Office of Personnel Management*, 241 F.3d 1364 (Fed Cir. 2005); see also *Simpson v. Office of Personnel Management* 347 F.3d 1361 (Fed Cir. 2003).

The Court presumed that Mr. Kimble made no elections yet all of the designations made in OPMs file (the OPM documentation explaining designation was newly acquired evidence and rather isn't really evidence but a clarifier and illustration of why I was the designated beneficiary) points towards a designation for a spouse to receive the money ie. myself. If Mr. Kimble designated me at any point and certainly if he did so AFTER our separation his intent to provide me as the designated beneficiary should be honored.

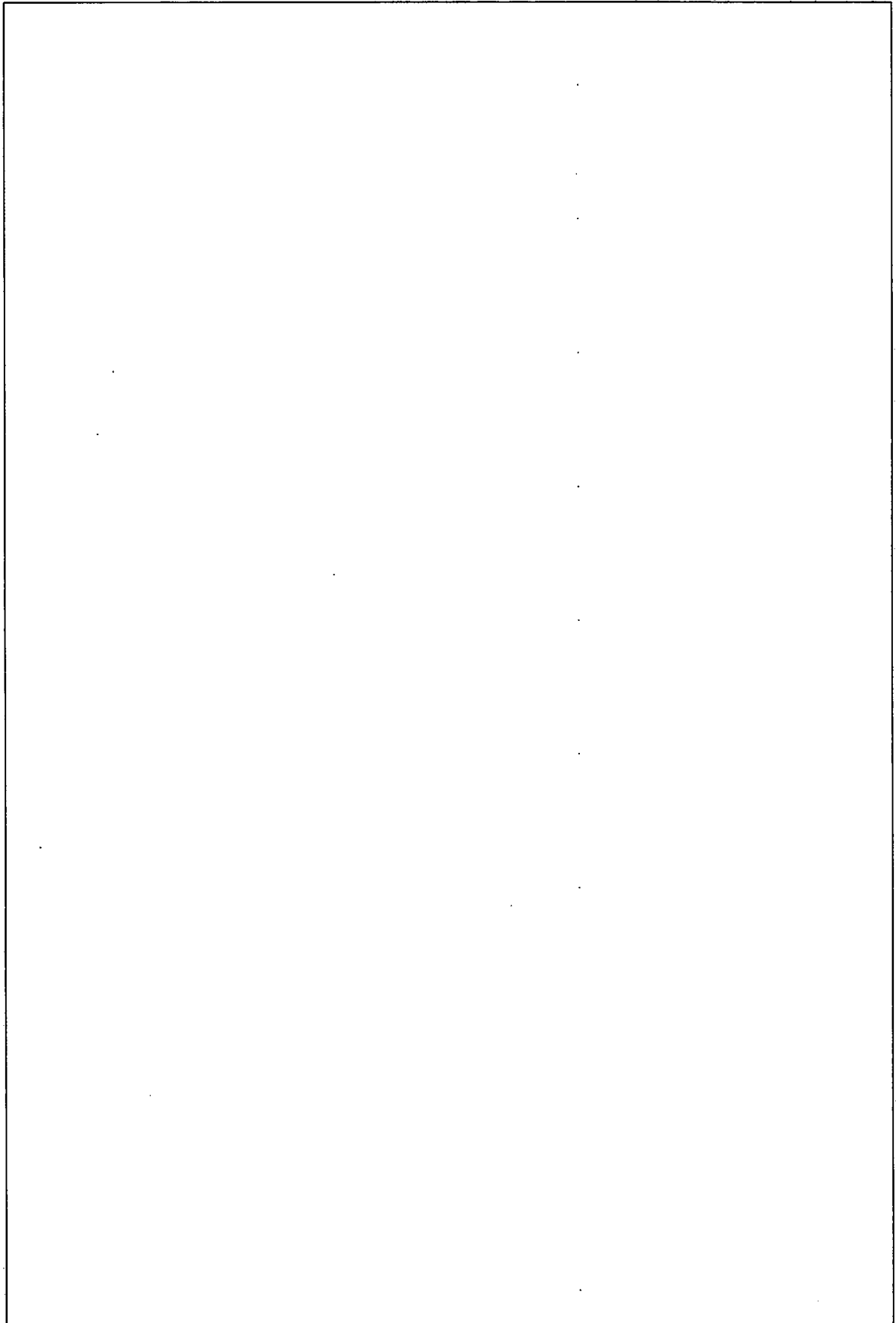
As such I ask that this Court take up my case.

CONCLUSION

This Court should grant certiorari.

Respectfully Submitted,
/s/ Rose Ann Kimble-Davis
Rose Ann Kimble-Davis
1037 Culvert Street
Reading, PA 19602
484-599-0126
rosedavis121660@gmail.com

APPENDIX



APPENDIX A, Court of Appeals Decision	1a
APPENDIX B, Agency Decision	7a
APPENDIX C, Board Decision	20a
APPENDIX D, Appeals Denial of Rehearing.....	27a
APPENDIX E, Documentation Showing I was Harvey Kimble's Designated Beneficiary (Exhibits 1-4).....	30a

