

23-90038-jm
February 8, 2024
Chief Judge

**JUDICIAL COUNCIL OF THE
SECOND CIRCUIT**

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In re
CHARGE OF JUDICIAL MISCONDUCT Docket No. 23-90038-jm

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DEBRA ANN LIVINGSTON, *Chief Judge*:

In June 2023, the Complainant filed a complaint with the Clerk’s Office of the United States Court of Appeals for the Second Circuit pursuant to the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351–364 (the “Act”), and the Rules for Judicial-Conduct and Judicial-Disability Proceedings (the “Rules”), charging a district judge (the “Judge”) of this Circuit with misconduct.

BACKGROUND

In 2013, the Complainant, representing himself, filed a lawsuit against a pension fund alleging that he was entitled to disability benefits. In 2015, the Judge granted the defendant’s motion for summary judgment, finding, among other things, that the evidence established that the Complainant had not accrued sufficient “pension credit” — i.e., enough hours worked — to qualify for a

disability pension. In 2016, the court of appeals dismissed the Complainant's appeal as lacking an arguable basis in law or in fact.

The Complainant filed the present misconduct complaint about 7 years later. The complaint alleges that the Judge, in granting summary judgment and dismissing the Complainant's underlying lawsuit, "failed to review" various state workers' compensation decisions and hearing minutes; "didn't properly review the facts of my proven disability"; and failed to question his union regarding its bylaws. The Complainant appears to acknowledge that he had not worked sufficient hours to qualify for a disability pension but argues that he would have accrued sufficient hours had he worked 8 more months, and states that similarly situated union members had been granted a disability pension even when they had not worked sufficient hours. He seeks to "overturn [the Judge's decision in order to obtain Full Union Pension Benefits with Medical and interest." He also alleges that the Judge's errors were intentional; he states that the Judge "knowingly and intentionally made false fictitious fraudulent statements," which "prevent[ed] me from receiving full Union Pension Benefits."

DISCUSSION

The complaint is dismissed.

To the extent the Complainant alleges that the Judge failed to review relevant decisions and hearing transcripts and failed to review the facts, his claim is that the Judge got it wrong, not that the Judge engaged in misconduct. Accordingly, the claim is dismissed as “directly related to the merits of a decision or procedural ruling.” 28 U.S.C. § 352(b)(1)(A)(ii); Rule 4(b)(1) (“Cognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse.”); 11(c)(1)(B). Purely merits-related allegations are excluded from the Act to “preserve[] the independence of judges in the exercise of judicial authority by ensuring that the complaint procedure is not used to collaterally call into question the substance of a judge’s decision or procedural ruling.” Rule 4 cmt. If the Complainant wishes to challenge the Judge’s decision to grant summary judgment to the defendant, he may do so, to the extent the law allows, only through normal appellate procedures.

The allegation that the Judge intentionally erred—that is, that the Judge knew the Complainant was entitled to disability benefits and nonetheless ruled against him for unexplained reasons—is derivative of the merits-based allegations. But, to the extent it is separate, it is unsupported and dismissed as

“lacking sufficient evidence to raise an inference that misconduct has occurred.”

Rule 11(c)(1)(D). A claim that a judge deliberately disregarded prevailing legal standards “must identify clear and convincing evidence of willfulness, that is, clear and convincing evidence of a judge’s arbitrary and intentional departure from prevailing law based on his or her disagreement with, or willful indifference to, that law.” *In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability*, 517 F.3d 558, 562 (U.S. Jud. Conf. 2008); *see also id.* (explaining that misconduct proceedings should “not intrude upon judicial independence by becoming a method to second-guess judicial decisions”). Here, the Complainant provides no evidence, apart from the alleged errors described above, to support his conclusory allegation of intentional misconduct. But even assuming that the Judge’s decision was incorrect and that the Judge erred in the ways that the Complainant describes, such errors would not be evidence of willful disregard of the law. *Id.* (noting that “the conduct must be virtually habitual to support the required finding”).

The Clerk is directed to transmit copies of this order to the Complainant and to the Judge.