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PRESS RELEASE

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McGillivray Steele Elkin Files Petition For Certiorai For Covid-19 Hazardous Duty Pay Case

On May 12, 2023, McGillivray Steele Elkin LLP filed a petition for writ of certiorari with the United States Supreme Court to appeal a wrongly decided ruling that denied hazardous duty pay to the brave men and women serving as federal correctional officers who worked with COVID infected inmates, without the benefit of vaccines or protective gear during the worldwide COVID-19 pandemic.

The petition seeks Supreme Court review of the United States Court of Appeals for the Federal Circuit decision finding that workplace exposure to COVID-19 is not a compensable hazard within the meaning of the hazardous duty pay statute and regulations because the Correctional Officers purportedly did not “work with or in close proximity” to the hazard that is COVID-19. The Federal Circuit took the extremely narrow view that only exposure to COVID-19 in a test tube qualified as exposure for purposes of receipt of hazard pay. This position is contrary to the view of the federal agency responsible for administering hazardous duty pay and contrary to the Department of Justice’s position - Correctional Officers deserve hazard pay for working in overcrowded prisons where social distancing was impossible, good ventilation unavailable, protective gear insufficient, and vaccines not yet developed, and where their job, by its very nature, required close physical contact to infected and contagious individuals.

The petition argues that the Supreme Court should grant review because the Federal Circuit’s decision was incorrect, and because the case presents an important question of law. Specifically, the petition asserts that workplace exposure to COVID-19 through the performance of one’s job duties constitutes working in close proximity to a hazard, and therefore, should entitle the Correctional Officers to hazardous duty pay. The majority opinion’s adoption of the “scientist rule” - under which hazardous duty pay is only available for exposure to contagious diseases in a laboratory or scientific setting – is an incorrect interpretation of the hazardous duty pay statute and regulations.

Lead attorney Molly Elkin of McGillivray Steele Elkin said, “The United States has regulations in place that require it to pay hazardous duty pay when federal workers are exposed to virulent biologicals in the workplace. COVID-19 is a virulent biological. The correctional workers are literally locked inside the prison with inmates and surfaces containing this deadly virus each and every shift. Sadly, the majority was wrongly motivated by fear of the floodgates of other federal employees coming forward if it ruled for the correctional officers, when it should have been motivated by doing justice and allowing us the chance to prove our case rather than requiring us to have proved it before we were even out of the gate.”

The lawsuit seeks to recover monetary damages plus interest for failure to provide hazardous duty pay for law enforcement employees such as themselves who were required to work during the pandemic with individuals infected with COVID-19.

The case is *Cody Adams, et al. v. United States, Case No. 1:20-cv-00783*, United States Court of Appeals for the Federal Circuit.

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McGillivray Steele Elkin LLP is a top-rated law firm devoted to protecting and enforcing the rights and interests of labor organizations and workers in both the public and private sectors. Established over 50 years ago in the nation's capital, McGillivray Steele Elkin's attorneys have over a century in collective experience litigating on behalf of workers and unions across the country.