**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

| | |
|---|---|
| **PATRICK MCGLONE, SR.**<br><br>**v.**<br><br>**PHILADELPHIA GAS WORKS, PGW** | **CIVIL ACTION**<br><br>**NO. 15-3262** |

**MEMORANDUM AND ORDER**
**RE: PLAINTIFF'S MOTION TO AMEND THE RECORD**

Following the Court's grant of summary judgment on all claims in this disability discrimination case, Plaintiff Patrick McGlone Sr. now moves for supplementation of the record under Federal Rule of Appellate Procedure 10(e)(2). Specifically, Plaintiff requests that we supplement the record with three Exhibits appended to his motion:

**Exhibit A**: two emails between counsel;

**Exhibit B**: two letters submitted by counsel to the Court; and

**Exhibit C**: an affidavit signed by Plaintiff's counsel regarding his recollections of the November 17, 2016 hearing held before this Court.

Under Rule 10(e)(2), the district court may correct or supplement the record "[i]f anything material to either party is omitted from or misstated in the record by error or accident." Fed. R. App. P. 10(e)(2). Its purpose is to ensure that the court of appeals has a record that adequately reflects what occurred in the district court. United States v. Armstrong, No. 99-603-1, 2003 WL 733881, at *1 (E.D. Pa. March 4, 2003). "The Rule, however, does not serve 'to facilitate collateral attacks on the verdict' nor does it afford this Court authority to admit new evidence to the court of appeals that was never before this Court in the first place." Id. (quoting Shasteen v. Saver, 252 F.3d 929, 935 (7th Cir. 2001)); see In re Application of Adan, 437 F.3d 381, 388 n.3 (3d Cir. 2006) (holding that "Rule 10(e)(2) allows amendment of the record on appeal only to correct inadvertent omissions, not to introduce new evidence") (emphasis added).

Plaintiff states that the three Exhibits he identifies "were omitted from the record as a result of

error or an accident" but offers no support for that statement. ECF No. 53, Pl.'s Mot. at 2. Rather, he focuses his argument on the alleged importance of the documents to appellate review. Specifically, Plaintiff contends that Exhibits A and C reflect an agreement between counsel that PGW would accept Plaintiff's declaration in lieu of re-directing his deposition, and Exhibit B contains legal argument that the Court considered in granting summary judgment. Id. at 3-4. PGW responds that, for all three Exhibits, Plaintiff has failed to demonstrate any dispute regarding what occurred before this Court, Plaintiff has not shown the Exhibits to be material, and Plaintiff has not established that any of the Exhibits were omitted by error or accident. ECF No. 54, Def.'s Opp'n at 4-6.

As to Exhibits A and C, there is no way to characterize their omission from the record as inadvertent and Plaintiff neither claims nor attempts to demonstrate as much. Indeed, neither Exhibit was ever before the Court, and Exhibit C was not even created until February 28, 2017, over a month after our summary judgment opinion. See id. at 5-6. Rather, Exhibits A and C are "new evidence," plain and simple, and as such are clearly barred by Rule 10(e)(2) and governing Third Circuit precedent. See Adan, 437 F.3d at 388 n.3.

Exhibit B stands on different footing, as these letters were requested by the Court at the November 17, 2016 hearing and were considered in deciding PGW's motion for summary judgment. Therefore, their addition to the record would ensure that it "adequately reflects what occurred in the district court." Armstrong, 2003 WL 733881, at *1.

Pursuant to the above analysis, Plaintiff's Motion to Amend the Record (ECF No. 53) is DENIED as to Exhibits A and C and GRANTED as to Exhibit B.

**BY THE COURT:**

/s/ Michael M. Baylson

**Michael M. Baylson, U.S.D.J.**

O:\Cecily.2016\McGlone v. PGW (15-3262)\Memo re Mot to Amend Record.docx