

Ninth Circuit Finds That a VA Surgeon's Conspiracy Claim Against His Supervisors Can Move Forward

Katherine Proctor  Thursday Sep 05, 2019

 **LAW ALERT** In light of intervening Supreme Court case law, an African-American VA surgeon may pursue his claim that his supervisors conspired to deter him from testifying in his and a colleague's race discrimination cases, the Ninth Circuit [found](#) Thursday.

Christian Head, a head and neck surgeon who held dual appointments at the Department of Veterans Affairs and UCLA, filed a Title VII employment discrimination suit against the VA Secretary and his VA supervisors in 2014. Head alleged racial discrimination and retaliation, as well as a conspiracy by the supervisors to deter him from testifying in his own case and a similar case brought by his colleague, Jasmine Bowers, in violation of 42 U.S.C. § 1985(2).

Head claimed the supervisors retaliated against him for his testimony by cutting his pay, accusing him of absence without leave, and "super-auditing" his time at work.

The district court granted the VA summary judgment on the conspiracy claim, relying on the Ninth Circuit's holding in *David v. United States* (9th Cir. 1987) 820 F.2d 1038. In that case, the Circuit held that only parties to the initial case who were "hampered in being able to present an effective case" can bring a section 1985(2) claim.

In its opinion reversing the district court, a three-judge panel of the Ninth Circuit held that the Supreme Court's decision in *Haddle v. Garrison* (1998) 525 U.S. 121, 126 abrogates the holding in *David*. The high court held in *Haddle* that interference with a plaintiff's employment -- which has no relationship to or impact on the underlying litigation for which he was subpoenaed to testify -- is a cognizable injury under section 1985(2).

Judge Richard Paez wrote for the panel that in light of *Haddle*, the district court's reasons for granting summary judgment to Head's supervisors on his conspiracy claim are no longer viable.

"Head has alleged that VA employees retaliated against him based on his testimony in the Bowers federal civil rights case and in his own case," Paez wrote. "Head can state a claim even if he cannot show that either he or Bowers were hampered in being able to present an effective case."

The court expressed no opinion as to the merits of Head's conspiracy claim.

Zane Hilton, who represented Head, said in an email that the court's analysis was "spot on," and that the decision "hopefully will encourage more people to come forward -- like Dr. Head -- and speak out against discrimination."

He added that although "this is obviously uncharted territory in the Ninth Circuit," he is "optimistic" that he and his client will prevail on remand in the district court.

"Of course, the 1985(2) claims are only a small part of Dr. Head's case, and we are all very excited that now he has the opportunity to seek some measure of justice for the harm he suffered," Hilton said.

The U.S. Attorney's Office for the Central District of California did not immediately respond to a request for comment.

The case is *Head v. Wilkie*, case number 17-55942, in the U.S. Court of Appeals for the Ninth Circuit.

© The Regents of the University of California, 2019. Unauthorized use and/or duplication of this material without express and written permission from this blog's author and/or owner is strictly prohibited



2100 Franklin St., Suite 500
Oakland, CA, 94612-3055

Information


[Privacy Policy](#)

[Terms & Conditions](#)

Customer Support

Mon – Fri 7:30am – 5:00pm (PST)

 1 (800) 232-3444

 **Tech:** 1 (800) 750-9155

 Email Support

Copyright © 2019 CEB. All rights reserved.

