

Tenth Circuit Affirms \$1 Million Jury Award to Whistleblower

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On July 20, 2022, the Tenth Circuit affirmed a \$1 million jury award to a former employee who claimed he was demoted in retaliation for reporting that his supervisor instructed him to falsify test results on a program used by the U.S. military. [Casias v. Raytheon Co.](#), Nos. 21-1195 and 21-1205 (10th Cir. 2022).

Background

Plaintiff alleged that his supervisor instructed him to change certain data on a GPS project designed for the U.S. Air Force, which made the project appear more successful.

Plaintiff allegedly complied and then immediately notified leadership of his superior's instruction. A few months later, Plaintiff was reassigned from his testing role, where he managed dozens of employees, to a minor role managing only two employees. Plaintiff eventually accepted a position at a different defense contractor where his salary, benefits and rank were lower.

Plaintiff filed suit in the U.S. District Court for the District of Colorado alleging various claims, including a claim under the Defense Contractor Whistleblower Protection Act ("DCWPA"). The jury found for Plaintiff, and awarded him \$43,000 in backpay and \$1,000,000 in noneconomic damages. The district court struck the backpay award but confirmed the noneconomic damages award. The company filed a motion for judgment notwithstanding the verdict and remittitur after trial, arguing: (1) Plaintiff did not show an adverse employment action or causation; (2) the noneconomic damages were excessive; and (3) the weight of evidence was against Plaintiff.

Ruling

On appeal, the Tenth Circuit affirmed the \$1 million jury award, finding that Plaintiff presented enough evidence for a reasonable jury to find for him on all of the issues appealed. First, the Tenth Circuit found that it was reasonable for the jury to infer Plaintiff suffered an adverse employment action because Plaintiff's reassignment was a change in responsibilities with a decrease in reputation and job prospects, and Plaintiff was hired at a lower rank and salary at his subsequent job. Second, the jury could reasonably infer Plaintiff's superior retaliated against him, even though the superior lacked a personal reason for doing so. Finally, the Tenth Circuit found the damages were not excessive because the act of falsifying information used by the U.S. military could have far reaching repercussions, and retaliating against an employee for reporting that falsification is a serious violation of the DCWPA. Although the \$1 million jury award was indeed large, the Tenth Circuit found that the award did not represent a "miscarriage of justice" given the circumstances.

Implications

This sizeable adverse jury verdict highlights the risks that employers may face in trying whistleblower retaliation suits to a jury and may lead to further similar lawsuits.

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