# Third Circuit Finds Private Employer May Lawfully Deny Employment Based on Prior Bankruptcy Filing

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In *Rea v. Federal Investors* (10-1440), the Third Circuit held that no private cause of action exists against a private employer that refused to hire an applicant because the applicant previously filed for bankruptcy. The appellant applied to an investment firm and, after an interview, the firm was seemingly poised to hire him. The investment firm, however, denied him employment because it discovered he filed bankruptcy seven years earlier. The appellant filed suit, claiming the firm violated federal law by discriminating against him on account of his prior bankruptcy. The district court dismissed his suit and the Third Circuit affirmed.

The Third Circuit's decision was premised on its construction of two subsections found in § 525 of the Bankruptcy Code. According to § 525(a) of the Code, a "governmental unit" may not "deny employment to, terminate the employment of," or otherwise discriminate against a person who is or was a debtor in a bankruptcy case. On the other hand, § 525(b) provides that "[n]o private employer may terminate the employment of, or discriminate with respect to" the employment of a current or former debtor. Missing from the text of § 525(b) is the phrase "deny employment to" that applies to government employers under § 525(a). Relying on the reasoning of *Leary v. Warnaco*, 251 B.R. 656 (S.D.N.Y. 2000), the appellant argued the omission of the phrase in § 525(b) was due to a "scrivener [who] was more verbose in writing § 525(a)." And, moreover, according to the appellant, it would be incongruous with Congress's objective to provide a debtor a "fresh start" if a private employer could deny employment because an applicant had sought bankruptcy protection.

Applying the canon of construction that states "[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion of exclusion," (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983), the Third Circuit rejected these arguments. The court accordingly refused to explain the omission by calling it "scrivener's error" and would not apply a purposive approach that would effectively modify the text of the statute.

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