

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-41392
Summary Calendar

STEVEN R. HOLTZCLAW,

Plaintiff-Appellant,

versus

DSC COMMUNICATIONS CORPORATION,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
(4:97-CV-182)

December 28, 1999

Before JOLLY, JONES, and BENAVIDES, Circuit Judges.

PER CURIAM:*

This case involves an order granting summary judgment for the defendant in what is foremost an American with Disabilities Act ("ADA") case. The district court found that the plaintiff could not sustain an ADA claim, i.e., was not a qualified individual for purposes of the disability definition in the Act, when he had made factually inconsistent statements regarding the totality of his disability to the Social Security Administration and his would-be (and former) employer. Finding the plaintiff not to be a qualified individual, the district court also granted the defendant's summary

*Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir.R. 47.5.4.

judgment motion on the plaintiff's Employee Retirement Income Security Act ("ERISA") and Age Discrimination in Employment Act ("ADEA") causes of action because both Acts require as a threshold issue that an individual be "qualified" for the job in order to assert a cause of action. Additionally, the district court denied the plaintiff's partial motion for summary judgment as moot.

The district court's judgment relied on Cleveland v. Policy Management Systems Corp., 120 F.3d 513 (5th Cir. 1997), a case that was subsequently vacated by the Supreme Court in Cleveland v. Policy Management Systems Corp., 119 S.Ct. 1597 (1999).

Because a fair consideration of the plaintiff's claim may have been restricted by the Fifth Circuit's now-vacated decision in Cleveland, the grant of summary judgment is VACATED and REMANDED to the district court for reconsideration in the light of the opinion of the United States Supreme Court and for further proceedings if necessary.

VACATED and REMANDED.