

Govt Doctors Get Whistleblower Protection

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12:52 AM PDT, May 2, 2006

WASHINGTON Thousands of federal doctors and medical researchers who receive higher-than-normal salaries are finally getting the same protection to blow the whistle on wrongdoing as other civil servants.

The decision by the U.S. Merit Systems Protection Board supersedes an earlier ruling that had denied National Institutes of Health safety expert Jonathan Fishbein protection from firing under the Whistleblower Protection Act.

The ruling is too late to affect Fishbein, who was reinstated by the government recently and settled a lawsuit alleging he was fired for blowing the whistle on safety problems with federal AIDS research.

But the board's conclusion has implications for thousands of other federal researchers and doctors brought in from the private sector to conduct important government research, medical work and safety reviews.

These so-called Title 42 workers were hired under a special provision of the law that paid them salaries higher than the normal civil service but more in line with what they could make in the private sector.

An administrative law judge in late 2004 concluded that the higher paid workers weren't entitled to whistleblower protection.

The board, however, disagreed and last month concluded that nothing in the Title 42 law precluded those workers from enjoying that protection.

"The board will construe its (the law's) provisions liberally to embrace all cases fairly with its scope," the ruling said.

Allegations by Fishbein and NIH colleagues of a hostile work environment and shoddy, unsafe research among vulnerable AIDS patients were highlighted in a series of Associated Press stories that led to several investigations and changes inside NIH.

Fishbein's lawyer on Monday said the new decision closed a "dangerous loophole" that could have kept researchers with knowledge of wrongdoing from coming forward.

"Dr. Fishbein took a courageous stand in demanding full whistleblower protection in the face of a hostile federal bureaucracy," Attorney Stephen Kohn said. "Other Title 42 employees with information about wrongdoing can now blow the whistle and obtain protection."

Senate Finance Committee Chairman Charles Grassley, R-Iowa, who championed Fishbein's case, hailed the decision.

"Any step that improves the environment for whistleblowers to come forward is a step in the right direction. Whistleblowers are patriotic Americans who stick their necks out and risk it all to commit truth. They deserve rewards, not reprisals," he said.

Fishbein was hired in 2003 under Section 42 by NIH, the nation's premier medical research agency, to

help improve AIDS research practices at a salary of \$178,000, or slightly more than Cabinet secretaries made at the time.

He alleged he was fired for uncovering concerns about sloppy research practices that might endanger patient safety, including a project in Africa that violated federal patient safety rules.

NIH said he was fired for poor performance but settled the case late last year after evidence emerged that Fishbein had been recommended for a performance award and may have been retaliated against.

The Department of Health and Human Services employs thousands of Title 42 workers in such key research agencies as NIH, the Food and Drug Administration and the Centers for Disease Control and Prevention.

Its lawyers originally opposed granting whistleblower protection to Fishbein, leading to the administrative judge's initial ruling. But the agency later reversed course amid a public outcry and sided with Fishbein's lawyers.

A spokesman for the department did not immediately return a call Monday seeking comment.

The whistleblower protection law was passed more than decade ago to strengthen federal workers' protections when they raise allegations of federal wrongdoing, giving them outlets such as the board and the U.S. Office of Special Counsel to seek legal protection.
