

EMPLOYER LAW BLOG

Eighth Circuit Affirms and Clarifies Important Limits on Claims under the Fair Credit Reporting Act

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The FCRA is a federal law that applies to employers when conducting background checks of employees. This includes criminal background checks as well as credit reports.

Under the FCRA, employers must provide certain types of notice, obtain appropriate consent, and allow employees a certain amount of time to respond to the contents of any background report obtained before the employer takes any adverse action on the individual's employment or employment application.

The law provides individuals a right to file a lawsuit if employers violate the FCRA. However, the Eighth Circuit's recent decision in *Schumacher v. SC Data Center, Inc.* affirms significant limits on the ability of individuals to file such suits in the absence of real injury or harm.

In *Schumacher*, the plaintiff falsely stated and certified in her employment application she had not been convicted of a felony. She authorized the employer to contact other entities, including law enforcement agencies, for information relevant to her application. She was offered employment.

One week before her start date, the employer reviewed a background report (which showed her felony conviction) and notified her it was withdrawing her employment offer. She received a letter from the employer two weeks later, stating she had a right to dispute the background report under the FCRA before a final hiring decision was made. She never disputed the accuracy of the report.

Instead, she filed suit against the employer, alleging several FCRA violations. She claimed, in relevant part, the employer took an adverse action before giving her the chance to dispute the report.

The employer moved to dismiss the claims based on standing—that is, she never suffered a “concrete” injury or “injury in fact” due to the alleged FCRA violations. The district court denied the motion.

However, the employer appealed. On appeal, the Eighth Circuit reversed and ordered the case dismissed. The Eighth Circuit held—even though the employer violated the FCRA by not giving the plaintiff time to dispute the background report—there was no legally cognizable harm. Ultimately, the information in the report *was* accurate. Absent injury, the plaintiff had no standing to file a lawsuit.

In reaching this conclusion, the Eighth Circuit noted the FCRA does not provide prospective employees with the “right to discuss with an *employer* the information in the consumer report prior to the employer taking an adverse action.” (emphasis added). Rather, the FCRA provides a right to dispute a report with the consumer reporting agencies themselves.

With this distinction in mind, the Eighth Circuit “decline[d] Schumacher’s request to create an additional right under the FCRA—that is, the right to explain to a prospective employer negative but accurate information in a consumer report prior to the employer taking an adverse employment action.”

Time will tell how this opinion will impact FCRA litigation forward. But it appears this decision will help weed out lawsuits based on nothing more than technical violations of an often-overlooked law.