

**United States Court of Appeals  
FOR THE EIGHTH CIRCUIT**

---

No. 99-1649

---

Brandon D. Smith,

Appellant,

v.

Dan Glickman, Secretary of  
Agriculture; U.S. Merit Systems  
Protection Board; U.S. Office of  
Special Counsel,

Appellees.

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

Appeal from the United States  
District Court for the District  
of North Dakota.

[UNPUBLISHED]

---

Submitted: February 17, 2000

Filed: February 24, 2000

---

Before McMILLIAN and FAGG, Circuit Judges, and KYLE,\* District Judge.

---

PER CURIAM.

The Natural Resources Conservation Service removed Brandon D. Smith from his job as a soil scientist for making false and/or misleading statements to a superior, for conduct unbecoming a federal employee, and for failure to follow instructions. The

---

\*The Honorable Richard H. Kyle, United States District Judge for the District of Minnesota, sitting by designation.

Merit Systems Protection Board (MSPB) upheld Smith's removal. Smith unsuccessfully appealed the MSPB's decision to the district court, claiming the evidence was insufficient to support his removal, the removal violated his right to free speech, and the removal was a reprisal against his whistleblowing activities and a result of age, marital status, and disability discrimination.

After careful review of the record, we agree with the district court that there was substantial evidence supporting Smith's removal. See Crawford v. Runyon, 37 F.3d 1338, 1340-41 (8th Cir. 1994). We also conclude Smith's free speech claim is properly rejected because Smith concedes in his brief that "his concerns related to his personal employment status" and not to matters of public concern that would constitute protected speech. See Tedder v. Norman, 167 F.3d 1213, 1214 (8th Cir. 1999). Finally, we conclude Smith's discrimination and retaliation claims are properly rejected because Smith failed to present prima facie cases on both theories. See Kiel v. Select Artificials, Inc., 169 F.3d 1131, 1135, 1136 (8th Cir.), cert. denied, 120 S. Ct. 59 (1999); Berg v. Bruce, 112 F.3d 322, 327 (8th Cir. 1997).

Because our review involves the application of established principles of law and an extended discussion would serve no useful purpose, we affirm without additional comment. See 8th Cir. R. 47B.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.