

## **Clifford Wiley v. National Collegiate Athletic Association**

612 F.2d 473 (10th Cir. 1979)

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Clifford Wiley ("Wiley"), a student-athlete at the University of Kansas, was awarded an athletic scholarship from the University of Kansas for \$2,621 and a Basic Education Opportunity Grant ("BEOG") for \$1,400 totaling \$4,021 in financial aid for the 1979-76 school year. The National Collegiate Athletic Association ("NCAA") Constitution, art. 3, § 1(f)(1), required that in the event financial aid award by an institution exceeds commonly accepted educational expenses, it shall be considered "pay" for participation in intercollegiate athletics. In the spring of 1976, Wiley was declared ineligible to compete in intercollegiate athletic events because his athletic award plus his BEOG exceeded NCAA limitations. Wiley sued NCAA to enjoin the inclusion of his BEOG in the calculation of the maximum financial assistance permissible under the NCAA Constitution. The United States Court of Appeals for the Tenth Circuit ("Court") dismissed Wiley's holding that there was a case or controversy between the parties, Wiley's interest was not sufficiently substantial to invoke federal jurisdiction.

Courts must exercise their power only in cases where true adversary circumstance allows informed judicial resolution. Actual controversy must exist at stages of appellate or certiorari review, not at the date the action is initiated. The Court found that because Wiley had graduated from the University following the initiation of this appeal, the district court's granting prospective relief in the form of an injunction has been mooted. There was, however, a substantial controversy that existed between the parties.

The Official Procedure Governing the NCAA Enforcement Program allows for retrospective action against an ineligible student-athlete under NCAA regulations who participated in intercollegiate activities under protection of a court order or injunction contrary to NCAA regulations. At its discretion the NCAA can, inter alia, vacate or strike the individual records and performances of the student-athlete, forfeit victories won by the team which the student-athlete played for, and require the return of any awards. The Big Eight Conference has given notice it would alter Wiley's points and vacate places earned in Big Eight championships if the Court found him ineligible to participate. The Court held that as long as Wiley's records and awards were at stake, it can render a decision that will affect the rights of the litigants.

Federal district courts have original jurisdiction to hear civil actions commenced to remedy the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, or any right, privilege or immunity secured by the Constitution providing for equal rights. This grant is tempered by a judicial doctrine requiring the dismissal of any claim which did not really and substantially involve a dispute or controversy properly within the jurisdiction of the district court. Dismissal is warranted when the claim is (1) wholly insubstantial or obviously frivolous, (2) foreclosed by prior cases which have settled the issues one way or another, or (3) patently without merit as to require no meaningful consideration. Unless clearly defined constitutional principles are at issue, claims of student-athletes discontent with NCAA rules do not present substantial federal questions. Wiley's interest is the right to attend college and play sports under a full scholarship plus a BEOG. The Court held that neither Wiley's personal interests nor the character of the alleged

misclassification prevent dismissal.

In dismissing this case, the Court held that Wiley's claim was not moot due to the retroactive action that could be taken against him by the NCAA. It also found that NCAA's amendment to its Constitution did not make the case moot. Jurisdiction based on federal question did not require the court to hear a case where there were insubstantial issues. The Court additionally held that unless clearly defined constitutional principles were at issue, claims of student-athletes displeased with NCAA or high school athletic association rules did not present substantial federal questions.