

## Court Reinstates Job Retaliation Lawsuit

Brett Barrouquere, Associated Press

LOUISVILLE, Ky. (AP) — A federal appeals court has reinstated a lawsuit by a Kentucky man who claims he was passed over for a job overseeing waste disposal from a nuclear plant because he is a whistleblower.

The U.S. 6th Circuit Court of Appeals on Thursday ordered a federal judge to determine whether executives with EnergySolutions Inc. learned of Gary Vander Boegh's whistleblowing before bypassing him for the landfill manager's job.

The case now goes back to federal court in Paducah for further proceedings.

Judge Richard Allen Griffin wrote for the court that Vander Boegh's claim rests on the "cat's paw" theory of employment discrimination. Under that theory, an employee argues that a biased non-decision-maker has influenced an unbiased decision-maker to take action that he or she otherwise would not have taken.

"Undisputedly, the decision not to hire Vander Boegh constitutes an adverse employment action," Griffin wrote.

The issue that needs to be determined, Griffin wrote, is when EnergySolutions found out about Vander Boegh's whistleblowing activities — before the company hired someone else or after the decision had been made.

Judge Lawrence P. Zatkoff dissented, saying Vander Boegh never received a pay check, job offer or benefits from the company, leaving him with no legal footing to stand on when he sued, Zatkoff said.

"For his part, Vander Boegh finds it peculiar that he did not receive an interview despite having 10 years of experience and ... the proper licensure for the position," Zatkoff wrote. "This is insignificant."

While Vander Boegh worked as a landfill manager for two companies overseeing the landfill where waste from the Paducah Gaseous Diffusion Plant was being deposited, he filed two complaints with the U.S. Department of Energy about the handling of material from the plant. The landfill manager's job was to ensure that nuclear waste from the Paducah Gaseous Diffusion Plant was being disposed of in compliance with the law and permit requirements.

The complaints, filed in December 2001 and January 2002, dealt with the storage of leachate, a liquid containing environmentally harmful material that can pose a threat to a natural water source if not collected properly. A U.S. Department of Energy official later found that Bechtel Jacobs, which ran the landfill at the time, found several instances of retaliation against Vander Boegh for his complaints.

## **Court Reinstates Job Retaliation Lawsuit**

Published on Industrial Maintenance & Plant Operation (<http://www.impomag.com>)

---

When EnergySolutions took over landfill management, it bypassed Vander Boegh and hired a different manager. Vander Boegh, who worked at the landfill from 1992 through 2006, claims EnergySolutions knew about the complaints, causing him to be passed over for the job.

**Source URL (retrieved on 11/20/2014 - 10:02pm):**

<http://www.impomag.com/news/2013/08/court-reinstates-job-retaliation-lawsuit>