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ADJUDICATORY ISSUE

April 12, 1994

(Information)

SECY-94-099

For: The Commission
From: John F. Cordes, Jr.
Solicitor
Subject: LITIGATION REPORT - 1994 - 03

City of Holyoke Gas & Electric Department v. NRC, No. 92-1287
(D.C. Cir., Mar. 21, 1994)

On March 21, the court of appeals dismissed this lawsuit at petitioner's request. Petitioner had been challenging the NRC decision in 1992 to allow transfer of Seabrook's operating license to Northeast Utilities Service Company. Petitioner was prepared to argue that the NRC mishandled the antitrust aspects of the transfer. See Litigation Report 1992-14, SECY-92-253. Shortly after filing suit, however, petitioner obtained an order from the court of appeals holding proceedings in abeyance while petitioner tried to work out a settlement of its concerns with Northeast Utilities.

After filing a series of status reports with the court stating simply that settlement negotiations were proceeding, petitioner in February moved to dismiss its petition. Petitioner did not report the outcome of its negotiations but presumably concluded them satisfactorily.

Contact: Marjorie S. Nordlinger
504-1616

Young v. NRC, Civ. No. JFM-93-1809 (D. Md., March 29, 1994)

This lawsuit by a former NRC employee alleged violations of federal laws (the Rehabilitation Act and Title VII of the Civil Rights Act) prohibiting certain forms of discrimination in employment. The NRC, the Merit Systems Protection Board and the Equal Employment Opportunity Commission each rejected petitioner's claims. She then filed a pro se lawsuit in federal district court in Baltimore.

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On March 29 the district court (Motz, J.) entered summary judgment for the NRC. The district judge found no evidence of unlawful discrimination in the record.

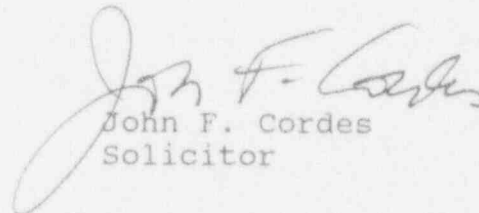
Contact: J. Bradley Fewell
504-1569

Cameo Diagnostic Centre v. Brown, Civ. No. 94-30036-F (D. Mass., Mar. 17, 1994)

This lawsuit began in small claims court in Massachusetts. See Litigation Report 1993-16, SECY-93-301. Plaintiff brought suit against an individual NRC employee and sought damages arising out of an NRC inspection of plaintiff's facility. Working with the United States Attorney's office we removed the case to federal court and substituted the United States as defendant on the ground that our employee had been acting within the scope of his employment in all his dealings with plaintiff. After removal we moved to dismiss the lawsuit for failure to meet the prerequisites of the Federal Tort Claims Act.

On March 17 the district court (Ponsor, J.) granted the government's motion to dismiss and entered judgment against plaintiff. The court found no merit to plaintiff's conclusory assertion that the NRC employee was acting outside the scope of his employment at the time of the NRC inspection. On March 23 the court denied plaintiff's motion to vacate the judgment.

Contact: Daryl M. Shapiro
504-1631


John F. Cordes
Solicitor

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ATTACHMENT -
City of Holyoke Gas & Electric Department v. NRC, No. 92-1287
(D.C. Cir., Mar. 21, 1994)

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 92-1287

September Term, 1993

City of Holyoke Gas & Electric Department,
Petitioner

v.

U.S. Nuclear Regulatory Commission
and the United States of America,
Respondents

United States Court of Appeals
For the District of Columbia Circuit

FILED MAR 21 1994

RON GARVIN
CLERK

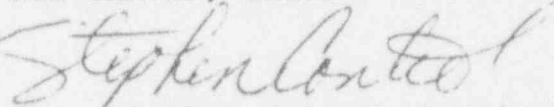
O R D E R

Upon consideration of Petitioner's unopposed motion to dismiss the petition for review pursuant to Federal Rule of Appellate Procedure 42 (b), it is

ORDERED that the aforesaid motion is granted and the petition for review is dismissed.

The Clerk is directed to transmit to respondent a certified copy of this order in lieu of a formal mandate.

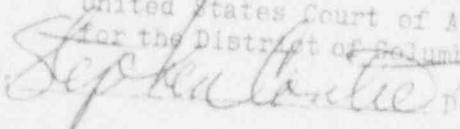
FOR THE COURT:
RON GARVIN, CLERK



By: Stephen Contee, Deputy Clerk

A True copy:

Test: Ron Garvin
United States Court of Appeals
For the District of Columbia Circuit

By:  Deputy Clerk

ATTACHMENT -
Young v. NRC, Civ. No. JFM-93-1809 (D. Md., March 29, 1994)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

YVONNE YOUNG

v.

NUCLEAR REGULATORY COMMISSION,*
 et al.

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Civil No. JFM-93-1809

MEMORANDUM

Yvonne Young, a former employee of the Nuclear Regulatory Commission ("NRC"), has filed this action asserting that her removal from federal service violated the Rehabilitation Act of 1973 and Title VII of the Civil Rights Act of 1964.¹ Defendants have filed a motion for summary judgment to which plaintiff has responded.

Plaintiff was employed as a project manager at the NRC. On January 31, 1992 the NRC proposed that she be removed from federal service for unacceptable performance. On February 19, 1992 plaintiff objected in writing to her proposed removal. On March 9, 1992 the NRC issued a decision adverse to plaintiff and ordered that she be removed from federal service as of March 11, 1992. Plaintiff appealed that decision to the Merit Systems Protection Board ("MSPB").

A transcribed hearing was held before the MSPB on June 3, 1992. Three representatives of the NRC testified at the hearing. Plaintiff and another witness called by plaintiff testified at

¹ Plaintiff is appearing pro se in this action. However, she was represented by an attorney during the hearing held before an administrative judge of the Merit Systems Protection Board at which a full and complete factual record was established.

the hearing. On June 26, 1992 the administrative judge issued a written opinion affirming the decision of the NRC to remove plaintiff. Plaintiff filed a petition for review of the administrative judge's decision by the full MSPB. On November 23, 1992 this petition was denied. Thereafter, plaintiff petitioned the Equal Opportunity Commission ("EEOC") for review of the MSPB's decision. On May 13, 1993, after a de novo review of the record, the EEOC concurred in the decision of the MSPB that plaintiff's removal was not discriminatory. Plaintiff then filed this action.

I have conducted a de novo review of the record and find that the conclusions of the MSPB and the EEOC that plaintiff's removal from federal service was not discriminatory are amply supported by the record and are, in fact, correct. The written decisions of the MSPB and the EEOC are analytically sound and factually accurate and no useful purpose would be served by my merely restating what they have already said.² Suffice it to say that the record unequivocally establishes that after having been issued a Performance Improvement Requirement Memorandum giving her 120 days to improve her performance, plaintiff failed to perform acceptable work on three separate projects that were

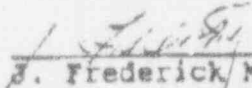
² The only legal issue on which the administrative judge of the MSPB and the EEOC arguably differed was on plaintiff's reprisal claim. The administrative judge had ruled against plaintiff on the alternative grounds that she had failed to prove a prima facie case of reprisal and that, assuming that she had done so, the NRC had established a legitimate, nondiscriminatory reason for its decision to remove her. The EEOC affirmed only on the latter two of these grounds. I agree with the EEOC on this point.

assigned to her. Timothy Johnson of the NRC who assigned these projects to plaintiff provided detailed testimony concerning the inadequacy of her performance on them. See Transcript of Hearing held before Administrative Judge Elizabeth Bogle, at 17-54. Plaintiff has never contradicted this testimony, and it is clear from it that the NRC clearly had legitimate reasons to find that plaintiff's performance was unacceptable and warranted her removal from federal service.

Plaintiff asserts two claims under the Rehabilitation Act of 1973. The first of these claims, based upon her heart condition, fails because she has not presented evidence to show that this condition substantially impairs any major life activity as required to establish a claim under the Act. Her second claim, based upon the contention that she was perceived as having a mental impairment, fails because there is no evidence that the officials of the NRC knew of the psychiatrist's report allegedly giving rise to this perception.

A separate order is being entered herewith granting defendants' motion and entering summary judgment on their behalf.

Date: March 27, 1997


S. Frederick Motz
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

YVONNE YOUNG

v.

NUCLEAR REGULATORY COMMISSION,
et al.

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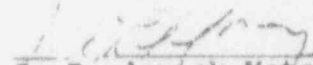
Civil No. JFM-93-1809

ORDER

For the reasons stated in the memorandum entered herein, it
is this 29th day of March 1994

ORDERED

1. Defendants' motion for summary judgment is granted; and
2. Judgment is entered in favor of defendants against
plaintiff.



J. Frederick Motz
United States District Judge

ATTACHMENT -
Cameo Diagnostic Centre v. Brown, Civ. No. 94-30036-F (D.
Mass., Mar. 17, 1994)

CAMEO DIAGNOSTIC CENTRE, INC.
SPECIALIZED MEDICAL IMAGING AND MEASUREMENTS
155 MAPLE STREET / SPRINGFIELD, MA 01105
(413) 788-7000

FILED
IN CLERK'S OFFICE
MAR 22 10 09 AM '94
U.S. DISTRICT COURT
DISTRICT OF MASS.

March 22, 1994

Mr. Robert J. Smith, Jr., Clerk
Office of the Clerk
United States District Court
United States Courthouse
1550 Main Street
Springfield, MA. 01103

ROCKETED

Dear Mr. Smith,

For want of a better phrase there is some funny business connected with case no. 94-30036-FRRF.

I just received "Judgement In A Civil Case" signed by your Deputy Clerk. The Decision by Court is of course totally fictitious-- there having been neither a trial or hearing of any kind. There are further mind boggling defects in the handling of the matter by your office.

I write to request that appropriate steps be taken to rescind the two documents dated 3/17/94 and 3/18/94 on the basis that Plaintiff has a constitutional right to be heard by a judge with the defendant testifying under oath.

This is after all what America is all about.

Accepting this letter as a motion to vacate the judgment, it is hereby denied. Under the civil rules, plaintiff has the obligation to come forward with evidence that, if believed, would warrant a finding that the employee acted outside the scope of his employment. Absent such a showing, by affidavit or otherwise, the plaintiff is not entitled to a trial or other evidentiary proceedings.

Very truly yours,

Paul J. Rosenbaum

Paul J. Rosenbaum

As ordered. Russell D. Pomeroy USA