

From: Alan Kabat <kabat@bernabeipllc.com>
Sent: Thursday, May 2, 2019 1:49 PM
To: Fehlman, Lauren - OSHA
Cc: Chandler, Christopher C; Chin, Steven C
Subject: Wetzel / TVA, 4-1760-19-25 (2)
Attachments: 2019 5 02 OSHA Supplemental complaint (Wetzel).pdf

Dear Ms. Fehlman,

Attached please find a supplement to Ms. Wetzel's retaliation complaint.

Sincerely,
Alan

Alan R. Kabat
Bernabei & Kabat, PLLC
1400 - 16th Street, N.W., Suite 500
Washington, D.C. 20036-2223
tel. (202) 745-1942 (ext. 242)
fax (202) 745-2627
email: Kabat@BernabeiPLLC.com

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Subject: Wetzel / TVA, 4-1760-19-25 (2)
Sent Date: 5/2/2019 1:49:19 PM
Received Date: 5/2/2019 1:48:08 PM
From: Alan Kabat

Created By: kabat@bernabeipllc.com

Recipients:

"Chandler, Christopher C" <ccchandler0@tva.gov>
Tracking Status: None
"Chin, Steven C" <scchin@tva.gov>
Tracking Status: None
"Fehlman, Lauren - OSHA" <>
Tracking Status: None

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BERNABEI & KABAT, PLLC

ATTORNEYS AT LAW

1400 16th STREET, N.W., SUITE 500

WASHINGTON, D.C. 20036-2223

LYNNE BERNABEI

ALAN R. KABAT

PETER M. WHELAN

202.745.1942

FAX: 202.745.2627

WWW.BERNABEIPLLC.COM

KRISTEN SINISI

MICHAEL ELLEMENT

DEVIN WRIGLEY

KAIYA LYONS*

*ADMITTED IN MN ONLY

By Email and First Class Mail

May 2, 2019

Lauren Fehlman, Regional Investigator
U.S. Department of Labor-OSHA
2296 Henderson Mill Road, NE,
Suite 200
Atlanta, GA 30345-2739

Re: Beth Wetzel / Tennessee Valley Authority, 4-1760-19-025.

Dear Ms. Fehlman:

On behalf of my client, Beth Wetzel, I write to supplement the complaint that she filed on December 18, 2018 (as previously supplemented on January 14, 2019) with the Department of Labor, Occupational Safety and Health Administration, under Section 211 of the Energy Reorganization Act (“ERA”), 42 U.S.C. § 5851 *et seq.*, and NRC Regulation 10 C.F.R. § 50.7, against the Tennessee Valley Authority (“TVA”) for its retaliation against Ms. Wetzel, because she engaged in activities protected under the ERA.

After TVA terminated Ms. Wetzel on January 14, 2019, she was eventually able to find a short-term contract position with as a technical consultant. However, TVA retaliated against Ms. Wetzel by placing a flag for her nuclear site access in the PADS database, which has significantly interfered with her ability to do consulting work in the nuclear energy industry.

Both Ms. Wetzel’s current contract employer and the largest nuclear utility in the country were informed that there is a flag in PADS, thus creating a negative perception that cannot be removed and will impact her ability to continue to perform work in the industry. We have only recently learned that TVA placed an entry in PADS: “Ms. Wetzel’s UA [unescorted access] was favorably terminated 7/18/2018.” This July 18 date confirms that TVA planned to terminate

Ms. Wetzel in July 2018 – which is *three months* before TVA placed her on paid leave, and *six months* before TVA terminated her employment, making clear that her termination was planned well in advance.

On January 17, 2019, TVA placed an “Admin Hold” on Ms. Wetzel in PADS which requires any downstream utility to contact TVA prior to allowing Unescorted Access. Ms. Wetzel’s new employer contacted TVA and was informed that the Admin Hold in PADS was related to an “*investigation*” involving Ms. Wetzel and the TVA Corporate Licensing Director. TVA further retaliated against Ms. Wetzel by ensuring any future employer would be informed of the retaliatory investigation.

It is settled law that placing someone on a denied access list or otherwise flagging them for unescorted access is retaliatory, since it is a form of blacklisting, which is specifically prohibited under 29 C.F.R. § 24.102(b). Here, TVA placed put an administrative hold on Ms. Wetzel in the PADS database only one month after she filed the first supplement to her OSHA complaint, and only several days after she told Joe Shea (her second-level supervisor at TVA) that her termination was retaliatory.

As the Department of Labor has consistently held, blacklisting is a particularly problematic form of retaliation:

Thus, employees must feel secure that any action they may take that furthers that Congressional policy and purpose, especially in the area of public health and safety, will not jeopardize either their current employment or future employment opportunities.

Blacklisting being both insidious and invidious, cannot easily be discerned. There may be a considerable lapse of time before a blacklisted employee has any basis for believing he is the subject of discrimination. The continuing violation theory is an appropriate means for protecting employees from such an ongoing retaliatory practice.

Egenrieder v. Metropolitan Edison Co., 85-ERA-23 (Sec’y Apr. 20, 1987); *accord Doyle v. Hydro Nuclear Services*, 89-ERA-22, at 3 n.2 (Sec’y Mar. 30, 1994) (citing *Egenrieder*). Here, although Ms. Wetzel was blacklisted on January 17, 2019 (with an entry in PADS that was retroactive to July 2018), she did not learn of that blacklisting until late March 2019.

Further, TVA never notified Ms. Wetzel – either in July 2018 or January 2019 – that TVA removed her site access, as required by TVA procedure. Ms. Wetzel’s current manager stated that the Admin Hold would have been a recurring flag in PADS, had his company not

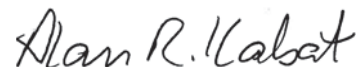
Lauren Fehlman, Regional Investigator
Occupational Safety and Health Administration
May 2, 2019
Page 3 of 3

convinced TVA to remove the information from PADS. By requiring future employees to contact TVA prior to allowing Ms. Wetzel site access, TVA would have harmed Ms. Wetzel's ability to be employed for the rest of her career. Not until her current employer contacted TVA did TVA agree to remove the administrative flag from PADS. However, Ms. Wetzel may have to disclose that she had a flag in PADS if a prospective employer asks her as part of a background check.

Therefore, Ms. Wetzel requests that OSHA accept this second amendment to her complaint, and that OSHA investigate the PADS action as an additional act of retaliation.

Thank you for your assistance with this second amendment to Ms. Wetzel's OSHA complaint.

Sincerely,

A handwritten signature in black ink that reads "Alan R. Kabat". The signature is written in a cursive, slightly slanted style.

Alan R. Kabat
Attorney for Beth Wetzel

cc: Ms. Beth Wetzel
Mr. Kurt Petermeyer, Director, Region IV
TVA Office of General Counsel