

Pennsylvania Public Policy Did Not Bar Termination of Nuclear Power Plant Employee Who Tested Positive For Alcohol

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A federal district court in Pennsylvania held that public policy did not bar termination of a nuclear power plant employee who tested positive for alcohol. *Bennett v. Talen Energy Corp. et al.*, No. 3:19cv521 (M.D. Pa. Oct. 11, 2019).

Plaintiff worked at a nuclear power plant as a production foreman. The Nuclear Regulatory Commission (“NRC”) requires all nuclear power plants to adopt Fitness For Duty (“FFD”) programs that address Unescorted Access (“UA”) requirements for employees that enter secure areas of a nuclear facility. In addition, drug and alcohol testing is required. On February 15, 2018, plaintiff submitted a urine sample under the FFD program, which revealed a blood alcohol level above the permitted level in violation of the program. As a result of the violation, plaintiff’s UA authorization was withdrawn for a minimum of 14 days, but the employer’s medical review officer assured plaintiff he would return to work before March 31, 2018. Instead, on March 23, 2018, plaintiff’s employment was terminated. Plaintiff also lost his UA status and could not get a job at another nuclear power plant.

Plaintiff filed suit, alleging wrongful termination in violation of Pennsylvania public policy. Specifically, he asserted that he was terminated after his first violation of the FFD program without being allowed to enter the employer’s Employee Assistance Program (“EAP”). In support of his position, plaintiff argued that Pennsylvania public policy favors allowing employees with alcohol or drug-related issues to complete treatment for first offenses before being terminated. He further argued that NRC regulations *required* NRC licensees to refer to an EAP employees who violated FFD protocol and restore the employees’ UA once the program is completed. The Court held that a plain reading of the regulation imposed no such duty, and therefore public policy did not require the employer to refer plaintiff to an EAP. Thus, the court dismissed his wrongful discharge claim.

Plaintiff also asserted a violation of NRC regulation 10 C.F.R. § 26.75, which provides that for the first violation of a FFD involving a drug or alcohol test, an employee’s UA must be terminated for a minimum of 14 days. An employer, however, may impose a more stringent sanction for a first-time violation. Since the employer did not enact a more stringent policy, Plaintiff argued that his UA badge should have been restored to him 14 days after his suspension. But the court stated that Pennsylvania courts and the Third Circuit have held that there is no private right of action for

violations of the NRC regulations relating to drug testing and security clearance investigations and dismissed this claim as well.

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