

Illinois Federal Court Grants Motion to Dismiss SOX Whistleblower Claim

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On February 28, 2023, the U.S. District Court for the Central District of Illinois granted a defendant-employer's motion to dismiss a SOX whistleblower retaliation claim, holding that the plaintiff failed to adequately plead that he engaged in protected activity because his alleged attempt to raise safety concerns did not plausibly allege that he subjectively believed that he was reporting fraud. [Magnuson v. Exelon Generation Company, LLC](#), No. 21-cv-4142.

Background

Plaintiff, an Operations Shift Manager at a nuclear power plant, was responsible for ensuring compliance with state and federal regulations set by the Nuclear Regulatory Commission ("NRC") (the federal agency responsible for regulating nuclear power plants and other uses of nuclear materials). Plaintiff alleged that the Company retaliated against him after he reported various purported safety violations, including by removing his security clearance, deactivating his NRC license, suspending him, requiring him to undergo a psychological evaluation, and ultimately placing him on an involuntary leave without pay. During this time, Plaintiff filed four separate complaints with OSHA. He subsequently filed suit, alleging various claims under state and federal law, including a whistleblower retaliation claim under SOX.

Ruling

The court granted the Company's motion to dismiss the SOX whistleblower retaliation claim, holding that Plaintiff failed to allege that he engaged in protected activity because none of his allegations "suggest that his disclosures were motivated by a subjective belief that he was reporting fraud within SOX's purview but rather demonstrate a concern for nuclear safety." The court noted that "Plaintiff's words, actions, and the animating beliefs he alleges overwhelmingly demonstrate that a concern for nuclear safety, not fraud, motivated his [complaints]."

Implications

This decision reaffirms the principle that SOX does not extend whistleblower protection to complaints about any form of purportedly improper conduct, but only protects complaints that are related to one of the six categories of misconduct enumerated in Section 806 of SOX.

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