

STATEMENT OF NEAL JORGENSEN
Hearing before the Subcommittee on Workforce Protections,
House Committee on Education and Labor
“Whistleblower and Victim’s Rights Provisions of H.R. 2067,
the Protecting America’s Workers Act”
April 28, 2010

Thank you for inviting me here today.

My name is Neal Jorgensen. I live in Preston, Idaho. I became a whistleblower in 2004 after being fired by Plastic Industries for filing a complaint with OSHA about the company’s safety problems.

Here’s something to think about while I’m giving my testimony. If you were a friend and you had violations in your place of work and asked my opinion, I would say “work safe, so you don't get hurt, and look for a new job, because it will cost you your job and twice as much as the employer is fined if you report the violations.”

The company fired me two weeks after I filed the complaint because OSHA went to the company and conducted a safety inspection, and found eight safety violations—including two that were considered “serious” by OSHA: one for not having machine guards on a bandsaw, and one for not having the proper shut-off controls on a baling machine and a pressurized washer. OSHA originally fined the company \$2,550 for these violations. After the company fired me, I filed another

complaint with OSHA known as a “whistleblower” complaint. Filing that complaint did not work out well for me – I was not protected by the OSHA law.

The reason I am here to tell my story today is that my employer got away with firing me without any consequences. Although OSHA investigated the facts of my case, found it was sound, and tried to collect the wages I would have earned if I had not been fired, the government lawyers decided not to go to court on my behalf to enforce the law. I found out that I could not have taken the company to court, even if I could have afforded it. The OSHA law does not allow individuals who file these types of whistleblower complaints to go to court—only the government can take these cases to court. That does not seem fair to me.

It also does not seem fair that the only thing the owner of the company, Rex Pitcher, was asked to pay was the fines for the violations OSHA found during its safety inspection. And those fines were later reduced a lot. Although OSHA initially asked the company to pay \$2,550, it was later reduced to \$1,500.

I filed my whistleblower complaint and an investigator from OSHA interviewed several people at the company to check out the facts. However, the owner, Rex Pitcher, lied to OSHA. First, he told OSHA I was fired because I was a temporary employee and had found another job. Then, he changed his story and said I was fired for poor performance.

Luckily, the OSHA investigator was pretty good and said the company’s explanations for my firing were inconsistent and not believable. He also found there was no evidence to support the company’s claim that I was only given a job until I found work elsewhere. The only reason I got a second job was because I

needed it to support my family. The owner knew I had gotten a second job and had no problem with it.

The OSHA investigator found no evidence of any of my so-called performance problems in the company files. He also found out that, after I filed the whistleblower complaint, Rex Pitcher asked a shift foreman to write a letter to the company about my work. He did, but when the investigator showed the foreman the typewritten letter and asked him if he wrote it, the foreman said he sent a handwritten letter to the company and that the good things he said about my work were deleted. The foreman said the company must have removed the positive comments before typing it up and giving it to OSHA! Again, the owner of the company lied.

In October 2004, OSHA completed its investigation and decided that my case was worth pursuing. OSHA tried to get the owner to pay me back wages of \$2,912, but he refused.

October 2004 was a pretty bad month for me. In addition to Rex Pitcher refusing to agree to pay the back wages I was owed, my wife left me and filed for divorce. I also found out that her lawyer was also representing my former employer in my whistleblower case! I told the OSHA investigator about this. He contacted the government lawyer and asked about this apparent conflict of interest. The lawyer said it wasn't a problem because he was "against Neal either way." At that point, I felt I could not win.

In December 2004, OSHA sent the case to the Department of Labor's lawyers and recommended that they take the company to court. Sadly, the lawyers decided not to pursue my case. They sent it back to OSHA to do more digging. After OSHA did this, the government lawyers decided not to go to court.

The main reason they gave was that the two judges in Idaho who get these cases were not likely to decide in my favor. The lawyers stated—and I'm quoting here:

“we believe we have an approximate 25% chance of success. There are two U.S. District Court judges in Idaho, one of whom is routinely not well disposed towards the government's cases, and the other who can go either way.”

It's sad to me that the company could treat an employee this way and get off scot free. Isn't the purpose of the whistleblower laws to protect workers who report unsafe conditions?

I thought I did the right thing, but the system did not work for me. The OSHA law did not provide the protections I needed and the only lesson the owner of the company learned is that he can treat his employees any way he likes, and then lie about it, and nothing will happen to him. Nothing.

Would I recommend that someone file a whistleblower complaint with OSHA? Absolutely not, the way the law is written.

I have found to really make an impression on someone, there has to be some real consequences. Let me illustrate.

When I was 4 or 5, I followed my neighbors to a pond to go frog hunting. My parents found out and found me on my tricycle just before I got to the pond. Mom took my trike home and Dad chased me home with a switch. The next time I even thought of going to that pond I was 11 and it was winter, so there was no chance of drowning. OSHA needs a “switch” to provide more help to workers to keep them safe.

I have also worked for companies that have had dealings with the EPA, which seems to be able to deal with possible safety and health problems better than OSHA. For example, at the company where I work now, the manager found there was a floor drain under the extruder, so the water that flows into the drain could have been contaminated. Because the company had previously been fined by EPA for a similar situation, it decided to spend a lot of time and money to recycle the water back to the extruder so the drain could be closed, which eliminated the chance of violating EPA’s rules. The EPA has some teeth, unlike OSHA, which needs to be able to provide more help to workers to keep them safe.

Thank you for letting me tell my story. I hope you are able to do something to improve the OSHA law that is supposed to protect workers.