

DID COMPANY INTENTIONALLY WITHHOLD OR DESTROY EVIDENCE?



A former employee of the United States Enrichment Corporation (USEC) filed a lawsuit against the company, alleging a violation of the Age Discrimination in Employment Act (ADEA) and Ohio state law. He also made a claim for spoliation of evidence – meaning that USEC, either deliberately or simply by negligence, withheld or destroyed records that the man had requested. The man had worked at the Portsmouth Gaseous Diffusion Plant in Piketon, OH, for 30 years. He was a laboratory technician for more than a third of that time, his duties including the measurement of the Uranium-235 isotope content of cylinders containing uranium hexafluoride. The “meter” used for measuring was a combination of several components, such as a laptop and a high voltage input. The instrument was known for frequently crashing, and on one particular day when it stopped functioning, the employee informed his supervisor – claiming that the meter produced a reading before crashing. The supervisor, however, determined that the man had likely fabricated the reading, and he was placed on two weeks leave while an investigation was held. The HR Director interviewed managers and supervisors and consulted experts, one expert concluding that the reading had been fabricated. As a result, the man was fired. He requested a separate investigation, but



USEC’s Employee Concerns Manager reached the same conclusion. The man’s ensuing lawsuit alleged discrimination based on his age, as well as state-law claims of negligent and intentional infliction of emotional distress. He also made a motion for sanctions for spoliation of evidence regarding the repair and maintenance records for the meter. The district court granted summary judgment in favor of USEC and denied the motion for sanctions. The former employee was 49 at the time he was fired, and his duties had been reassigned to a younger worker. Similarly, four months after his termination, he was due to vest in pension benefits a total of nearly \$170,000. Both the district and appeals courts accepted that the man had made a case for age discrimination, but he could not show that USEC had fired him for these reasons and that the reputedly false reading had no factual basis. The HR rep had interviewed several experts, and three separate investigations into the incident had been conducted – including one at the plaintiff’s request. All three had determined that the reading was fabricated. The USEC had been ordered by the court to produce raw data relating to the meter, as its typical malfunctioning was relevant to the plaintiff’s case. The man, however, asserted that the records which had been provided “shed no light” on the maintenance and repair details. That part, he maintained, had either been withheld or destroyed. The company responded by stating that no other records concerning the meter existed, and as the man could not substantiate his claim of destruction of evidence, appellate judges could not reverse the denial of sanctions. The district court’s decision was accordingly affirmed.