Whistle-Blower Clears the Air

EPA Reinstatement of Fluoride Critic Seen as Change in Wind

By Gary Lee

To federal employees contemplating blowing the whistle on a controversial government policy, the saga of William L. Marcus offers two messages: victory is within your grasp, but wear a heavy set of armor, as the battle could become a protected war.

Marcus, now 58, was a senior toxicologist at the Environmental Protection Agency and in May 1990 questioned the EPA's hacked practice of adding fluoride to the nation's drinking water supplies. After Marcus wrote memos suggesting that fluoride may cause cancer in humans, Margaret Stasikowski, his supervisor in the Office of Drinking Water, ordered him to stop writing about the chemical. In May 1992, Marcus was fired, allegedly for pursuing outside work that conflicted with his EPA work. At the time, Marcus had a second job as an expert trial witness in legal cases. Last month, Labor Secretary Robert B. Reich ordered the EPA to reinstate Marcus, to compensate him for legal costs be incurred fighting his firing, and to pay him $50,000 in damages. The reason for the firing, Reich determined, was "retaliation," for Marcus's criticism of fluoride.

Fluoride proponents flatly disputed that perception. "We have been fighting the use of fluoride since the mid 1950s, and we have been opposed by federal officials all along the way," said Robert Caron, a former senior EPA official, a friend of Marcus and now a leader in the anti-fluoride movement nationwide. "I hope that the decision in Marcus's case will lead to a rethink of the official fluoride policy."

Marcus represented himself when he appeared as a court witness. "One big complication in this case," said David Colapinto, a lawyer for the organization, "is that the whistleblower laws were established to protect private citizens and Marcus was appealing as a federal employee. Under the 1989 Whistleblower Protection Act, federal employees who want to blow the whistle can appeal to the Office of Special Counsel, but many still complain that they face retaliation from supervisors.

In the end, the judge sided with Marcus. It turned out that EPA officials had falsified Marcus's time cards to show that he was pursuing outside work when he should have been working and that the EPA made false statements about how Marcus represented himself when he appeared as a court witness.

EPA officials appealed the decision. To keep the case from falling into the black hole of appeals cases, some of which drag on for years, Marcus appealed to lawmakers, including Sen. Barbara A. Mikulski (D-Md.), who, in turn, asked Reich to give the case priority. Labor Department officials reviewed the appeal early this year and made their ruling Feb. 7.

Marcus, more than a chance to get his job back, it represented a victory for his profession. "It is my hope," he said, "that my vindication here will serve as the first, albeit small step in bringing responsible science, undaunted by fear of job security or other reprisals, back to the EPA."

For whistleblower advocates, the decision means an expansion of the protection offered by federal whistleblower laws. "With this case, the laws can now be used to protect federal employees who are whistleblowers," Colapinto said. "It may encourage other government workers to come forward now."

For critics of fluoride, the ruling was also good news. They say that besides the risks the chemical poses of causing bone cancer, it causes mottled teeth, crippling bone disease and may cause kidney disease.

Fluoride proponents insist that the chemical, which occurs naturally in some drinking water supplies, helps to fight tooth decay. "We have been fighting the use of fluoride since the mid 1950s, and we have been opposed by federal officials all along the way," said Robert Caron, a former senior EPA official, a friend of Marcus and now a leader in the anti-fluoride movement nationwide. "I hope that the decision in Marcus's case will lead to a rethink of the official fluoride policy."