

United States Court of Appeals For the First Circuit

No. 11-1843

MINGHUA CHEN,

Petitioner,

v.

HILDA L. SOLIS, Secretary of Labor for the Department of Labor,

Respondent,

DANA-FARBER CANCER INSTITUTE,

Intervenor.

Before

Lynch, Chief Judge,
Torruella and Howard, Circuit Judges.

JUDGMENT

Entered: March 16, 2012

Petitioner Minghua Chen, a former probationary employee of the Dana-Farber Cancer Institute, seeks review of a final decision of the Secretary of Labor denying her complaint that she was unlawfully terminated by Dana-Farber in retaliation for reporting a radioactive spill. To us, substantial evidence of record clearly supports the conclusion that, even without her protected activity, petitioner's onsite supervisor would have voiced serious reservations about her resistance to his direction; and that the senior researcher in the laboratory would have taken the same personnel action in order to protect the continuity and reliability of his research. We therefore agree with the Secretary that Dana-Farber has met the statutory standard of clear and convincing evidence for its affirmative defense. See 42 U.S.C. § 5851(b)(3)(D).

The petition for review is denied.

By the Court:

/s/ Margaret Carter, Clerk.

cc:

Minghua Chen
Michael D. Felsen
Mary J. Rieser
James J. Horgan
Frank E. Reardon
Jennifer S. Brand
Megan E. Guenther
M. Patricia Smith