

Testimony of David Escher

Before the Subcommittee on Health

Committee on Ways and Means

United States House of Representatives

On the Genetic Information Nondiscrimination Act (H.R.493)

March 14, 2007

Chairman Stark, Members of the Subcommittee, thank you for inviting me to testify before you today.

My name is Dave Escher. I am 52 years old and had been employed by Burlington Northern Santa Fe Railroad for over 26 years and was a member of the Brotherhood of Maintenance of Way during that time. I was born and raised in Herndon, a small town in northwestern Kansas with a population of 200 people. I graduated from high school in 1972, began my career with Burlington Northern in 1976, and ended that career in 2002. I married my wife Deb in 1986, and have three daughters, Kelsey, Kara, and Kristyn. We now live in Reno, Nevada after relocation three and a half years ago from McCook, Nebraska.

My jobs within Burlington Northern Santa Fe Railroad included such positions as laborer, truck driver, assistant foreman, machine operator, and foreman. I was appointed to the Division Safety Committee and continued to serve on that committee for over 12 years. I held such positions as maintenance of way representative, Vice Chairman, and safety and health facilitator up to the time of my departure from the company.

I was also selected as "The McCook Division Safety Employee of the Year" in 1994. I had always had a great working relationship with all my co-workers as well as those in upper management levels.

Prior to my departure from the company, I began experiencing numbness, pain, and tingling sensations in my right hand. When the numbness began to move through my hand and up my arm into my upper bicep, I went to see a doctor who referred me to a specialist. It was determined that I had developed work-related carpal tunnel syndrome, for which surgery was necessary.

After meeting with the operating surgeon, I received a letter from corporate headquarters stating that they were not satisfied with the initial test results and that they required further testing. In a subsequent visit to a neurologist, I once again had my hands x-rayed and another nerve conductor study performed. The results again confirmed that I had carpal tunnel syndrome, that surgery was required, and that the condition was work-related.

Within three weeks of the surgery, I received another letter from management demanding that I undergo more extensive testing and that an appointment was already set for me. Included in this letter, safety rule S-26.3 was noted which states that the medical department has the authority to require an employee to meet all requirements set forth by the medical department, and that everyone must comply with these instructions or face the consequences of disciplinary action for being an insubordinate employee.

After receiving this letter, I immediately contacted the company medical case manager with whom I had been dealing, and I reminded her that I had already seen four medical professionals, undergone two nerve conductor studies, received six separate x-rays of each hand, and now the company was demanding that I see yet a fifth doctor and undergo yet another nerve conductor study with more x-rays. When I pressed for an explanation, I was told that as far as she understood, more information concerning my medical condition was needed.

I went to the appointment as I had been ordered. During the procedure seven vials of my blood were extracted, and the doctor once again confirmed that I did suffer the effects of carpal tunnel syndrome, and that the condition was work-related.

In a matter of a few days, I would learn from a co-worker who had refused to submit to the same order, and who also had been diagnosed with carpal tunnel syndrome, that I had been subjected to a genetic test through the blood that was taken from me. This was done without my knowledge or consent.

I found myself in a state of disbelief and humiliation. I could not believe or accept what had just occurred. I experienced states of denial, disbelief, and depression. I felt totally violated and devalued as a person. I had just been used as a laboratory rat in a carefully devised scheme where my employer would benefit greatly by trying to prove that carpal tunnel syndrome was a genetic disorder rather than a work environment related condition. They could relieve themselves of financial obligations to their employees who suffer work-related injuries within the workplace.

This was a very difficult concept for me to accept. My attitude toward the company became very negative. My moods of anger and depression resulting from the constant stress and uncertainty of my job situation affected my family as well. I became despondent to the needs and the concerns of my wife and daughters as I tried to work through this uncomfortable and seemingly endless situation.

I was also fearful of the fact that no one could tell me where all the vials of my blood had been dispersed. What information was being learned about me, who was going to receive this information, and how could it be used to discriminate against not only myself, but also my family, when they go out into the workplace? The constant worries, "where would I go to find another job at this point in my life," and be able to obtain insurance for my family, seemed to me insurmountable. This was a very trying time in my life.

One of the most heart-wrenching moments occurred when my little seven-year old daughter, Kristyn began crying one night because she was scared Daddy was going to lose his job and her little world would be turned upside down. How do you explain to a young child that you could lose your job not because of what you have done to your employer, but because of what your employer has done to you?

I feel that this new science of genetic information is a great asset when left in responsible hands. But it can also be very devastating when put into the hands of the wrong people.

I am fearful of the power that corporations, including insurance companies, would have if they were allowed to subject their employees and policyholders to genetic testing, and then make decisions based on what is learned in those tests.

We have laws to protect us from people wiretapping our phone, stealing our mail, and defrauding our bank account. How can we allow employers to steal the blood of their employees and use it to discriminate through the predispositions discovered through the information from the genetic studies?

It is my personal belief that individuals are hired on the basis of their abilities and capabilities to do the job, not on the basis of their genetic make-up or genetic history.

It has now been over 5 years since I first had the opportunity to testify before Congress in regard to genetic discrimination. To this day, I have never received confirmation of what happened with the vials of blood taken from me. I have been denied health insurance since I am on a railroad occupational disability, and there are still no laws protecting individuals from an employer demanding an employee be genetically

tested. I still strongly believe that the need for the passage of legislation that protects all Americans from genetic discrimination is as important today as it was five years ago.

Mr. Chairman, through the tactics of deception, intimidation, lying, and stealing, the company to which I have given 26 years of my life took from me something they can never give back, and that is the very essence of being - my genetic make-up.

In conclusion, if employers, insurance companies, and the like are able to have this type of power and control over their employees and clients, then who will be able to have a job or affordable insurance, if any insurance at all?

I want to thank the Subcommittee for the opportunity to testify, and I urge enactment of legislation to protect American citizens from genetic discrimination. Thank you.