

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Submitted February 8, 2024*

Decided February 9, 2024

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 23-1765

MARK KELLY,
Plaintiff-Appellant,

v.

DANIEL DORMAN, et al.,
Defendants-Appellees.

Appeal from the United States District
Court for the Southern District of Indiana,
New Albany Division.

No. 4:22-cv-00071-TWP-KMB

Tanya Walton Pratt,
Chief Judge.

ORDER

Mark Kelly, formerly a chemist at a private research laboratory, appeals the dismissal of his lawsuit challenging the Nuclear Regulatory Commission's investigation

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

of his complaints of his former employer's wrongdoing. The district court concluded that Kelly lacked standing and dismissed the case for lack of jurisdiction. We affirm.

We recite the facts according to the allegations in Kelly's amended complaint. *See A.F. Moore & Assoc. v. Pappas*, 948 F.3d 889, 891 (7th Cir. 2020). In the 1990s, Kelly worked for Lambda Research, Inc., a company that provided technical reports to customers in the nuclear industry. In 1999, Kelly came to believe that these reports contained erroneous calculations about the texture of zirconium, an element used to manufacture nuclear reactor components. Fearing that such errors could cause or exacerbate nuclear accidents, Kelly reported his concerns to his boss, who reacted angrily. Kelly then complained to the Nuclear Regulatory Commission, which investigated and then informed him that errors in Lambda's texture analysis were "not a safety concern." Dissatisfied and facing an increasingly hostile workplace, he resigned from Lambda.

In 2000, Kelly sued Lambda in federal court for retaliation and constructive discharge under the state whistleblower statute. The district court granted summary judgment to Lambda and the Sixth Circuit affirmed. *See Kelly v. Lambda Research, Inc.*, 89 Fed. Appx. 535, 545 (6th Cir. 2004).

In 2022, Kelly brought this suit against the Nuclear Regulatory Commission and several of its officials. In a sprawling complaint, he alleged that the Commission—through its flawed 1999 investigation and related reports—had concealed errors to protect Lambda, put public safety at risk, and harmed his own reputation, career, and general well-being. He asked that the Commission be ordered to correct all reports concerning zirconium texture analysis and review any influence that its reports may have had on public safety.

The district court screened Kelly's complaint, *see* 18 U.S.C. § 1915(e), and dismissed it for lack of jurisdiction. The court explained that Kelly lacked standing because he appeared to raise only a general grievance about a government agency that did not present a case or controversy as required by Article III of the Constitution. The court granted Kelly leave to amend his claim, warning that if he did not address the errors identified in his complaint, his case would be dismissed.

Kelly amended his complaint to additionally allege that the Commission's flawed investigation violated his rights to due process and free speech by dooming his later employment-discrimination lawsuit. The court, adopting a magistrate judge's

report and recommendation, reiterated that Kelly lacked standing because his conclusory allegations of harm were insufficient to suggest how any conduct by the defendants concretely harmed him.

On appeal, Kelly asserts only that his allegations of injury are sufficient for purposes of standing. But a complaint fails for lack of standing “unless the complaint plausibly alleges concrete injury caused by the asserted wrong.” *Baysal v. Midvale Indemnity Co.*, 78 F.4th 976, 978 (7th Cir. 2023) (citing *Dep’t of Ed. v. Brown*, 600 U.S. 551 (2023)). The injury must be traceable to the asserted wrong and likely rather than conjectural. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Kelly’s complaint does not meet this standard because he failed to plausibly allege that any injury he suffered—the loss of a job he resigned from, harm to his reputation, his unsuccessful lawsuit—is remotely traceable to the Commission’s 1999 response.

AFFIRMED