

Jury awards whistleblower \$2.1 million

■ Lab operators express disappointment in verdict, claiming actions were merited

By Ian Hoffman
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Jurors awarded \$2.1 million to an ex-Livermore lab worker after finding that in-house counsel and executives illegally fired her eight years ago chiefly because she was going to be a witness in a sexual-harassment case against the nuclear weapons lab.

It is the second time that an Alameda County jury sided with former lab computer technician Dee Kotla, this time assessing double the monetary damages against the lab's operator, the University of California.

"I feel good," said Kotla, 55. "I've been vindicated twice."

Lab officials argued to jurors that Kotla was fired for using her lab computer to convert some files and disks for a friend's business and for making \$4.30 in personal phone calls.

"The Laboratory is extremely disappointed in today's

verdict," lab officials said in a prepared, unattributed statement. "We believe our actions were appropriate and our case has merit."

Jurors concluded Kotla's technical violations of lab policy didn't warrant firing. Instead, the majority of jurors found a likelier explanation in Kotla's efforts to testify for a co-worker who alleged the lab tolerated the sexual harassment of several workers by a senior scientist. Lab defense attorneys asked her pointed questions and demanded the password to her work computer.

"She walked into a hostile environment," said juror Charles Harte, a retired Safeway worker. Within two months, the lab tried twice unsuccess-



KOTLA

fully to the criminal charges against Kotla and fired her. She became emotionally distraught and attempted suicide.

Jurors awarded Kotla \$127,000 in lost wages and benefits and \$2 million for emotional distress and other non-economic damages.

The university and its two nuclear weapons labs, Livermore and Los Alamos, often challenge jury verdicts and awards, drawing on a legal war chest funded by federal taxpayers. But the Kotla case, amassing legal bills at least twice as large as the jury award, could make that practice less common.

A powerful House committee investigating the University of California's operation of two nuclear weapons labs last year took an interest in its billing

of legal expenses to the U.S. Department of Energy. A bipartisan majority on the House Energy and Commerce Committee passed a provision denying reimbursement of legal fees to any Energy Department contractor at the first loss on the merits of a case.

The House approved the provision last year as part of an energy bill that did not pass the Senate.

"I think this verdict puts it over the top," said Danielle Brian, executive director of the Project on Government Oversight, a Washington, D.C., watchdog and whistleblower-protection group. "It's clear this case has gone through every hurdle and continues to come up a winner for the whistleblower. UC has no business spending taxpayer money fighting her."

Rep. Ed Markey, D-Mass., expects the restriction that he authored on taxpayer reimbursement of legal expenses to the university and other Energy Department contractors will make the new energy bill.

"I will continue to fight the reimbursement of costs associated with the wasteful, abusive and senseless legal maneuverings (that) Livermore has engaged in in this case," Markey said in a prepared statement on the Kotla verdict.

He said he hoped the university would pay Kotla and let her get on with her life.

"If these sorts of abuses are not stopped, Livermore and other DOE contractors will lack any incentive to settle cases with legitimate whistle-

blowers or refrain from pursuing frivolous legal actions against innocent people and companies," Markey said.

While Kotla attorney Gary Gwilliam portrayed a high-level lab conspiracy get rid of Kotla, several jurors said it appeared the lab's bureaucracy made several mistakes and miscommunications that required her firing to cover itself.

The U.S. Department of Energy so far has approved reimbursement of \$1.2 million of the university's legal bills, a figure that may not include \$1 million or more in additional billings. Kotla's legal bills are likely to fall between \$2.5 million and \$3 million. Gwilliam said he offered to settle for \$499,000 years ago.