

November 4, 2021

Written Testimony of Glenda Perez, former Implementation Set-Up Representative at Cigna, for House Education and Labor Committee, Health, Employment, Labor and Pensions Subcommittee hearing entitled “Closing the Courthouse Doors: The Injustice of Forced Arbitration Agreements”

Chairman DeSaulnier, Ranking Member Allen, and members of the committee, thank you for the opportunity to testify in support of important legislation that would end forced arbitration for workers across America, including the Restoring Justice for Workers Act (H.R. 4841) before this committee.

My husband and I used to work for Cigna, a global healthcare and insurance company, from October 2013 to July of 2017. I was an Implementation Set-up Representative responsible for keying data into a computerized system that interfaces with pharmacies, allowing the pharmacies to correctly charge consumers filling their prescriptions. I structured both National and Commercial Pharmacy benefits for multiple companies across many different states. I trained new hires when asked, and quickly became a Subject Matter Expert. I won the “Cigna Champion” award two years in a row. Through Cigna, I also volunteered for the Red Cross and Habitat for Humanity and Cigna featured a picture of me on their Twitter page. To say I was proud is an understatement, I was honored to say I worked for the company.

In March of 2017, meetings were held with my team to address an ongoing issue related to pharmacy benefits. The following month, my manager singled me out as, in her words, “a risk to the team”, as being responsible for making errors related to this problem. She told me that I would be put on a performance corrective action plan. I was shocked and confused, as I was sure that I had not made any such errors. When I asked to see evidence of the errors, my manager refused and insisted that I just accept responsibility and take ownership of the problem.

Subsequently I was introduced to a new process under the performance corrective plan. That process meant I had to explain the status of accounts I worked on each day and submit my work to a private email box that was reviewed by a trainer. I was told that I wasn’t the only one being required to take corrective action and that other employees were already doing this process as well. This whole process was deeply concerning to me because I had never had a performance issue and Cigna never provided me with any documents showing the errors they claimed I had made. Also, as a trainer and Subject Matter Expert, I along with a few other Subject Matter Experts, had access to the very same email box the trainer had, so I knew no one in my department was submitting any work to the private email box.

I talked to my husband, who also worked at Cigna as a Root Cause Analyst, about this issue and asked him if he could pull up the report with the alleged errors. My husband found reports of other individuals, specifically white women, one of whom was a Subject Matter Expert as well, who were making those same errors I was accused of making. They were not partaking in the new work process that I was made to do.

In May, based on this information, I filed an internal complaint with Human Resources regarding my manager’s discriminatory acts against me. After just one day, they returned with the results of their “investigation” – simply agreeing with the manager. Notably, on the internal complaint form that I filled

out, it said the turnaround time for a full investigation takes approximately 60 days. That very same day that I received the “investigation” results from Human Resources, my manager instructed me to take part in a far more onerous performance corrective plan which was well outside of the scope of what I normally did and wasn’t in line with the original performance plan. The new plan meant I had to provide screen shots of every single step I took to complete an account. Knowing that my colleagues saw what I had to submit was belittling, demoralizing, and embarrassing. Not even new hires were subjected to this type of treatment. I felt like this was designed to punish or embarrass me.

Two months after reporting my manager to Human Resources for discrimination, I was fired.

I contacted Human Resources because I was confused and completely blindsided. I found out that Human Resources was never even made aware that my manager had terminated me. When I wanted to file a complaint for racial discrimination and retaliation, Human Resources told me my complaint would have to be handled by their “arbitration process”. I didn’t really understand what “arbitration” meant, and in my mind, I thought it was simply another department in Human Resources that manages this level of complaint. Apparently, I had e-signed an arbitration document that was in the onboarding employee packet, a month prior to my first day at Cigna. After reviewing Cigna’s forced arbitration policy, I quickly learned that it wasn’t an informal internal process, but instead a complicated, formal and binding process that was nothing like going to court.

I started looking for attorneys to help me, but I didn’t find any willing to represent me in forced arbitration. All the attorneys I spoke with were interested in my case, until I mentioned that I had started the forced arbitration process. While some told me it might be quicker and more informal, that wasn’t the case. It turned out to be very challenging, lengthy, and confusing. I don’t have any legal background whatsoever and it took a lot of time for me to understand the process. We couldn’t afford internet at home, so we would use the Wi-Fi of a local dentist in the parking lot, and we drove to a law library, which was far away and the gas to get there was expensive, to do research to try and understand the process. This was all while I was caring for my three children and looking for a new job. It was completely overwhelming.

I filed a complaint in forced arbitration for claims of racial discrimination and retaliation under Title VII of the Civil Rights of 1964, the Florida Civil Rights Act of 1992, and 42 U.S.C.A. § 1981. Cigna chose the arbitration provider named the American Arbitration Association. From that company, Cigna and I were supposed to then choose an arbitrator. It took several months to choose a specific arbitrator. We went through a lengthy discovery process in which I was trying to get information from Cigna to prove my case. At one point Cigna’s attorneys said my discovery request would cost over \$1 million – even though I was only requesting my employee personal profile. And from my research, I found that requesting your personal profile was a common request, but I was denied it by the arbitrator.

Upon Cigna’s request, the arbitrator even instructed me to withdraw my EEOC complaint that I had filed and he told me that I had to request a right to sue letter before my arbitration hearing date or else the arbitration hearing would be canceled. The arbitrator said that they couldn’t have two cases going on at

the same time – and if I didn't get my right to sue letter, they would have no choice but to postpone my hearing until my EEOC claim concluded – so I did.

Cigna then filed a motion for summary judgment and the arbitrator instructed me that I had a week to respond to Cigna's motion. A couple of days later, just before my hearing date, the arbitrator ruled in Cigna's favor and canceled the hearing. I was never even given a chance to participate in a hearing.

I was devastated, I couldn't understand what had happened. The arbitrator's ruling didn't make sense to me. He kept ensuring me that I would have my hearing, but that never happened. I never had a chance to tell my side of the story.

That night my husband found a photo on the Internet of the arbitrator and the counsel for Cigna looking very friendly, arms around each other, at the arbitrator's 50th birthday party. The photo of them is included at the end of this testimony. In fact, the arbitrator also used to work for the firm representing Cigna. To me, this obviously showed that the arbitrator was not impartial. Had I known of this personal relationship, I would have moved to disqualify him. But the personal relationship between them was never disclosed. In his original submitted oath, the arbitrator was asked:

“Have you had any professional or social relationship with counsel for any party in this proceeding or the firms for which they work?

Answer: NO”.

Only in a subsequent amended oath, and only after I had agreed to this arbitrator, did the arbitrator disclose that he was previously a Shareholder at the firm representing Cigna, but he did not disclose the personal relationship. Further, a secondary CV that I later found showed that the arbitrator even listed the counsel for Cigna as one of three individuals he used as a reference.

I filed a motion to vacate the arbitrator's award in the United States District Court for the Middle District of Florida with the help of my husband who hired a process server to deliver Cigna my motion. It took several attempts for Cigna to even accept the motion, and when they finally accepted, they fired my husband from his job.

It took two years for the Florida Middle District Court, to ultimately dismiss my motion. The court ruled that the arbitrator had disclosed his previous employment with the firm, thus, waiving my right to complain of any evident partiality. The court also stated that the evidence only shows a friendly relationship between the arbitrator and Cigna's Counsel. I took my case up to the United States Court of Appeals for the Eleventh Circuit.

It took one year for the Eleventh Circuit Court to deny my motion to vacate the arbitration award. In its decision, the court said, “Judicial review of arbitration awards is narrowly limited,” and “the FAA presumes that arbitration awards will be confirmed.” It was then that I realized that I was stuck with the results of an unfair process of forced arbitration.

This turned into a 4-year battle— with no real opportunity to have my voice heard – and it left me broken. I once had faith in the judicial system and a person’s ability to hold a corporation accountable when they violated the law. Now I know that we as individuals are being stripped of our access to the judicial system because of forced arbitration, and thus the system has failed me.

I’m beginning to slowly put my life back. Both my husband and I are fully employed, but this entire process still has its long-lasting effects. We were once a family thriving, and forced arbitration left us barely surviving. Little by little, the things we worked so hard for - were taken from us. Our newly bought house is in foreclosure, our car was repossessed, we had to empty our 401ks, sell all my jewelry including my wedding ring, we were on food stamps, and relied on family members to help pay our electricity and water bills and things our kids needed. My kids were robbed of their mom and dad for four years. Finally, I was robbed of my dignity.

I’m in this fight to end forced arbitration because no one should have to go through what I went through. My family’s lives were destroyed – only because I made the decision to speak up and believed the judicial system would be there to help me seek justice. Forced arbitration cannot be the “reset” button for companies to escape responsibility for a wrong they have committed. It is important for workers to be able to protect their rights and have access to the civil justice system. I urge the members of this Committee to support, and for Congress to pass, the Restoring Justice for Workers Act and the Forced Arbitration Injustice Repeal Act (H.R. 1423), a bill that I have long advocated for which would end forced arbitration for workers and consumers.

Thank you and I look forward to your questions.

