

**United States
Nuclear Regulatory Commission**



Report of Investigation

BYRON NUCLEAR POWER STATION

**Deliberate Violation of Safety Procedures; Discrimination
Against a Radiation Protection Technician for Identifying a
Deliberate Violation of Safety Procedures; Discrimination
Against a Radiation Protection Technician for Identifying a
Safety Concern by Writing a Problem Identification Form;
and Assist to Inspection**

Office of Investigations

Reported by OI:RIII

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Title: BYRON NUCLEAR POWER STATION

DELIBERATE VIOLATION OF SAFETY PROCEDURES; DISCRIMINATION AGAINST A RADIATION PROTECTION TECHNICIAN FOR IDENTIFYING A DELIBERATE VIOLATION OF SAFETY PROCEDURES; DISCRIMINATION AGAINST A RADIATION PROTECTION TECHNICIAN FOR IDENTIFYING A SAFETY CONCERN BY WRITING A PROBLEM IDENTIFICATION FORM; AND ASSIST TO INSPECTION

Licensee:

**Commonwealth Edison Company
4448 German Church Road
Byron, IL 61010-9750**

Docket Nos: 050-454

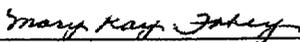
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Control Office: OI: RIII

Status: CLOSED

Reported by:



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SYNOPSIS

This investigation was initiated by the U.S. Nuclear Regulatory Commission (NRC), Office of Investigations (OI), Region III (RIII), on October 13, 1998, to determine whether a Radiation Protection Technician (RPT), who was employed at the Byron Nuclear Power Station, was retaliated against after providing information that the [REDACTED] deliberately instructed the RPT not to document contamination, as required, which allegedly resulted in the RPT receiving a day off without pay. It was further alleged that after completing a Problem Identification Form (PIF), which identified a safety concern, the RPT was given a day off without pay and denied a temporary assignment at another facility, which would have generated overtime wages. EX 7C

Additionally, on October 13, 1998, NRC:RIII requested that information be obtained relative to a chilling effect resulting from the RPT's concerns.

Based upon evidence developed during the investigation, OI:RIII could not substantiate that the [REDACTED] deliberately instructed the RPT not to document contamination as required, nor was the RPT discriminated against for identifying this concern. In addition, the OI investigation did not substantiate that the RPT was discriminated against by being given a day off without pay after completing a PIF. EX 7C

The information requested by the RIII staff regarding any chilling effect is included in the report.

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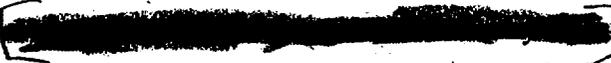
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LIST OF INTERVIEWEES

| | <u>Exhibit No.</u> |
|---|------------------------|
| BAILEY, Steve, Radiation Protection Technician, Byron | 25 |
| BAUER, Joseph, Radiation Protection Manager, Byron | 15 |
| BRISTOL, Angela, Radiation Protection Technician, Byron | 29 |
| CHAPMAN, Howard, Radiation Protection Technician, Byron | 23 |
| GOULD, Philip, Station Laborer, Pope Construction | 30 |
| KENNEDY, Shirley, Radiation Protection Technician, Byron | 4, 5 |
| LEACH, Scott David, Radiation Protection Technician, Byron | 24 |
|  Byron | 7 |
| NAGY, Jeffrey, Radiation Protection Technician, Byron | 8, 9 |
| QUACO, Gregory, Radiation Protection Lab Supervisor, Byron | 21 |
| RUSSELL, Rick, Station Laborer, Pope Construction | 31 |
| SVOBODA, Mark, Radiation Protection Lab Supervisor, Byron | 10 |
| THOMPSON, David, Radiation Protection Technician, Byron | 26 |
| TOMLJANOVICH, Timothy, Radiation Protection Technician, Byron | 11 |
| TUCKER, Randy, Radiation Protection Lab Supervisor, Byron | 20 |

EX
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DETAILS OF INVESTIGATION

Applicable Regulations

- 10 CFR 50.5 Deliberate Misconduct (1998) (Allegations 1 and 2)
- 10 CFR 50.7 Employee Protection (1998) (Allegations 2 and 3)
- T.S.6.8.1 Written procedures shall be established, implemented and maintained (1998) (Allegation 1)

Purpose of Investigation

This investigation was initiated by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI), Region III (RIII), on October 13, 1998, to determine whether Shirley KENNEDY, a Radiation Protection Technician (RPT) at the Byron Nuclear Power Station (Byron), Byron, Illinois, was discriminated against for reporting that on April 3, 1998, [REDACTED] instructed KENNEDY not to document contamination in violation of the licensee's procedure, and in an unrelated event, for identifying safety concerns by writing a Problem Identification Form (PIF) on September 2, 1998. Ex
7c

OI was also requested to obtain information concerning a chilling effect on KENNEDY as a result of her writing a PIF on September 2, 1998 (Exhibit 1).

Background

On September 25, 1998, NRC:RIII received an allegation from KENNEDY concerning discrimination as a result of KENNEDY identifying safety concerns and reporting those concerns.

On October 13, 1998, these issues were revisited at an Allegation Review Board (ARB) and OI was requested to determine whether KENNEDY had been discriminated against and to assist RIII inspection efforts in obtaining information on the potential chilling effect (Exhibit 1).

Coordination with Regional Staff

At an ARB held on October 13, 1998, NRC:RIII requested that OI initiate an investigation to determine if KENNEDY had been discriminated against for raising safety concerns.

On February 25, 1999, Jay HOPKINS, Senior Allegation Coordinator, was provided with a copy of KENNEDY's transcript for staff review of any potential safety/technical concerns.

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comments. On March 24, 1999, the NRC staff advised that upon review of KENNEDY's transcript, they identified one new safety concern, which was reviewed and closed with no additional action, since no violation of NRC requirements was identified.

Coordination with Regional Counsel

On March 23, 1999, Bruce A. BERSON, RIII Counsel, advised that [REDACTED] EX 5

Review of Department of Labor Report

On February 3, 1999, OI:RIII met with Investigator Carolyn MEDERNACH, Department of Labor (DOL) Occupational Safety and Health Administration (OSHA), North Aurora, Illinois, concerning a formal DOL complaint filed by KENNEDY on October 5, 1998. MEDERNACH stated that attempts were made to reach a settlement with KENNEDY and her attorney but were unsuccessful. MEDERNACH's report concluded that based upon her investigation, she was unable to find evidence to support merit to a Section 211 ERA complaint. She further concluded that she felt that a settlement could have been reached, however, KENNEDY and her attorney were uncooperative in trying to settle the case (Exhibits 2 and 3).

Allegation 1: Deliberate Violation of Safety Procedures

Interview of Allegor (Exhibits 4 and 5)

KENNEDY was interviewed on January 7, 1999 (Exhibit 4), and again on April 26, 1999 (Exhibit 5), by OI regarding the allegations she had reported to the RIII staff. KENNEDY provided substantially the following information:

KENNEDY participated in a Unit 1 Moisture Carryover Test on April 3, 1998. She stated that at the end of the test, she smeared an extendable teletector which was used during the test. According to Kennedy, she checked her smears in chemistry and this smear came back with a reading of 30K. Upon receiving this information, KENNEDY immediately informed [REDACTED] KENNEDY stated that [REDACTED] instructed her to "bury the smear, don't tell anybody about it" (Exhibit 4, p. 6). When KENNEDY informed [REDACTED] that she intended to re-smear the teletector, [REDACTED] told KENNEDY to forget about it, that Tim TOMLJANOVICH, RPT, had the teletector and it was clean. KENNEDY stated that she did re-smear the teletector and it did come back clean (Exhibit 4, pp. 5-6). EX 7C

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On April 26, 1999, KENNEDY clarified that she had actually smeared two different pieces of equipment, one being the teletector and one being an NRC instrument. She believed that TOMLJANOVICH had re-smeared the NRC instrument (Exhibit 5).

KENNEDY stated that the next day, while reviewing PIFs, she discovered PIF #B1998-01565, authored by Stephen D. ROBINSON, RPT, which described personal contamination to an RPT as a result of the contaminated teletector (Exhibit 4, pp. 6-8).

Agent's Note: PIF #B1998-01565 was originated on April 7, 1998, and not the next day, which would have been April 4, 1998 (Exhibit 6).

KENNEDY stated that she recognized that this event related to the contaminated teletector she had reported to [REDACTED] and she brought the information to Ron PROFFITT, RPT and Local 115 Union Steward. PROFFITT asked if KENNEDY had informed [REDACTED] and KENNEDY stated that she had notified [REDACTED] Mark SVOBODA, Radiation Protection Lab Supervisor (RPLS), and RPT Jeffrey NAGY (Exhibit 4, pp. 8-9). 7c

Agent's Note: NAGY is the RPT who used the contaminated teletector and received contamination to a finger on his left hand (Exhibit 6).

KENNEDY told OI that SVOBODA contacted [REDACTED] by telephone and [REDACTED] instructed SVOBODA to place the teletector inside of the contaminated area to decay. Additionally, on April 26, 1999, KENNEDY told OI that the telephone conversation between SVOBODA and [REDACTED] occurred after [REDACTED] had gone home. SVOBODA had telephoned [REDACTED] to inform [REDACTED] that NAGY had received some contamination to his hand. KENNEDY stated that NAGY may have known that she had identified the teletector as being contaminated before he used the teletector, but she definitely told him after he was contaminated. KENNEDY stated that as far as she knew, [REDACTED] did not inform NAGY about any potential contamination of the teletector (Exhibit 4, p. 9; Exhibit 5).

Evidence

The following evidence was obtained regarding KENNEDY's allegation that [REDACTED] deliberately violated safety procedures by instructing KENNEDY to "bury" a smear and not tell anyone that KENNEDY obtained a 30K reading on a teletector used during the April 3, 1998, moisture carryover test.

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Interview of [REDACTED] (Exhibit 7) EX 7C

According to [REDACTED] EX 7C 7C

"Not only was I not informed of the contaminated teletector on the day of the test, just from a logistics point of view, to even make the allegation credible, in order for me as [REDACTED] to be concerned about 30K contamination is not even a viable allegation because if there was a concern, either I would have to believe that we would have had a violation of a procedure or regulation, as we were with the posting procedure that morning. Otherwise, it's just a contamination control issue that the technician can handle. EX 7C

For me to tell somebody to bury evidence, I would need to believe that something was wrong. If there's no regulatory issue and no procedure issue, nothing's wrong. For me to cover something up, I would have to believe that it led to a contamination event which caused somebody dose which was, you know, a guy had to go home contaminated. That is a safety issue, but I was gone for almost an hour before Jeff even became contaminated. So, I didn't -- would have no reason to believe there was any possible ramifications that I should cover something up" (Exhibit 7, pp. 40-41).

[REDACTED] further stated that the amount of NAGY's contamination was not a reportable event. [REDACTED] explained that station procedure required that the event be documented on a PIF, which it was. [REDACTED] stated that there was no attempt by anyone to cover up the event (Exhibit 7, p. 41). EX 7C

[REDACTED] stated that the only conclusion [REDACTED] could draw from KENNEDY's allegation was that KENNEDY made the allegation in retaliation for [REDACTED]'s involvement [REDACTED] (Exhibit 7, p. 42). EX 7C

Interview of NAGY (Exhibits 8 and 9)

NAGY stated that [REDACTED] did not provide him with any information about a contaminated teletector, but he recalled he was present when KENNEDY smeared the teletector and discovered it was contaminated. NAGY recalled that the teletector was re-smeared by someone else, and it was clear of any contamination. NAGY explained that the contamination could have been wiped clean during the first smear, or the contamination could have been the result of background radiation in the area causing the needle deflection. He told OI that when he later used the teletector, neither he nor anyone else had any concern that the teletector was contaminated (Exhibit 8, pp. 9-10).

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On July 15, 1999, NAGY clarified that KENNEDY smeared the teletector after the addition of the Na24. He stated that the teletector never left the radiologically controlled area (RCA) and he later retrieved the teletector from the RCA when he was sent to survey the area before the operator closed the injection valve. NAGY stated that the teletector had been placed against the grey shelving unit where the protective clothing was being stored, and that was where he retrieved it when he re-entered the area to perform the survey (Exhibit 9).

Agent's Note: Per review by RIII staff, it was determined that as long as the teletector did not leave the RCA, no procedure violation existed.

NAGY subsequently discovered that he was contaminated after he alarmed as he passed through the individual personnel monitor (IPM) and portal monitor (PM) (radiation monitors). NAGY stated that everyone concluded that he received the contamination after he touched the tip of the teletector to the compression fitting, which had a small drop of Na24 on it. NAGY used his fingers to collapse the teletector and it was concluded that was how his finger became contaminated (Exhibit 8, pp. 14-16).

NAGY believed that SVOBODA contacted [REDACTED] by telephone to inform [REDACTED] of the contamination. NAGY did not recall what [REDACTED] told SVOBODA. NAGY stated that nobody attempted to keep the fact of the contamination quiet, nor was there any reason to. He told OI that a PIF was written documenting the incident (Exhibit 8, pp. 17, 19). EX7C

Interview of SVOBODA (Exhibit 10)

SVOBODA stated that neither KENNEDY nor anybody else ever informed him that a teletector or any other piece of equipment used during the test was contaminated before NAGY notified him that he was contaminated as a result of NAGY's teletector touching a drop of Na24. SVOBODA recalled contacting [REDACTED] following notification of NAGY becoming contaminated. [REDACTED] provided instructions to continue to decon NAGY. SVOBODA stated that the duty desk was notified and a Personal Contamination Event form was completed by NAGY following the incident. SVOBODA explained that had a teletector been contaminated, it would have been the RPT's responsibility to attempt to decon the teletector (Exhibit 10, pp. 1-2). EX7C

Interview of TOMLJANOVICH (Exhibit 11)

TOMLJANOVICH did not recall any discussion about the possibility of the teletector being contaminated before NAGY picked it up. The only instrument that TOMLJANOVICH recalled being contaminated was the teletector that NAGY had used and it was discovered as a result of NAGY's contamination (Exhibit 11, pp. 12-13).

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Agent's Analysis

The evidence from testimony supports the fact that [REDACTED] did not instruct KENNEDY to "bury" a 30K smear from a teletector on April 3, 1998. While there was little corroborating evidence that the teletector was actually contaminated with 30K, it was further determined that as long as the teletector did not leave the RCA, no procedural violation existed. It was determined that NAGY's hand became contaminated after a drop of Na24 contaminated the tip of the teletector he was using to survey the injection valve prior to the operator closing the valve, and not because the teletector had prior contamination. There was no attempt to cover up the fact of NAGY's contamination and the appropriate station procedures were followed. EX 7c

There was no testimony provided indicating that KENNEDY informed any supervisor or manager of the alleged procedural violation until after disciplinary action was taken against KENNEDY. It was further established that no procedural violation would have occurred should the teletector have been contaminated with 30K.

Conclusion

Based upon the evidence developed, OI could not substantiate the allegation that [REDACTED] deliberately violated station procedure by instructing KENNEDY bury a smear during the April 3, 1998, moisture carryover test. EX 7c

Allegation 2: Discrimination Against an RPT for Identifying a Deliberate Violation of Safety Procedures

Interview of Alleger (Exhibit 4)

KENNEDY explained that she did not report the incident regarding the failure to report the contaminated teletector smear to the NRC until September 1998, because she was involved in a series of meetings concerning a separate, unrelated disciplinary action. However, KENNEDY claimed that she felt that the disciplinary action taken against her was also, in part, a result of her reporting [REDACTED] for instructing her to bury the smear (Exhibit 4, pp. 12-13). EX 7c

Agent's Note: A letter of reprimand was issued to KENNEDY on April 11, 1998, citing an unrelated incident (failure to post a radiation area) during the April 3, 1998, Unit 1 Moisture Carryover Test (Exhibit 12).

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Evidence

The following evidence was obtained regarding KENNEDY's allegation that she was discriminated against by receiving a letter of reprimand, dated April 11, 1998, after KENNEDY identified a procedural violation by [REDACTED] EX 7C

1. Protected Activity

On April 3, 1998, KENNEDY participated as an RPT in a moisture carryover test with an Na24 tracer injection. KENNEDY's assignment was control of the source and injection area. KENNEDY attended an ALARA pre-job briefing on April 3, 1998, and signed the Radiation Work Permit Acknowledgment Log on April 3, 1998, prior to the test. KENNEDY claimed she identified contamination on the teletector after the moisture carryover test, but before NAGY was contaminated (Exhibits 13 and 14).

2. Knowledge of KENNEDY's Protected Activity

KENNEDY stated that on April 3, 1998, she notified [REDACTED] SVOBODA and NAGY that the teletector NAGY had used was smeared and came back with a 30K reading. During her interview with OI, KENNEDY admitted that she did not report this incident to the NRC until September 1998, because she was involved in a series of meetings concerning a separate, unrelated disciplinary action (Exhibit 4, pp. 5-13). EX 7C 7C

[REDACTED] denied that KENNEDY provided [REDACTED] with any information concerning the teletector being contaminated either before NAGY used it or after. [REDACTED] stated that [REDACTED] left Byron at approximately 7:20 p.m. [REDACTED] further stated that, "Everybody surveyed themselves out of the larger controlled area and then went to chemistry and surveyed themselves in an IPM and a PM, which are whole body contamination monitors. Every person made it out of the area at least once before I left" (Exhibit 7, pp. 25-30). EX 7C EX 7C EX 7C

[REDACTED] stated that [REDACTED] was contacted by Mark SVOBODA at home by telephone and informed of the contamination incident. [REDACTED] stated that [REDACTED] does not recall any "...discussion about a teletector or any weird circumstances with a teletector" (Exhibit 7, p. 30). EX 7C EX 7C

NAGY stated that after the addition of the source injection, he and the other RPTs received their samples and were ready to take a break. He recalled that KENNEDY had smeared a teletector and claimed it was contaminated. NAGY stated that he recalled that someone else re-smearred the teletector and did not identify any contamination. He recalled only one teletector being used that day. NAGY believed that SVOBODA contacted [REDACTED] at home after [REDACTED] had left that day (Exhibit 8, pp. 9-10, 17). EX 7C

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SVOBODA, who was the duty desk supervisor during the moisture carryover test, told OI that neither KENNEDY nor anybody else ever informed him that a teletector or any other piece of equipment was contaminated prior to NAGY reporting he was contaminated. SVOBODA stated that he first became aware of KENNEDY's allegations about 3 months ago, after OI contacted employees at Byron (Exhibit 10, pp. 1-2).

Joseph BAUER, Radiation Protection Manager, stated that he had no prior knowledge of KENNEDY's allegation. He stated that he became aware of the allegation against [REDACTED] when [REDACTED] informed him a few weeks ago after [REDACTED] had been interviewed by OI. BAUER stated that neither KENNEDY nor any of the RPLS' had brought this matter to his attention. BAUER provided his handwritten notes from a meeting on April 6, 1998, concerning the moisture carryover test with [REDACTED] and Scott FLETCHER, Lead RPLS. Those notes indicate that, "After tests, [REDACTED] asked Shirley to smear out Jeff West instruments. Shirley said it read 30K." (Exhibit 15, pp. 7-8, 11-12; Exhibit 16). EX7C EX7C EX7C

BAUER stated that disciplinary action was taken against KENNEDY as a result of her failure to post a radiation area on April 3, 1998, which resulted in the company receiving a Level IV violation from the NRC. He further explained that this disciplinary action was due to normal progressive disciplinary policies, which included six previous technical errors committed by KENNEDY (Exhibit 12; Exhibit 15, pp. 8-10; Exhibit 17).

Conclusion

Based upon the evidence developed, OI could not substantiate that KENNEDY was retaliated against after providing information that [REDACTED] violated station procedure. OI could not establish that any of KENNEDY's supervisors, [REDACTED] were aware of her concern regarding the contaminated teletector. Testimony clearly indicated that disciplinary action was taken against KENNEDY on April 11, 1998, for her failure to post a radiation area during the Na24 moisture carryover test. EX7C EX7C

Allegation 3: Discrimination Against an RPT for Identifying a Safety Concern by Writing a PIF

Interview of Alleger (Exhibit 4)

On or about August 24, 1998, KENNEDY discovered that a ladder that was used to access the Danger, Locked High Radiation Area (DLHRA) was left unattended. KENNEDY told OI that she insisted that a PIF be completed and Randy TUCKER, RPLS, completed the PIF on August 24, 1998. KENNEDY did not feel that the PIF accurately reflected the condition in the DLHRA (Exhibit 4, pp. 14-15).

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Agent's Note: PIF #B1998-03731 was originated on August 24, 1998, by Randy TUCKER (Exhibit 18).

KENNEDY was subsequently assigned to retrieve the ladder from the DLHRA on August 31, 1998. KENNEDY stated that she felt that this was retaliation for insisting on the completion of that PIF. KENNEDY further explained that she had the highest overall dose in the Radiation Protection Department, and she viewed her selection as punishment and disciplinary action. She stated that retrieval of the ladder would put her in an area where she was going to receive additional exposure (Exhibit 4, pp. 15-16).

KENNEDY stated that she and two deconners, Phil GOULD and Rick RUSSELL, were given the assignment by Gregory QUACO, RPLS. During discussion before they began the job, KENNEDY questioned QUACO about why the ladder had to be removed when it had been there for 11 years. She stated that she received no answer from QUACO (Exhibit 4, pp. 16-18).

KENNEDY stated that following the removal of the ladder on August 31, 1998, and after a series of meetings, she subsequently received a day off without pay. In her original complaint to DOL OSHA, KENNEDY further alleged that as a result of this disciplinary action, she was denied a temporary assignment to Braidwood Nuclear Power Station (Braidwood), until she met with a representative from the company's Employee Assistance Program (EAP), which resulted in a loss of overtime wages (Exhibit 4, pp. 26-33; Exhibit 2).

Evidence

The following evidence was obtained regarding KENNEDY's allegation that she was discriminated against by receiving 1 day off without pay and being prevented from participating in an assignment at Braidwood, which would have resulted in overtime pay, after writing a PIF on September 2, 1998.

1. Protected Activity

On August 24, 1998, KENNEDY discovered and informed TUCKER, RPLS, that an outside ladder had been left unattended in the DLHRA. KENNEDY alleged that she insisted that TUCKER submit a PIF, which according to KENNEDY, he did reluctantly on August 24, 1998. KENNEDY stated that she was subsequently assigned to retrieve the inside ladder from the DLHRA by QUACO on August 31, 1998. As a result of removing the inside ladder from the DLHRA, KENNEDY wrote PIF #B1998-03853, which identified unnecessary dose received in the DLHRA during the removal (Exhibit 19).

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2. Knowledge of KENNEDY's Protected Activity

TUCKER denied that KENNEDY had to prompt him to write PIF #B1998-03731 on August 24, 1998. While TUCKER could not recall whether it was KENNEDY or TOMLJANOVICH who brought the information to his attention, he prepared the PIF without prompting (Exhibit 20).

QUACO stated that the decision to remove the inside ladder was made by Bill McNEILL, ALARA Supervisor, and FLETCHER. QUACO agreed that the inside ladder had been in place for many years, but the decision was made to remove it from the DLHRA (Exhibit 21, pp. 16-17).

QUACO stated he became aware that KENNEDY had written a PIF on September 2, 1998, near the end of the shift, when KENNEDY handed him a piece of paper with the number of a PIF on it and informed him that she had written a PIF (Exhibit 21, p. 5).

3. Unfavorable Action Taken Against KENNEDY

KENNEDY claimed that she received the assignment to remove the inside ladder from the DLHRA in retaliation for insisting that TUCKER write PIF #B1998-03731. She further stated that after completing the removal of the inside ladder on August 31, 1998, she wrote a PIF addressing the unnecessary dose received in the DLHRA during the removal of the inside ladder. KENNEDY stated that she subsequently received 1 day off without pay and was denied an opportunity to take a temporary assignment at Braidwood in retaliation for writing the PIF (Exhibit 4, pp. 30-33; Exhibit 2).

4. Did the Unfavorable Action Result from KENNEDY Engaging in Protected Activity

QUACO explained that the assignment to remove the inside ladder was given to KENNEDY because she was an extra technician that day. He stated that she was not assigned that job in retaliation. QUACO stated that the disciplinary action was taken against KENNEDY for her performance during the removal of the inside ladder from the DLHRA on August 31, 1998. QUACO determined that KENNEDY had allowed RUSSELL and GOULD to work through alarming dosimeters while they removed the inside ladder from the DLHRA along with KENNEDY. QUACO stated that he was not involved in the decision to take disciplinary action against KENNEDY (Exhibit 21, pp. 13-17).

BAUER outlined the sequence of events which led to disciplinary action being taken against KENNEDY for the August 31, 1998, event. BAUER stated that KENNEDY was disciplined because she allowed the deconners to continue working in spite of the fact that their dosimeters had alarmed (Exhibit 15, pp. 23-32; Exhibit 22).

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BAUER further stated that he and Kelly FAGAN, union steward, made the decision to postpone KENNEDY's departure to Braidwood for a temporary assignment until she met with a representative of the EAP. BAUER stated KENNEDY was never rescheduled to go to Braidwood for a variety of reasons, at her request (Exhibit 15, pp. 32, 37-40).

TUCKER stated that KENNEDY was not denied an assignment to Braidwood in retaliation for writing a PIF. TUCKER recalled two incidents whereby KENNEDY informed TUCKER that she would be unavailable to begin an assignment at Braidwood for personal reasons. TUCKER stated that the selection for these temporary assignments was made by union management and not by RPLS (Exhibit 20).

Conclusion

Based upon the evidence developed, OI could not substantiate that KENNEDY was discriminated against after she wrote a PIF on September 2, 1998. There was no evidence to substantiate that KENNEDY's assignment to remove the ladder or the disciplinary action that was subsequently taken were the result of her reporting any safety concerns. In addition, there was no evidence to support KENNEDY's contention that she was retaliated against by not being allowed to benefit from an assignment at Braidwood. It was clearly established that KENNEDY received disciplinary action due to the fact that she allowed two deconners to continue working through an alarming dosimeter.

Assist to Inspection: Presence of Chilling Effect upon KENNEDY

Evidence

The following evidence was obtained regarding KENNEDY's allegation that she now feels a chilling effect after being yelled at [REDACTED] after she informed [REDACTED] that she had [REDACTED] EX 7C

On September 2, 1998, KENNEDY informed [REDACTED] that she had [REDACTED] (Exhibit 8) EX 7C for receiving unnecessary dose during the ladder removal. She stated that she informed [REDACTED] EX 7C of the [REDACTED] and [REDACTED] She EX 7C recalled that [REDACTED] s facial features changed and [REDACTED] said that [REDACTED] thought that they were EX 7C supposed to talk about it first. KENNEDY told [REDACTED] that she had tried to talk with [REDACTED] on EX 7C the day of the assignment, but [REDACTED] would not listen. KENNEDY stated, "I started to fear that [REDACTED] EX 7C was going to physically do something, so I quickly left" (Exhibit 4, p. 23). KENNEDY thought that two Assistant RPTs, Steve BAILEY and Dave THOMPSON, witnessed this incident (Exhibit 4, p. 23).

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KENNEDY stated that when she entered the ALARA room, [] opened the door and screamed, "While you were up there [] I had to have someone else do your job." KENNEDY stated that Howard "Butch" CHAPMAN was on the telephone in the ALARA room and would have heard [] KENNEDY told OI that prior to leaving to [] she had asked both [] and TUCKER if she was needed. She stated that she was told that if they did need her, they would page her (Exhibit 4, pp. 23-24).

KENNEDY stated that she left the ALARA room in tears and went to the NRC Resident Inspector's Office to report what had happened, and subsequently contacted RIII (Exhibit 4, p. 24).

KENNEDY told OI that during 1998, she completed approximately ten PIFs and has felt a chilling effect as a result. KENNEDY claimed that the chilling effect has now spread to her co-workers, throughout the Radiation Protection Department (Exhibit 4, pp. 56-57).

Interview of []

[] denied that [] raised his voice when KENNEDY [] (Exhibit 21, p. 23).

Interview of CHAPMAN (Exhibit 23)

CHAPMAN told OI that while he did not recall the date, he did recall the incident between [] and KENNEDY. CHAPMAN stated that he was on the telephone at the foreman's desk, sitting approximately 3 feet from []. CHAPMAN recalled that [] told KENNEDY that [] would like to speak with her for a minute. CHAPMAN explained that KENNEDY went to her locker, approximately 6 feet away. CHAPMAN observed [] open the door and speak to KENNEDY from the doorway. CHAPMAN heard [] ask KENNEDY why she did not answer her page. [] told KENNEDY that [] had to assign her job to someone else. CHAPMAN stated that [] did not use a threatening tone of voice, nor did [] make any move toward KENNEDY. Following the conversation, [] returned to the desk without any comment to CHAPMAN. CHAPMAN stated that he heard KENNEDY close her locker, but did not see where she went. CHAPMAN stated that after the incident, he had heard that KENNEDY claimed that she had been afraid of being struck by []. CHAPMAN stated that this characterization was not true (Exhibit 23).

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Interview of TUCKER (Exhibit 20)

TUCKER stated that he was present with [redacted] when KENNEDY returned [redacted]. He stated that [redacted] appeared aggravated, but did not raise [redacted] voice when [redacted] spoke to [redacted] KENNEDY (Exhibit 20). EX7C EX7C

Interview of LEACH (Exhibit 24)

LEACH stated that he was present in the Radiation Protection Office when KENNEDY handed [redacted] a piece of paper [redacted]. LEACH recalled that [redacted] did not say anything to KENNEDY in his (LEACH's) presence (Exhibit 24). EX7C

Interview of BAILEY (Exhibit 25)

BAILEY told OI that he was not present during the alleged incident involving [redacted] and [redacted] KENNEDY (Exhibit 25). EX7C

Interview of THOMPSON (Exhibit 26)

THOMPSON stated that he recalled the incident and was sitting at the foreman's desk with [redacted] when it occurred. He recalled that KENNEDY handed [redacted] a piece of paper, [redacted] which [redacted] looked at and disposed. [redacted] then followed KENNEDY into the ALARA [redacted] room and had a 1-2 minute conversation with KENNEDY. THOMPSON stated that he could not hear the conversation, but he did not hear any yelling or raised voices (Exhibit 26). EX7C EX7C

Interview of BAUER (Exhibit 15)

BAUER provided information that in 1998, KENNEDY submitted a total of 10 PIFs (Exhibit 27) and in 1999, KENNEDY submitted a total of 23 PIFs as of July 6, 1999 (Exhibit 28). BAUER stated that during 1998, there were allegations at Byron in the Operations Department that there was a chilling effect. BAUER stated that he and the other supervisors encouraged employees to write PIFs and would never have retaliated against anyone for identifying problems (Exhibit 15, pp. 53-56).

Interview of SVOBODA (Exhibit 10)

SVOBODA stated that he felt that he was the supervisor who was least biased against KENNEDY, being that he is the newest supervisor. He stated that he repeatedly has provided KENNEDY with high profile opportunities, yet she has continued to claim that she is not being

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given equal opportunities. He stated that the number of PIFs that KENNEDY has written has gone up in the last year. He further stated that all supervisors encourage the writing of PIFs and use them for tracking purposes as well as identifying problems (Exhibit 10, p. 2).

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SUPPLEMENTAL INFORMATION

The following Transcripts of Interview are included in the List of Exhibits, but are not referenced in the Report of Investigation:

Transcript of Interview with BRISTOL, dated May 19, 1999 (Exhibit 29).

Transcript of Interview with GOULD, dated April 30, 1999 (Exhibit 30).

Transcript of Interview with RUSSELL, dated April 30, 1999 (Exhibit 31).

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LIST OF EXHIBITS

Exhibit
No.

- 1 Investigative Status Record 3-1998-038, dated October 13, 1998.
- 2 DOL OSHA Charge Questionnaire, dated October 5, 1998.
- 3 DOL OSHA Report #922708, dated December 30, 1998.
- 4 Transcript of Interview with KENNEDY, dated January 7, 1999.
- 5 Report of Interview with KENNEDY, dated April 26, 1999.
- 6 PIF #B1998-01565.
- 7 Transcript of Interview with [REDACTED], dated June 15, 1999. EX 7C
- 8 Transcript of Interview with NAGY, dated March 31, 1999.
- 9 Report of Interview with NAGY, dated July 15, 1999.
- 10 Report of Interview with SVOBODA, dated July 20, 1999.
- 11 Transcript of Interview with TOMLJANOVICH, dated May 24, 1999.
- 12 Memorandum to KENNEDY, dated April 11, 1998.
- 13 ALARA Pre-Job Briefing Attendance Form, dated April 3, 1998.
- 14 Radiation Work Permit Acknowledgment Log, RWP #98/02/28.
- 15 Transcript of Interview with BAUER, dated July 6, 1999.
- 16 Notes of BAUER, dated April 6, 1998.
- 17 NRC Inspection Report 50-454/98010 and Notice of Violation, dated May 28, 1998.

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- 18 PIF #B1998-03731.
- 19 PIF #B1998-03853.
- 20 Report of Interview with TUCKER, dated July 9, 1999.
- 21 Transcript of Interview with QUACO, dated June 15, 1999.
- 22 Memorandum to KENNEDY, dated September 25, 1998.
- 23 Report of Interview with CHAPMAN, dated July 13, 1999.
- 24 Transcript of Interview with LEACH, dated May 10, 1999.
- 25 Statement of BAILEY, dated July 13, 1999.
- 26 Statement of THOMPSON, dated July 13, 1999.
- 27 PIFs generated by KENNEDY in 1998.
- 28 PIFs generated by KENNEDY in 1999.
- 29 Transcript of Interview with BRISTOL, dated May 19, 1999.
- 30 Transcript of Interview with GOULD, dated April 30, 1999.
- 31 Transcript of Interview with RUSSELL, dated April 30, 1999.

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