

U.S. Department of Labor

Occupational Safety and Health Administration
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Kansas City, MO 64105
Reply to Attention of: DPS
Telephone: (816)426-5861
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JAN 22 2003

Mr. Richard A. Michau, CPP
President, Wackenhut Nuclear Services Division
The Wackenhut Corporation
4200 Wackenhut Drive #100
Palm Beach Gardens, FL 33410

Re: Wackenhut Nuclear Services Division/Batten/Case No. 7-7080-03-004

Dear Mr. Michau:

This is to advise you that we have completed our investigation of the above-referenced complaint filed by Mr. Stanley T. Batten, against Wackenhut Nuclear Services Division, under the employee protection provisions of the Energy Reorganization Act (ERA) of 1974, 42 U.S.C. §5851. The Complainant, Mr. Batten, claimed that the Respondent, Wackenhut Nuclear Services Division, denied him the opportunity to advance in his career by refusing to promote him on two separate occasions because of his involvement in an incident that was reported to the Nuclear Regulatory Commission (NRC) and for bringing forth a safety concern to management. The evidence presented during this investigation supports a prima facie complaint and a merit finding.

The Respondent provides physical and personnel security for the Callaway Power Plant which is located in Fulton, Missouri. AmerenUE operates the nuclear power reactor under a license issued pursuant to Section 104c of the Atomic Energy Act of 1954 as amended. The operating license for the reactor was issued by the NRC. The adverse employment action occurred on June 20, 2002 and the Complainant filed his complaint in writing on October 11, 2002. The complaint was filed timely. The Complainant and Respondent are covered under the provisions of the ERA.

The investigation revealed that in 1999, the Complainant assisted in the investigation of a incident involving the creditably of another security officer. The information obtained during this investigation resulted in the termination of the security officer. The former security officer then filed a complaint of discrimination with the NRC alleging a violation of Section 50.7, Title 10 of the Code of Federal Regulations (CFR). The NRC found merit to the complaint and issued a Notice of Violation to the licensee, AmerenUE and a proposed civil penalty of \$55,000.00.

The former security officer also filed a complaint of discrimination with the U.S. Department of Labor alleging a violation of Section 211 of the Energy Reorganization Act of 1974 as amended. The investigation found the complaint to be without merit, citing the individual's actions were self-serving and not protected activity.

The Complainant felt that the NRC investigation undermined his position and creditability and that the Respondent refused to allow the Complainant to address these concerns to the NRC during the Pre-Decisional Conference on the NRC violation.

The Complainant indicated that because of this incident, the licensee, AmerenUE, was fined by the NRC because of a violation directly related to the Respondent failing to hire properly qualified personnel. The Complainant feels that because of this incident and an additional incident where he identified another potential NCR violation to management, the Respondent now views the Complainant as a trouble maker. The Complainant feels that because of these incidents, the Respondent has now "black-balled" the Complainant from further advancing his career by not promoting the Complainant to positions that he was obviously the most qualified of the applicants.

The Respondent has not provided a clear and convincing reason to justify the denial of career advancement of the Complainant. The Respondent's failure to follow their own promotion procedure manual when the manual clearly indicates the procedures apply to all Nuclear Services Division (NSD) personnel is directly related to pre-selection of a candidate and an adverse employment action against the Complainant.

The preponderance of evidence in this case strongly indicates that, but for the Complainant's protected activity, he would not have been denied the opportunity to advance his career through promotions. Based on the aforementioned facts, the evidence indicates a violation of the employee protection provisions of the Energy Reorganization Act. The following actions are required to remedy the violation.

Order to Abate the Violation

1. Promote the Complainant to the position of Project Manager of the Callaway Power Plant with an effective date of June 20, 2002.
2. Adjust the Complainant's rate of pay from the effective date of June 20, 2002 and provide all back-pay and any additional pay increases from June 20, 2002.
3. Remove from the Complainant's employment records of any reference to the exercise of his rights under Section 211 of the Energy Reorganization Act of 1974.

4. No future retaliation or discrimination directed against the Complainant in any manner for instituting or causing to be instituted any proceeding under or related to the ERA or the Occupational Safety and Health Act.
5. Post immediately the "Notice to Employee" in a conspicuous place in or about Respondent's facility, including all places where notices for employees are customarily posted, and maintain for a period of 60 consecutive days from the date of posting, and said Notice to Employees to be signed by a responsible official of the Respondent and the date of actual posting to be shown thereon. Said Notice to Employees is attached.


If you wish to appeal the above findings, you have the right to a formal hearing on the record. To exercise this right you must, within five (5) business days of receipt of this letter, file your request for a hearing by facsimile (fax), hand delivery, or overnight/next day delivery mail or telegram to:

Beverly Queen, Chief Docket Clerk
Office of Administrative Law Judges
U.S. Department of Labor
800 K. Street, NW, Suite 400
Washington, D.C. 20001-8002
Fax No. (202) 693-7365

Unless a request for appeal is received by the Administrative Law Judge within the five-day period, this notice of determination will become the Final Order of the Secretary of Labor. Complainant Mr. Stanley T. Batten is being advised of the determination in this case and the right to a hearing. A copy of this letter has also been sent to the Chief Administrative Law Judge with the complaint. If you decide to request a hearing, it will be necessary for you to send copies of the request to Mr. Batten and to this office at the address noted in the above letterhead. After copies of your request are received, appropriate preparations can be made. If you have any questions, please do not hesitate to call me at (816) 426-5861.

It should be made clear to all parties that the U.S. Department of Labor does not represent any of the parties in a hearing. The hearing is an adversarial proceeding in which the parties will be allowed an opportunity to present their evidence for the record. The Administrative Law Judge who conducts the hearing will issue a recommended decision to the Secretary based on the evidence, testimony, and arguments presented by the parties at the hearing. The Final Order of the Secretary will then be issued after consideration of the Administrative Law Judge's recommended decision and the record developed at the hearing, and will either provide for appropriate relief or dismiss the complaint.

Sincerely,


for Charles E. Adkins, CIH
Regional Administrator

Enclosure

cc: Mr. Stanley T. Batten
Mr. Patrick J. Doran, Attorney for the Respondent
Chief Administrative Law Judge
Manager, U.S. Department of Energy
Office of Employee Concerns. Washington, D.C.