



CROSS LAW FIRM, S.C.

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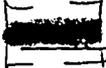
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Paralegal

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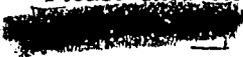
CROSS LAW FIRM, S.C.

March 14th, 2002

Mr. Randall D. Cleveland
Access Manager
Nuclear Management Company
700 First Street
Hudson, WI 54016

RE:  Nuclear Access Authorization Denial Appeal

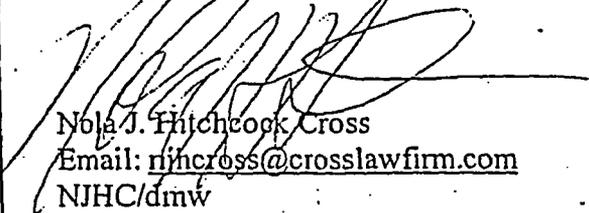
Dear Mr. Cleveland:

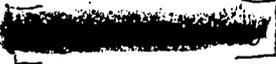
Please find enclosed a completed appeal for the denial of security access for Mr. 

The Cross Law Firm has been retained to represent  in the above referenced matter. All further communication on this matter should be made directly to our office and please call if there is anything else required.

Very truly yours,

CROSS LAW FIRM, S.C.


Nola J. Hitchcock Cross
Email: njncross@crosslawfirm.com
NJHC/dmw

Cc: 

Enclosure

Information in this record was deleted
in accordance with the Freedom of Information
Act, exemptions 7C
FOIA- 2006-113

7(c)

14-27

**REQUEST FOR REVIEW
OF
NUCLEAR ACCESS AUTHORIZATION DENIAL
BASED ON BACKGROUND INFORMATION**

INSTRUCTIONS FOR REQUEST FOR REVIEW APPLICATION

(Read this page before completing application.)

1. The reason for your access authorization denial is given in Section I of this form. If you want to request a review of this decision, you must complete this form.
2. Your review will be conducted by an NMC entity independent of NMC Security.
3. You should be notified in writing of the disposition of your review within 30 days following receipt by NMC of all information supporting your review request. Pending the disposition of your review request, your access authorization will remain denied.
4. This form must be completed in ink or typed. Please print or write legibly. You must complete Sections II and III. Section IV is for NMC use only. If you need additional space, please put your name on each extra page used and indicate the section number to which you are responding.
5. If you have questions while completing this form, please contact the NMC Access Manager for help at (715) 377-3402. Incomplete forms cannot be processed and will be returned for corrections. Improperly completed forms only delay your request for review of access authorization denial.
6. Pursuant to the Fair Credit Reporting Act, a copy of the consumer investigative report (CIR) which was obtained by Nuclear Management Company in support of your request for a Nuclear Security Clearance is enclosed. If this box is checked, NMC did not request a CIR.
7. After completing the request for review, please make sure that you sign the certification provided below and that your signature has been witnessed. Once completed, the request for review is considered to be CONFIDENTIAL.

CERTIFICATION

I certify that the information I have provided in completing this application for review of access authorization denial is true, complete and accurate to the best of my knowledge and beliefs, and is made in good faith. I authorize NMC and its agents to review the information I have provided in this application in reviewing my access authorization denial.

SIGNATURE

DATE

2-26-02

WITNESS

7(c)

SECTION 1: REASON FOR DENIAL

[REDACTED] 7(c)

I. a NMC SECURITY PROCEDURE CITATION

NMC Security Procedure 4G Section 16.4.4.b.2.ii & 3 (NUMARC 89-01, Section 7.1 item H).

I. b PROCEDURE TEXT (paraphrase)

Individuals are denied access where background information is developed adversely reflecting on trustworthiness and reliability.

I. c CASE FACTS

- a. On December 10, 2001 you acknowledge to an NMC investigator that while working at Kewaunee you smelled alcohol on a co-worker and did not report the observation to either Kewaunee supervision or security. When asked why you did not report the smell of alcohol, you stated you "feared union reprisal".

SECTION II: APPLICANT RESPONSE

[REDACTED]

7(c)

IN THE SPACE BELOW, PLEASE PROVIDE THE REASON (S) WHY YOU BELIEVE THE DENIAL OF YOUR NUCLEAR ACCESS AUTHORIZATION (AS STATED IN SECTION I IS NOT WARRANTED)

The information stated as the reason for denial in Section I.c of this form is incorrect, apparently as a result of a misunderstanding of the December 10, 2001 phone conversation between Investigator Harold Walker and Mr. [REDACTED]. The investigator contends that there is reason to believe that Mr. [REDACTED] "trustworthiness and reliability" is compromised. The facts show the opposite. [REDACTED] did not make the statements in the manner suggested and, additionally, the underlying information is untrue in any case.

[REDACTED] born [REDACTED] has been a steamfitter/welder and a welding consultant since the 1960's. He has written welding procedure and quality control manuals, has worked as a welding superintendent as well as a welding consultant in several settings. [REDACTED] received his FBI clearance in 1968. Since about 1981, Mr. [REDACTED] has worked primarily in nuclear plants as a welder instructor, trainer, inspector and troubleshooter. He is highly respected welding consultant in his field.

The investigator states that during the subject phone conversation, Mr. [REDACTED] acknowledged that "while working at Kewaunee (he) smelled alcohol on a co-worker and did not report the observation to either Kewaunee supervision or security." Mr. [REDACTED] did not in fact make such an acknowledgement. Indeed, Mr. [REDACTED] is [REDACTED]. He has been diagnosed with [REDACTED]. According to Dr. Jason Hoppe, internal medicine, "[REDACTED] has a longstanding impaired ability to smell due to this problem." (See enclosed Exhibit A.) Dr. Steven L. Kagen of the Kagen Allergy Clinic, diagnosed Mr. [REDACTED] with [REDACTED]. He states that this condition led to "decreased ability to smell all various odors..." (See Exhibit B.) Mr. [REDACTED] was recently examined on January 7, 2002 for his Occupational Health Screening. RN Julie Peterson noted at that time that Mr. [REDACTED] suffered from "decrease(d) sense of smell." (See Exhibit C.) In short, Mr. [REDACTED] was physically unable to detect the smell of alcohol on his co-worker. And Mr. [REDACTED] certainly did not state otherwise. His [REDACTED] was present during the entire phone conversation. She attests to the fact that Mr. [REDACTED] never stated that he smelled alcohol on the co-worker's breath. (See Exhibit D.) Mr. [REDACTED] specifically recalls stating that he had only "incidental" contact with the co-worker and that he had a hard time smelling anything because of sinus problems since he was a young child. (Again, see Exhibit D.)

According to the investigator, Mr. [REDACTED] stated that the reason he did not report the smell of alcohol was that Mr. [REDACTED] "feared union reprisal." It is now clear that Mr. [REDACTED] did not, indeed could not, smell alcohol on the co-worker. Mr. [REDACTED] and the investigator did discuss union reprisal. Apparently, this was in the context of why people did not report other employees in the plant, not why Mr. [REDACTED] himself did not report people in the plant. Indeed, Mr. [REDACTED] has previously reported co-workers to supervision or security. What Mr. [REDACTED] meant to explain and in fact did explain was that if he could not actually smell alcohol on someone's breath, as he cannot, he would fear union reprisal if he turned someone in without any basis for doing so. Fearing union reprisal and failing to act as a result are two different things. Mr. [REDACTED] has never failed to act. He explained to the investigator that he has previously reported a co-worker when he observed staggered walking, slurred speak, bloodshot eyes, etc., since he cannot detect a person who has been drinking by smell. Mr. [REDACTED] did not observe the co-worker in question exhibiting any of those non-olfactory symptoms. Hence, there was nothing to report. There was no more than a misunderstanding by the investigator about what Mr. [REDACTED] was trying to convey. Again, [REDACTED] confirms this. (See Exhibit D.)

Mr. [REDACTED] is entirely trustworthy and reliable, as any of his prior supervisors will confirm.

SECTION III: APPLICANT DOCUMENTATION

[REDACTED] 7(c)

IF YOU ARE SUBMITTING ADDITIONAL INFORMATION IN SUPPORT OF YOUR REQUEST FOR REVIEW, PLEASE LIST AND IDENTIFY EACH DOCUMENT BELOW:

<u>Document Title</u>	<u>Author</u>	<u>Date</u>
A. Medical Report	Dr. Jason Hoppe, M.D. Internal Medicine Prevea Clinic	February 8, 2002
B. Medical Report	Steven L. Kagen, M.D. Kagen Allergy Clinic	March 7, 2002
C. Occupational Health Screening Report	Julie Peterson, R.N.	January 7, 2002
D. Witness Statement	[REDACTED]	March 13, 2002

SECTION IV: NUCLEAR ACCESS AUTHORIZATION REVIEW DISPOSITION

[REDACTED] 7(c)

NMC Senior Site Operations Officer Referral:

Yes

No

NMC Senior Site Operations Officer:

RECOMMENDATION (X CHOICE):

Uphold action.

Reverse action (e.g., denial, suspension). Basis for reversal is given below.

Continue review process pending receipt of additional information.

REVERSAL BASIS:

Name

Signature

Date

~~P~~ R E V E A
CLINIC ~~X~~

February 8, 2002

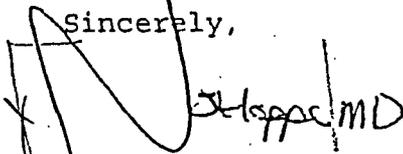
[REDACTED]

RE: [REDACTED]

To Whom It May Concern:

I am the primary carer for [REDACTED], having last seen the patient in my office January 22, 2001. Mr. [REDACTED] carries the diagnosis of [REDACTED]. Mr. [REDACTED] has a longstanding impaired ability to smell due to this problem. If you have any further questions or concerns, please do not hesitate to contact my office.

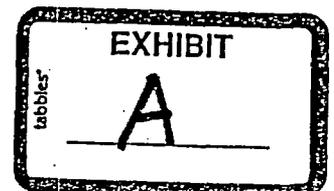
Sincerely,

 Jason Hoppe MD

Jason Hoppe, MD
Internal Medicine

JH/tt26

7(c)



Kagen Allergy CLINIC

Steven L. Kagen, M.D.

Diplomate:
American Board Internal Medicine
American Board Allergy/Immunology
Diagnostic Laboratory Immunology

Joseph Zondlo, M.D.

Diplomate:
American Board Pediatrics
Allergy and Asthma Specialist

R. Muthiah, Ph.D.

Director of Research

March 7, 2002



Dear Mr. [Redacted]

I have received your request for medical records pertaining to you here at the Kagen Allergy Clinic. This letter summarizes your care with us.

You were seen at the age of [Redacted] years in June of 1991 at the time you presented with classic [Redacted] Both of these conditions directly affected your ability to breathe normally through the nose. This led to symptoms of nasal obstruction, decreased ability to smell all various odors, as well as excessive mucus production, sneezing and itching.

We found you to be allergic to [Redacted]



You were last examined on May 28, 1998, at which time [Redacted]

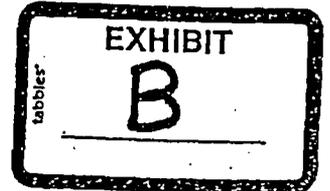
7(c)

As I have not examined you in the past 4 years, I am unable to provide any more current information to you. I trust that this information will prove useful to you. If any questions arise, please feel free to contact me.

Sincerely yours,

Steven L. Kagen
Steven L. Kagen, M.D.

mew



100 W. Lawrence St. Appleton, WI 54911
920-739-9100

2333 Riverside Dr. Green Bay, WI 54301
920-432-8800

March 13th, 2002

STATEMENT OF [REDACTED]

1. I, [REDACTED] residing at [REDACTED], phone number [REDACTED].
2. On December 10, 2001, I was present in our home during a phone conversation between NMC Investigator Harold Walker and I. I heard all of the statements made by [REDACTED] during that conversation.
3. During the said conversation, Mr. [REDACTED] did not state that he had smelled alcohol on a co-worker's breath.
4. During the said conversation, Mr. [REDACTED] did state that he feared union reprisal, but he also stated that he would and had reported people who exhibited definite signs of alcohol or drug abuse (e.g., slurred speech, staggering, redness of eyes, etc.)
5. I heard Mr. [REDACTED] state that his contact with the co-worker, was "incidental" and that he, (Mr. [REDACTED]), has had problems with his sense of smell since he was a young child.
6. Mr. [REDACTED] has in the past discussed with me reporting co-workers' misconduct and even firing an employe despite concerns of union reprisal. He stated that he could not live with himself if anything was to happen to anyone because he did not report an employe. Therefore, he did in fact report/fire them.
7. Mr. [REDACTED] most often works as a consultant rather than on union hiring hall jobs and he is therefore less dependant on the union than his co-workers. U r e .

[REDACTED] 3-14-02
Date

