

DOCKETED
USNRC

'82 SEP 27 A11

September 24, 1982

OFFICE OF SECRETARY
DOCKETING & SERVICES
UNIT 1

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Attention: Docketing and Services Branch
Washington, D.C. 20555

DOCKET NUMBER
PROPOSED RULE

24

PR-50

(47 FR 33980)

Gentlemen:

SUBJECT: PUBLIC COMMENT ON THE 'FITNESS FOR DUTY' RULE,
PROPOSED 10 CFR 50.54x, FEDERAL REGISTER NOTICE,
AUGUST 5, 1982

Although I am a member of the Commission staff, I wish to relay as a public comment, certain information which developed and came to my possession subsequent to your issuance of the proposed 'Fitness for Duty' Rule for public comment. On its surface, and irrespective of the legal merits of the matter between VEPCO and Mr. Bartholomew, the elements of the case reflect upon the potential rule and merit some attention.

It appears that Mr. Bartholomew, an employee of a licensee's contractor, at his own volition, undertook an alcohol/drug abuse rehabilitation program with the full cooperation of the contractor who was his immediate employer. Upon completion of the 28 day rehabilitation program, and with his certificate at hand, he reported back for duty. The contractor filed a form, indicating that such was routine, with VEPCO, at whose Surry site Mr. Bartholomew had been working. At a later time, Mr. Bartholomew was advised that VEPCO had declared he would no longer be permitted access to the Surry site because of NRC regulations. He was then terminated. Upon inquiry at VEPCO's Security Office, he was informed that NRC regulations, 10 CFR Part 10 prohibited his access to the site, and the specific provisions concerned alcohol and drug abuse. He was not advised of any recourse nor told from whom he could seek relief. In looking for assistance, he found a lawyer in Richmond who would investigate the matter for a fee of \$10,000. This was certainly beyond his means.

After numerous telephone calls to the NRC, he was referred to me for advice. Although 10 CFR Part 10 does not apply to power reactors, I did learn that VEPCO had committed to essentially duplicate language in their Security Plan, that is, that alcohol/drug abuse is grounds for denying access the the Surry site, unless there were adequate evidence of rehabilitation. Further, VEPCO's commitment provided that the person accused would be afforded the opportunity to refute such information brought against him. I suggested that Mr. Bartholomew appeal the matter to VEPCO's Director of Corporate Security. This he did and that appeal was tersely denied. Copies of that exchange of correspondence is attached for the record.

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PDR PR

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Add: Ellis Neeschoff
5650 NH

While awaiting VEPCO's answer, Mr. Bartholomew related his story to a reporter of a Richmond newspaper. She apparently was sufficiently persuaded by Mr. Bartholomew's circumstance and veracity that she wrote an article on his plight. She contacted me to verify what I had purportedly told Mr. Bartholomew and determine what our rules and regulations currently provide. A copy of her draft story is also attached for the record. Sometime before Mr. Bartholomew received the denial letter from VEPCO, he learned from the reporter that the newspaper had declined to publish her article that was critical of VEPCO.

Of the several points which may be drawn from this series of events, please consider the following:

- VEPCO has a policy of asking employees with alcohol abuse problems to come forward for assistance, without fear of consequence. This policy does not appear to extend to contractor employees working at their sites.
- VEPCO's commitment concerning 'evidence of rehabilitation' as mitigation does not seem to apply to contractor employees working at their sites.
- Action was taken against Mr. Bartholomew because of his self-identification as one having had an alcohol/drug abuse problem. He asserts repeatedly that no untoward events occurred at the site, nor accidents, nor drinking on the job, which could have prompted VEPCO's concern about his suitability. He could have stayed drunk and employed.
- Mr. Bartholomew's dismissal appears to be blamed on the NRC.
- Mr. Bartholomew's dismissal is a severe blow to employee assistance programs, and the efforts of rehabilitative service agencies (such as AA), in general, warning others who may seek rehabilitation that their jobs may be forfeited.
- Without specific recourse or appeal identified, Mr. Bartholomew was left to thrash about NRC offices, Veterans Administration Offices, and Virginia State Offices seeking relief.

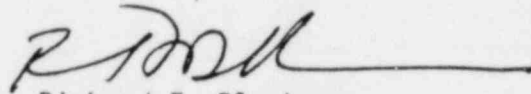
I suggest that the proposed 'Fitness for Duty' rule be altered to require that any individual substantially injured by a licensee's application of the rule be afforded adequate opportunity to rebut the information brought against him and present adequate evidence of rehabilitation where germane. This addition would appear to avoid some of the contentions over 'due process' and provide something better than the policy suggestion on 'due process' now proposed in the Statements of Consideration.

Secretary of the Commission

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The filing of this public comment is made with the knowledge and consent of W. W. Bartholomew.

Very Respectfully,

A handwritten signature in black ink, appearing to read 'R. Blackmon', with a long horizontal line extending to the right.

Richard F. Blackmon

cc: W. W. Bartholomew
508 Old Town Drive
Colonial Heights, VA 23834

William W. Bartholomew
096-46-8019
508 Old Town Drive
Colonial Heights, VA 23834
(804) 526-4328

Mr. Walter Parker
Director of Corporate Security
Virginia Electric and Power Company
Richmond Plaza
Richmond, VA 23219

Dear Mr. Parker,

I have been recently terminated from employment at Surry Power Station, Surry Virginia. There I was employed by Daniels Construction Company, as an electrician. I am now attempting to appeal this termination.

I was informed by Daniels personnel that I was terminated because security personnel at Vepco would not grant me a clearance to gain access to the facility. After my dismissal, I had the privilege to consult Mr. Phil Godwin about my denial for access to restricted areas in the plant. He stated to me, that the reason for this action was, that I had been in treatment for alcoholism and chemical dependency, and that my past experience of alcohol and drug abuse, was revealed in an evaluation report from St. Johns Vianney Center, which Daniels sent to him with my approval of written consent. I do realize that this report revealed my drugs of choice and my experimentation with other drugs in the past ten to twelve years. The report has also disclosed that, I voluntarily put myself in treatment, and displayed initiative and seemed to be well motivated in the program. Let me also add, that I put myself in treatment for the better of myself and my employer.

I am appealing this decision that was made by Vepco security personnel, which is outlined under N.R.C. regulation 10 C.F.R. I feel that I have received sufficient rehabilitation, and am trying to make myself a better all around person.

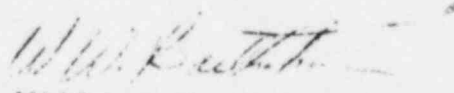
It is to my opinion, that companies like Vepco would fully support persons like myself, who are trying to improve themselves. As to this date though, I feel that I have not only been non-supported, but also somewhat discriminated against. I really feel that my particular situation should be examined more carefully, and the disease of alcoholism and chemical dependency be more understood by the staff at Vepco.

I have been in contact with the Nuclear Regulatory Commission in Washington, D.C., I explained my problem to them. The person who I talked to is involved in designing security rules and regulations for nuclear power reactors. He asked me, was alcohol and drugs a problem with me on the job, and I said, no. He also asked, if I was involved in any unsafe acts on the job due to alcohol and drugs, and again, I said no. I was then informed, that being I have sought treatment for my problem, under their regulations this is no means for denial of access to a nuclear power facility. I am aware that Veeco can set their own rules for safety and security as long as they are within guidelines of the N.R.C. I do have respect for Veeco as far as keeping their facility safe and secure.

I have also been in contact with the Virginia Rehabilitative Services, and the Office of Federal Contracts and Compliance Program. The V.R.S. sent me information regarding the laws which protect handicapped individuals and Vietnam Era Veterans, which I am both. I feel that Veeco should review Section 503 of Rehabilitation Act of 1973, and Section 402 of the Vietnam Era Veterans Readjustment Act of 1974. These laws protect against discrimination of non visible handicaps and Vietnam Era Veterans.

Again, I cannot stress enough, the importance of the appeal I am making at this time. I am now unemployed, and feel I should not be. The job market is at a low point now, and economy is steadily on the rise. I would appreciate your full attention to this matter. If there are any changes in your companies decision, please advise myself and Daniels Construction Company at Surry Power Plant.

Very truly yours,


William W. Bartholomew

/wb



St. John Vianney Center
 Route 2, Box 389 • (804) 784-3501
 Richmond, Virginia 23233



located at 11111 road in Henric county

Sr. Patricia Eck, C.B.S.
 President, Board of Directors

Linda J. Pasternak
 Executive Director

August 18, 1982

Mr. Walter Parker
 Director of Cooperate Securities
 VEPCO
 7500 West Broad Street
 Richmond, Virginia

RE: BARTHOLOMEW, WILLIAM

Dear Mr. Parker:

I was requested by Bill Bartholomew to write you in regard to his treatment here at St. John's in June 1982. I understand from Bill that you received a copy of our discharge summary from Daniel Construction Co. with his written permission. This discharge summary may be difficult to interpret without an understanding of chemical dependency. We believe that addiction to any mood and mind altering drug is a disease in that it effects the functioning of the person mentally, emotionally and physically. The choice of drug, whether it be alcohol, cocaine or whatever has little bearing on the dynamics of this disease. What is important is abstinence from all mood altering drugs. Bill appeared motivated to do this and to use the Aftercare recommendations made at the time of his discharge on July 2, 1982. His prognosis was fair. He has since that time remained abstinent and has used aftercare resources as directed.

If we can be of further help please call.

Sincerely,

John Bolton
 The Rev. John Bolton, M.S.
 Inpatient Treatment Coordinator

Lynn Stonnell
 Lynn Stonnell, MSW
 Alcoholism Counselor

enclosure

Enkindling the Spirit of Recovery

DISTRICT 19
MENTAL HEALTH and MENTAL RETARDATION SERVICES BOARD

ADMINISTRATION

233 S. Adams Street
P. O. Box 1691
Petersburg, Va. 23803
804-861-3700

August 12, 1982

ALCOHOL AND DRUG SERVICES

116 S. Adams Street
Petersburg, Va. 23803
804-732-2672

Mr. Walter Parker
Director of Corporate Security
Virginia Electric and Power Company
Richmond Plaza
Richmond, Virginia 23219

ALCOHOL SERVICES

116 S. Adams Street
Petersburg, Va. 23803
804-732-2672

RE: William Bartholomew

Dear Mr. Parker:

139-C Baker Street
Emporia, Va. 23847
804-634-5181

Bill Bartholomew came to our agency on 7/16/82 for aftercare services following his inpatient treatment at St. John Vianney's Center.

Main Street
P. O. Box 106
Waverly, Va. 23890
804-834-3693

At that time Bill agreed to take part in weekly Aftercare Group Therapy sessions, in individual counseling when needed and to continue in his daily attendance at Alcoholics/Narcotics Anonymous meetings.

602 North 4th Street
Hopewell, Va. 23860
804-541-8610

Since first seeing Bill, I have been impressed with his strong desire to remain sober and his active search for finding new and appropriate ways of dealing with his feelings and daily problems. Bill seems to have an increasingly good awareness of himself and is unafraid to ask for help from us and those in the AA community when he needs it. Bill seems extremely motivated to continue working on recovery from his disease of chemical dependency.

DRUG SERVICES

Real House
842 W. Washington Street
Petersburg, Va. 23803
804-732-2806

If I can be of any further assistance, please feel free to contact me.

Sincerely,

Dawn M. Machonis

Dawn Machonis, M.S.
Chemical Dependency Counselor

DM/mkd

PARTICIPATING MEMBERS

Colonial Heights, Dinwiddie, Emporia, Greenville, Hopewell, Petersburg, Prince George, Surry, Sussex

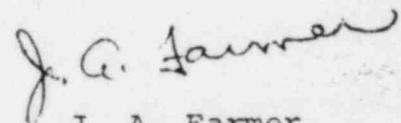
DANIEL CONSTRUCTION COMPANY
SURRY POWER STATION
P. O. BOX 753
SURRY, VIRGINIA 23883

August 3, 1982

Letter of Recommendation for Mr. William Bartholomew

Bill Bartholomew worked directly for me for several months while employed at Vepco's Surry Power Station in Surry, Virginia. He displayed a lot of initiative, interest and pride in his work. He was dependable and was well liked as a person and a fellow worker by all who worked with him.

I highly recommend Bill to any company requiring Electricians.



J. A. Farmer
Electrical Foreman

JAF:jw





VIRGINIA ELECTRIC AND POWER COMPANY, RICHMOND, VIRGINIA 23261

August 23, 1982

Mr. William W. Bartholomew
508 Old Town Drive
Colonial Heights, Virginia 23834

Dear Mr. Bartholomew:

Your undated letter to me was received on August 23, 1982 and the contents were carefully noted.

Your employment history with the Daniels Construction Company is not a matter for this company.

Your access to any Veeco Nuclear operating site is denied, and is not a matter of appeal. Veeco accepts no responsibilities for your employment history with the Daniels Construction Company.

Yours truly,

Walter L. Parker
Manager-Security

Aug. 10, 1982

Dear Bill,

I'm sure this copy of the story
w. little consolation to your dis-
appointment.

However, I hope you realize
I am disappointed also. It upsets
me that your story will not be
told, not now anyway. I believe
the press has a right to
know of it, I'm just sorry my
article did not agree.

Please keep in touch, I'm
still very interested in your
case. I hope there is a picture
in your room.

Sincerely,
Susan G. Heather

The date on this memo appears wrong.

She talked to me much later.

B

SLG:VFPCC BI:STROTH;12/08,15:27 FR:STROTH;12/08,15:27 RV:STROTH;30/08,16:18
NU: LIE: FMT:txt BJ: 00034
PUE: IA:dd-rm ED: PG: DP: PR: VFR:00
NOTE:

Bill Bartholomew has received his first unemployment check. The job it took him three years to get, and the one he worked on for three months, is over.

When he speaks of the unemployment compensation, his tone is tense and he chooses his words carefully. There will come a time, the 28-year-old says, when his creditors can no longer be stalled. What he will do then eludes him.

When he was laid-off from his job as an electrician at Daniel Construction Co., a Vepco contractor at the Surry nuclear plant, Bartholomew says he was wronged.

Now, his dabbling in the area of legal appeal -- contacting the Nuclear Regulatory Commission and a Richmond attorney -- is an attempt to make things right again, he says. He wants to prove that his previous, self-admitted dependency to alcohol and chemicals was not just cause for the revocation of his security clearance by Vepco and his subsequent termination by Daniel.

He wants to prove it quickly. As an electrician, he made \$560 a week. On unemployment, he makes \$138.

Bartholomew's security clearance was revoked by Vepco after the company received a copy of a clinical discharge summary from the St. Johns Vianney Center. Bartholomew said he entered the center on his own recourse to be rid of his drug and alcohol habits. Daniel also received a copy of the summary and it was the construction company that forwarded it on to Vepco.

Bartholomew had spent 28 days at the rehabilitative center, from June 6 to July 4, and was diagnosed as a chemically dependent person. Daniel was notified of his stay just a few days after his admission. Lee Wood, the personnel manager for Daniel at the site, said Bartholomew's job would be waiting for him when he returned, Bartholomew says.

Yet, his job was terminated a week and one-half after he arrived back. Without a security clearance, he could no longer move freely through the plant to perform his electrical work. Work at the Surry site became impossible.

Bartholomew's voice rises when he reflects on the action taken by the two companies. "Look what happened to me," he demands.

"I entered the program [at St. Johns] on my own. I wanted to get help, to break my habits. I got back to my job . . . and it wasn't there.

"[The companies] are telling me, 'don't go get help. Stay here and be sick, just don't say anything about it.' They didn't even know I had a problem before I admitted myself, and now they say my problem will not permit me to work."

Resolving the issue is complex for Bartholomew, as Daniel says they have no other jobs and Vepco skirts responsibility. In six weeks, Daniel has been unsuccessful in finding Bartholomew a position elsewhere within the company.

Wood, who Bartholomew says advised him not to speak to a newspaper reporter, has said he is still looking for a position for Bartholomew.

Then there is Vepco and the possible responsibility they might hold for the revocation of Bartholomew's license. However, in a prepared statement issued by the public relations director of the company and also in a letter sent by the company's security manager, the utility has clearly stated it holds no responsibility.

In fact, the letter sent by the corporate security office, from Walter Parker, not only denied responsibility but also denied Bartholomew's appeal, a

(MORE)

TO BARTHOLOMEW

right which is provided for in Vepco's written commitments to the NRC.

Parker's brief letter read, "Access to any Vepco nuclear operating site is denied and it is not a matter of appeal .|.|. Vepco accepts no responsibility with your employment history with Daniel's."

In the same commitments, which parallel nearly verbatim Sections 10.10 and 10.11 of the NRC's own code, Vepco states that alcoholism, without adequate grounds of rehabilitation, is cause for revocation of a security clearance. However, according to Richard Blackron, a security officer in the office of inspection and enforcement in the NRC's Bethesda, Md. regional office, the reverse of the statement is also true. He said evidence of rehabilitation may be considered to re-instate a clearance.

Bartholomew's alcoholism and drug dependency counselors sent Parker what evidence they could, in the form of letters, which indicated their opinion the Bartholomew was on the rehabilitative road.

Both letters were favorable and stated Bartholomew's prognosis was fair (prognoses can only be good, fair or poor). The letter from the chemical dependency counselor went so far as to say, "[She was] impressed with his strong desire to remain sober .|.|. [Bartholomew] seems to have an increasingly good awareness of himself .|.|. [he] is extremely motivated to continue working on [his] recovery."

Rodney Smith, Vepco's director of news services, has refused comment on what value, if any, the utility saw in the letters. ~~Because Bartholomew's clearance has not been reinstated, however, it would appear the letters were not evidence enough.~~

After he found that Vepco was steadfast in their refusal to ^{re-}grant his clearance, Bartholomew admitted he was "completely drained." ^{when} "It looks like we are trying everything and nothing is working," he said after his appeal attempt was thwarted and his evidence of rehabilitation was obviously inadequate. "I just don't understand it. It looks like I'm protected but it's just not working. I am so upset. Everything just seems like it's falling in."

In what appears Bartholomew's final recourse, he has been in touch with an attorney, G. William White, with the Cabell, Paris, Lowenstein and Bareford firm. White said he was studying Bartholomew's case and was not yet sure whether the unemployed electrician would become a client.

White, who admits at this point he has only a cursory knowledge of Bartholomew's ^{situation}, said if things are as they appear, Bartholomew may well have been wronged.

"If [his alcoholism and drug habits] were the only reason for his being fired," then he appears to have been discriminated against, White said. "If that is what happened, then action such as that would discourage others from getting treatment."

If White takes on the case, he may rely on the Rehabilitative Act, ¹⁹⁷³ which declares alcoholism, among other diseases, as hidden handicaps. Handicapped persons, under the 1973 federal government law, are protected if the termination of their employment is deemed solely the result of their handicap.

In order for the act to apply, however, ^{part of} the employer must either be a federal government contractor or receive some type of federal funding. According to a senior estimator at Daniel, the Richmond office does not engage in government contracting. But he said the parent company, Fluor Corp. in California, often worked as a contractor for the federal government.

As for the utility, Smith said Vepco neither contracted with the government nor ~~were~~ they ~~the~~ recipient of government grants, such as nuclear

(MORE)

explore the matter

would likely to ~~be on the~~

research funding. White, however, said he ~~planned to~~ research the matter.

And eventhough Bartholomew still lacks anything in the way of positive resolve, he admits his mood is ~~improved~~ since consulting with the attorney.

~~Although he must still keep~~ creditors at bay, there is an optimism in his tone that was noticably absent two weeks hence. ~~ago~~

"I feel better than I did, but still, all I want is my job back," Bartholomew said. "I feel they owe me my job and my back pay. It's not that I want to take anyone to court, but if that's the only way . . ."

"I don't know what's going to become of this, I'm just happy we're finally pursuing it, that someone could finally give re some answers. But still, I'm really not expecting anything. We're just going to have to see."

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(END)