



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

June 15, 1989

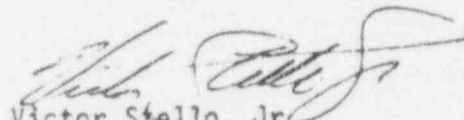
The Honorable Pete Wilson
United States Senate
Washington, DC 20510

Dear Senator Wilson:

This is in response to your May 24, 1989, letter to Chairman Zech concerning a February 8, 1989, letter you received from Ms. Laurie Green-Miller.

In her letter, Ms. Green-Miller requested information concerning Merit System Protection Board case law and its relationship to NRC personnel policy. Enclosed for your information are two copies of a fact sheet which provides the answers to Ms. Green-Miller's questions concerning NRC's personnel policy and performance-based personnel actions.

Hopefully, this fact sheet will address Ms. Green-Miller's concerns.


Victor Stello, Jr.
Executive Director
for Operations

Enclosure: As stated

FACT SHEET - NRC PERFORMANCE-BASED PERSONNEL ACTIONS

Q. BY WHAT AUTHORITY ARE PERFORMANCE-BASED PERSONNEL ACTIONS TAKEN AT THE NUCLEAR REGULATORY COMMISSION (NRC)?

A. Performance-based personnel actions at the NRC are taken pursuant to Chapter 43 of Title 5 of the United States Code and, if applicable, the collective bargaining agreement between the NRC and the employees union.

Q. WHY DOES THE NRC CONSIDER MERIT SYSTEMS PROTECTION BOARD (MSPB) CASE LAW BEFORE IT TAKES A PERFORMANCE-BASED PERSONNEL ACTION?

A. Since its creation in 1978, the MSPB has been the primary source of case law interpreting the meaning and proper application of Chapter 43 of Title 5 of the United States Code. Therefore, before taking performance-based personnel actions, the NRC considers MSPB case law to ensure that those actions are consistent with generally accepted interpretations of Chapter 43.

Q. WHY DOESN'T NRC STATE IN ITS INTERNAL PERSONNEL POLICIES (e.g., NRC MANUAL CHAPTERS) THAT IT CONSIDERS MSPB CASE LAW BEFORE IT TAKES PERFORMANCE-BASED PERSONNEL ACTIONS?

A. It is unnecessary to state in an NRC Manual Chapter or any other published policy that the NRC considers MSPB case law since all Federal agencies, including the NRC, consider the opinions of courts and Federal agencies charged with interpreting statutes which are applicable to agency actions.

Q. WHAT HAPPENS WHEN AN NRC EMPLOYEE'S PERFORMANCE IS DEEMED UNACCEPTABLE?

A. Whenever an NRC employee's performance is deemed unacceptable in one or more critical elements, supervisors are required to provide the employee an opportunity period in which to demonstrate acceptable performance. The supervisor is also required to provide the employee with a performance improvement requirements memorandum which details how the employee failed to meet his/her performance standards and what he or she can do during the opportunity period to improve his/her performance.

Q. WHAT PERSONNEL ACTION CAN BE TAKEN IF AN EMPLOYEE'S PERFORMANCE REMAINS UNACCEPTABLE AT THE END OF THE OPPORTUNITY PERIOD?

A. If an employee's performance remains unacceptable at the completion of the opportunity period, the supervisor shall initiate action to remove the employee from his/her position by reassignment, reduction in grade or removal.

Q. CAN AN NRC EMPLOYEE WHO IS REMOVED OR REDUCED IN GRADE PURSUANT TO CHAPTER 43 BECAUSE OF UNACCEPTABLE PERFORMANCE APPEAL HIS/HER REDUCTION IN GRADE OR REMOVAL?

A. An NRC employee who is a veterans' preference eligible can appeal his/her reduction in grade or removal based on unacceptable performance to the MSPB, or under the collective bargaining agreement if the employee is in the bargaining unit. Non-veterans' preference eligibles may appeal either under the collective bargaining agreement if they are in the bargaining unit, or under the Agency administrative grievance system if they are not in the bargaining unit.

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PETE WILSON
CALIFORNIA

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JOINT ECONOMIC COMMITTEE

United States Senate

WASHINGTON, D.C. 20510

May 24, 1989

Chairman
U.S. Nuclear Regulatory Commission
1717 H Street
Washington, D.C. 20555

Dear Sir:

I have enclosed a copy of a letter which I received from Laurie Green-Miller of San Mateo, California regarding personnel policy information. I would appreciate it very much if you would bring this letter to the attention of the appropriate individuals within your agency for consideration and respond to me at your earliest convenience.

Please return with your reply the correspondence which I have enclosed referring to case 9139060050.

Thank you very much for your assistance in this matter.

Sincerely,



PETE WILSON

PW:pm
Enclosure

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