

From: Luina, Scott
Sent: Thursday, January 7, 2021 1:57 PM
To: JShealA-Hearing Resource
Subject: FW: Message from KM_C458
Attachments: SKM_C45821010713530.pdf

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Hearing Identifier: JShea_IA_NonPublic
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Subject: FW: Message from KM_C458
Sent Date: 1/7/2021 1:57:22 PM
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From: Luina, Scott

Created By: Scott.Luina@nrc.gov

Recipients:
"JShealA-Hearing Resource" <JShealA-Hearing.Resource@nrc.gov>
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MESSAGE	406	1/7/2021 1:57:24 PM
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NRC ADVISEMENT ON IDENTITY PROTECTION

This advisement is provided to clarify the degree of protection which can be afforded by the NRC to a concerned citizen making an allegation:

In resolving technical issues, the NRC in protecting your identity intends to take all reasonable efforts to not disclose your identity to any organization, individual outside the NRC, or the public unless:

- § You have clearly indicated no objection to being identified.
- § Disclosure is necessary because of an overriding safety issue.
- § Disclosure is necessary pursuant to an order of a court or NRC adjudicatory authority or to inform Congress or State or Federal agencies in furtherance of NRC responsibilities under law or public trust.
- § Disclosure is necessary in furtherance of a wrongdoing investigation, including an investigation of harassment and intimidation (H&I) allegations.
- § Disclosure is necessary to support a hearing on an enforcement matter.
- § You take actions that are inconsistent with and override the purpose of protecting your identity.

If your allegation is that you have been discriminated against for having raised safety concerns, the NRC will normally disclose your identity during an NRC investigation if you are the victim of the discrimination.

For allegations involving wrongdoing (e.g., record falsification or other deliberate conduct in violation of NRC regulatory requirements), your identity may be disclosed at the NRC's discretion in order to pursue the investigation.

Information provided under the Freedom of Information Act (FOIA) will, to the extent consistent with that act, be purged of names and other potential identifiers; however, disclosures may be necessary under this act.

I Michael McBreasty, fully understand the degree of protection of my identity as explained in this document.

Date: 9/4/18

[Signature]
(Concerned Citizen)

Witness: [Signature]



UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF INVESTIGATIONS

AUTHORIZATION TO RELEASE RECORDS

I, Michael McBready, hereby authorize the Sequoiah and/or the
(Name) (Name of plant)
TVA, to release any and all records concerning my employment
(Name of Licensee)
with TVA to the, Nuclear Regulatory Commission (NRC),
(Name of Licensee)

Office of Investigations. These records include, but are not limited to personnel files, performance reviews, awards, bonuses, performance improvement plans, as well as Fitness-For-Duty records.

[Signature], 9/4/2018
Signature of Employee Authorizing Release Dated

[Signature], 9/4/2018
Witnessed by Dated

SSA
Title

OFFICIAL USE ONLY - OI INVESTIGATION INFORMATION

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
OFFICE OF INVESTIGATIONS

INTERVIEW REPORT WITH MICHAEL W. MCBREARTY


Michael W. MCBREARTY, former Site Licensing Manager, Sequoyah Nuclear Plant (Sequoyah) Tennessee Valley Authority (TVA), was interviewed on August 30, 2019, telephonically to obtain clarifying information, by Senior Special Agent (SSA) Scott K. Luina. MCBREARTY related the following information in substance:

OI:RII explained to MCBREARTY a telephonic interview was warranted because OI needed to obtain limited clarifying information and MCBREARTY was currently living in the United Arab Emirates (UAE). MCBREARTY was reminded that he was still under oath and agreed to be voluntarily interviewed by OI.

MCBREARTY stated to OI that he recalled being interviewed in approximately April 2018, by the TVA Office of General Counsel (OGC). MCBREARTY stated he was interviewed on just this one occasion by the TVA OGC. The TVA OGC attorney mentioned to MCBREARTY the interview was related to a "harassment allegation." At the time, MCBREARTY assumed the interview was related to his allegation mentioned in his March 2018 text message to Jim POLICOSKI. MCBREARTY thought this because Inza HAGINS-DYER (Employee Concerns Program Manager) had told MCBREARTY that the ECP had received the allegation from MCBREARTY's text message which referenced a potential chilling effect in corporate nuclear licensing (CNL). HAGINS-DYER had mentioned to MCBREARTY the issue would be referred to a third party to investigate. MCBREARTY learned later when he reviewed documents submitted by TVA to the Department of Labor (DOL) that the interview with TVA OGC was related to an investigation into MCBREARTY for harassment of HENDERSON.

MCBREARTY related that the general questions asked by the TVA OGC were related to CNL and the relationships with the site licensing. The only specifics he was asked were related to his opinions on how Joseph SHEA and Erin HENDERSON did business and their relationships with the sites. MCBREARTY does not recall being asked any questions about leaving HENDERSON off emails or about the text message to POLICKOSKI. MCBREARTY provided his opinion to the TVA OGC when asked about SHEA and HENDERSON and how there is a lack of trust from him towards them. MCBREARTY was also asked about his relationship with Ed SCHRULL, Beth WETZEL and others. MCBREARTY was not provided an advisement or acknowledgement of what the interview was about and had no indication that the interview was related to an investigation into his actions. MCBREARTY and others thought the interview was a safety conscious work environment (SCWE) type of interview.

This report was prepared on August 30, 2019, from agent's notes.



Scott K. Luina, Senior Special Agent
Region II Field Office
Office of Investigations, USNRC

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
OFFICE OF INVESTIGATIONS

INTERVIEW REPORT WITH WESLEY DESCHAIINE

Wesley DESCHAIINE, Project Engineer, U.S. Nuclear Regulatory Commission (NRC), Region II (RII), was interviewed on August 15, 2019, at the NRC RII Office, by Senior Special Agent (SSA) Scott K. Luina. DESCHAIINE related the following information in substance:

DESCHAIINE was the NRC Resident Inspector at Sequoyah Nuclear Plant from March 2011 until January 2019. DESCHAIINE was present on site during the NRC inspection which led to the Service Life and Kirk Key non-cited violations (NCVs) in September 2015. DESCHAIINE recalled conversations with Michael MCBREARTY, former Site Licensing Manager, Tennessee Valley Authority (TVA), related to the "informational" or "clarification" letter submitted by TVA in January 2016, related to the Kirk Key NCV. DESCHAIINE confirmed he had conversations with MCBREARTY about this letter not being in process but would still be reviewed by the NRC.

DESCHAIINE corroborated MCBREARTY's testimony and confirmed that in September or October 2017, he had a discussion with MCBREARTY related to the Service Life NCV being used as a sample in the corrective action program (CAP) review for the quarter. DESCHAIINE told MCBREARTY that the inspection would include a review of the condition report (CR) related to the Service Life NCV and how it appeared no corrective action had been taken by TVA which was contrary to TVA procedure and process. DESCHAIINE confirmed he again told MCBREARTY this was not in process and that TVA needed to deny or correct the condition adverse to quality. DESCHAIINE recalled MCBREARTY made a comment about how "this is going to come back and hurt/get me" but DESCHAIINE was not certain what MCBREARTY meant by this comment.

This report was prepared on August 16, 2019, from agent's notes.



Scott K. Luina, Senior Special Agent
Region II Field Office
Office of Investigations, USNRC



Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902

October 23, 2018

Senior Special Agent Scott Luiña
Office of Investigations, Region II
U. S. Nuclear Regulatory Commission
245 Peachtree Center Avenue, NE Suite 1200
Atlanta, Georgia 30303-1257

Re: NRC Office of Investigations Request for Documents (OI Case No. 2-2018-033)

Dear Special Agent Luiña:

This letter is in response to your September 2018 request for several documents relating to a complaint filed by Michael McBrearty, a former employee of the Tennessee Valley Authority (TVA) alleging retaliation.

Several of the records being provided in this disclosure are confidential personnel files, the public disclosure of which would constitute an invasion of personal privacy and which would trigger TVA's reporting responsibilities under the Privacy Act. Accordingly, these records should be withheld from public disclosure under 10 C.F.R. § 2.390(a)(6).

The enclosed records are responsive to your request. They include a copy of the complaint of harassment (Attachment A) and report of investigation (Attachment B) that led to Mr. McBrearty's administrative leave. In addition to the report substantiating Mr. McBrearty's misconduct, I am enclosing the human resources (Attachment C) and employee concerns records (Attachments D through I) that relate to the investigation. Finally, a copy of the requested condition report is enclosed (Attachment J).

In March 2018, Erin Henderson, TVA's Director of Nuclear Regulatory Affairs, filed with her management and TVA human resources a complaint alleging that she had been the subject of harassment and a hostile work environment by a group of corporate and Sequoyah site licensing employees led by Mr. McBrearty. In response to this complaint, TVA's Office of the General Counsel conducted an internal investigation into the allegations and determined that they were substantiated. A copy of the report is included in this response. The report contains confidential attorney-client information. I have endeavored to redact the privileged passages, and any privileged information which may be visible should not be considered to constitute a waiver of the privilege.

The investigation concluded that Ms. Henderson, in her role as the then-Senior Manager of Regulatory Affairs, raised a concern to TVA human resources about the ethical implications of

one of her employees, Michelle Conner, serving in a role that required oversight of the site licensing managers. The concern was rooted in the belief that Ms. Conner was involved in a personal relationship with Mr. McBrearty, site licensing manager at Sequoyah, of a nature that would interfere with Ms. Conner's ability to provide independent, unbiased oversight. Ms. Henderson's complaint then motivated Mr. McBrearty and others to engage in a campaign of insubordination and disrespectful conduct directed toward Ms. Henderson that amounted to harassment and created a hostile work environment.

By raising a concern about compliance with Federal ethics regulations and TVA's Code of Conduct, Ms. Henderson engaged in protected conduct within the meaning of the Whistleblower Protection Act (5 U.S.C. § 2303). The course of action pursued by Mr. McBrearty and others in response to her concern—harassment through insubordinate acts and creation of a hostile work environment over a two-year period—was unlawful discrimination.

On the basis of a draft version of the report which was provided to TVA Nuclear management in May 2018, Mr. McBrearty was placed in a non-work, pay status (i.e., administrative leave or "suspended pending investigation") while the report went through revision and finalization, and management began to work on determining how to proceed with Mr. McBrearty. In August, the report was finalized. However, before TVA Nuclear management had the opportunity to discuss the final report and decide upon the appropriate level of discipline, Mr. McBrearty tendered his resignation from TVA.

It is worth noting that the provided records from employee concerns and human resources do not substantiate the claim of a chilled work environment that have been made by McBrearty and his associates. They do, however, corroborate claims about his animosity toward Ms. Henderson deriving from his relationship with Ms. Conner.

The manager of TVA's Nuclear Employee Concerns Program has been out of the office and out of the region since this request for documents, so this may not constitute all concerns raised by Mr. McBrearty. Upon her return later this month, we will review the program files and make a supplemental disclosure if any additional records are found.

The enclosed records demonstrate TVA's legitimate, non-retaliatory basis for placing Mr. McBrearty in a non-work, pay status pending further action: Ms. Henderson raised a validly held concern about potential ethical issues and, as a result, Mr. McBrearty engaged in an extended campaign of harassment in violation of, among other things, the Whistleblower Protection Act.

Sincerely,



Christopher C. Chandler
Associate General Counsel, Nuclear

Enclosures

NRC OFFICE OF INVESTIGATIONS
INVESTIGATIVE PLAN

CASE NO.: 2-2018-033

TITLE / FACILITY: DISCRIMINATION AGAINST A FORMER SITE LICENSING MANAGER FOR RAISING SAFETY CONCERNS / SEQUOYAH 1

ALLEGATION:

On August 13, 2018, the U.S. Nuclear Regulatory Commission (NRC), Region II (RII), Enforcement Investigations Coordination Staff (EICS) staff received information from, Michael MCBREARTY, Site Licensing Manager Tennessee Valley Authority (TVA), at Sequoyah Nuclear Plant (SQN). On August 15, 2018, MCBREARTY's allegation was discussed by Sarah Price, Regional Counsel, NRC RII, who officially concluded on August 21, 2018 during the Allegation Review Board (ARB) that MCBREARTY had made a prima facie showing of discrimination. On August 15, 2018, ADR was offered via email and telephone, but MCBREARTY requested the Office of Investigations (OI) to open a case on August 16, 2018. The details of MCBREARTY's discrimination allegation to EICS are provided below.

During a 2015 NRC baseline inspection, SQN received two NCV's 1) Molded Case Circuit Breaker Service Life and 2) Removal of Kirk Key Interlocks. SQN followed the TVA procedure and performed a Regulatory Analysis which concluded that the violations didn't have an appropriate regulatory technical basis, and should be denied. According to MCBREARTY, SQN licensing drafted a denial letter, in response to the 2015007 inspection report which identified the violations. MCBREARTY claimed that Joe SHEA, TVA's Vice-President of Licensing and Erin Henderson, Director, Nuclear Regulatory Affairs directed the MCBREARTY to write the letters as "informational" letters verses denials. MCBREARTY repeatedly disagreed with and challenged the position directed by SHEA and HENDERSON, and repeatedly emphasized neither TVA nor NRC processes addressed "informational" letters for responding to violations. MCBREARTY repeatedly told SHEA and HENDERSON that if they did not deny the violations, they has a legal obligation to implement corrective actions to restore compliance. According to MCBREARTY, SQN licensing drafted and continually revised the "informational" letter as directed by SHEA and HENDERSON (Corporate Licensing), but corporate licensing would never sign nor forward to the NRC. MCBREARTY continued to push TVA corporate licensing to approve and submit a combined denial/backfit letter to the NRC, and continued to emphasize that TVA was now in non-compliance for two years. Corporate licensing finally signed a combined denial/backfit letter to the NRC in December 2017 after the NRC staff indicated their intentions to issue SQN a cited violation because they has failed to implement corrective actions for the Molded Case Circuit Breaker Service Life Violation. According to MCBREARTY, corporate licensing did submit an "informational" letter to the NRC in February 2016 associated with the Kirk Key Interlock Violation, which has upheld by the NRC in March 2017. During the 2017 PI&R inspection, the team challenged SQN regarding the corrective actions for the Kirk Key issue. MCBREARTY communicated that SQN would submit a LAR by the end of September 2017 to address the violation. At the direction of SHEA, corporate licensing repeatedly extended the LAR submittal date and questioned the appropriateness of submitting a LAR, but never suggested any other corrective action. The LAR was approved and submitted in March 2018.

On May 25, 2018, MCBREARTY was informed by his supervisor that he was being put on paid suspension due to an investigation of harassment and undermining the corporate licensing staff's ability to perform their duties. MCBREARTY remained on paid suspension until he resigned in late August 2018.

SUBJECTS: SHEA, HENDERSON and potentially others.

POSSIBLE VIOLATIONS: Violations of 10 CFR 50.5 (Deliberate Misconduct) and 10 CFR 50.7 (Employee Protection) pertain.

INVESTIGATIVE ISSUES: To determine if MCBREARTY was retaliated against for raising safety concerns.

COORDINATION WITH NRC STAFF: Coordination with RC for Prima Facie and with Anthony Masters, Branch Chief, RII, DRP, RPB5

INVESTIGATIVE STEPS:

Conduct interview of Allegor

Determine additional interviews and documents needed after Allegor interview.

Prepared by:



Special Agent

8/23/2018

Date



Special Agent in Charge

8/24/2018

Date