

From: Fults, Deanna L <dlfults@tva.gov>
Sent: Thursday, May 23, 2019 1:30 PM
To: Luina, Scott
Subject: [External_Sender] FW: General Concerns with Recent Proposed Adverse Actions in Nuclear Regulatory Affairs
Attachments: General Concerns with Recent Proposed Adverse Actions in Nuclear Regulatory Affairs.docx; Licensing Intakes since Henderson at COC.docx; Licensing report 2016 with comments for Inza.docx
Importance: High

Provided per your request.

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From: Fults, Deanna L
Sent: Wednesday, September 19, 2018 3:04 PM
To: Hagins-Dyer, Inza E
Subject: General Concerns with Recent Proposed Adverse Actions in Nuclear Regulatory Affairs
Importance: High

Inza,

I added two new bullet points at the bottom of page 3 after we discussed the initial draft. Please let me know if you have any questions or need anything further.

Thanks,

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From: Fults, Deanna L

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"Luina, Scott" <Scott.Luina@nrc.gov>
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MESSAGE	885	5/23/2019 1:30:13 PM
General Concerns with Recent Proposed Adverse Actions in Nuclear Regulatory Affairs.docx		
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Licensing Intakes since Henderson at COC.docx	13095	
Licensing report 2016 with comments for Inza.docx	30528	

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General Concerns with Recent Proposed Adverse Actions in Nuclear Regulatory Affairs:

- 11 concern intakes raised with ECP in Nuclear Regulatory Affairs and Support Services since 2015, two of which specifically questioned the ERB process for Mr. McBrearty.
- In 2016, in case number NEC-16-00638, the ECP investigator noted that the Senior Manager of Fleet Regulatory Operations has a pattern of writing up individuals on service reviews including comments related to the employees' need for respectful communications when the employees may have expressed an opinion that differed from hers. The investigator noted five separate instances in three different departments in the past three years (not including the Concerned Individual's stated fear of being written up), where employees were either placed on a Performance Improvement Plan or have received negative comments on service reviews for what they perceived as disagreeing with the Senior Manager.
- Also noted at that time, two individuals reported that they were under a physician's care for ongoing stress-related illnesses that developed once they began working for the Senior Manager.
- Since 2016, ECP has documented 5 other instances of individuals reporting to the Senior Manager (or working with the Senior Manager in the case of McBrearty) who have left their position, been placed on a PIP, or in the case of Wetzel and Schrull are being offered a no-fault separation or termination.

Concerns with Schrull Adverse Employment Action:

- The original rationale for the No-Fault for Schrull included findings from an HR report that insinuated Schrull's conduct in February 2018 could lead to a chilled work environment. While that may have been a significant finding, Ms. Henderson admitted during the ERB that Schrull was only verbally coached as a result. At no time prior to the first scheduled ERB meeting was ECP made aware of this issue by anyone in Regulatory Affairs or HR. ECP had to ask for a copy of the report on the same day of the ERB meeting, once the packet was made available to the participants.
- When questioned why ECP had not been alerted to the potential chilled work environment, Mr. Shea responded to the ECP Senior Manager that he had concerns with the program's reputation, and when asked to clarify, he stated that management is always found to be the problem with ECP, and he expressed concerns with the way in which we gathered information for our findings.
- Because no plan had been made to address the possibility that Schrull would turn down the voluntary separation, Mr. Bono directed the Senior Manager to redraft the ERB package to include provisions that Schrull would be terminated in the event he did not accept the package. The ERB was held again on 9/7/18. As a part of the mitigation plan for that action, the plan included contracting with ORAU to perform a SCWE assessment within 2 months of the action being taken against Schrull. This is also a provision of the SCWE Mitigation Plan for Wetzel.
- In both versions of the SCWE Mitigation Plan Screening Form, the Senior Manager included language "Management is aware that this individual had discussions about his individual performance *and his views on his manager managing his performance with other in the department at various times leading up to his midyear review.*" (*Emphasis added*) Also included was the caveat that Schrull was not rated off track, however, page 1 of the Fact Finding Notes

document indicated that if he chose not to accept the no fault separation, “he will be terminated due to performance.” The Senior Manager included documentation in the package to justify her decision to terminate due to performance. However, it’s not clear that it would be justified or even that Schrull had been effectively put on notice of the need to improve his performance, given the admitted lack of formal documentation at the mid-year (even though the Senior Manager’s negative observations began as early as 8/10/17) that Schrull was off-track.

Concerns with Wetzel Adverse Employment Action:

- Both recent ERB write ups for Schrull and Wetzel say that the employees were critical of the Senior Manager. It could appear that the vocal employees are the ones being asked to leave, which could in turn cause other employees to become reluctant to voice a dissenting opinion.
- The OGC report appears to be largely focused on the conduct of McBrearty. A letter from Ms. Quirk was issued on August 10 recommending termination for McBrearty, but the memo from Ms. Quirk’s employees Grace and Chandler was left unsigned and undated.
- The investigation appears to only explore the allegations made by the Senior Manager. The OGC report includes some information from ECP, but it does not include one concern file initiated to address Ms. Conner’s concern, NEC-16-00638, (which involved elements of HIRD and a CWE). The OGC report extensively relies on statements made by other employees about the conflict between the Senior Manager and Ms. Conner to conclude that McBrearty, and to some extent, Wetzel, were using that conflict to perpetuate their harassment of the Senior Manager. As stated above, NEC-16-00638 presents information that suggests there were areas for the Senior Manager to improve upon when dealing with employees who expressed differing opinions, and this was a part of the formal recommendations made to the VP of Regulatory Affairs.
- The evidence of Wetzel’s misconduct was based on two things—1) Wetzel’s repeated comments (including during the OGC investigation) that the Senior Manager had pulled gate records and had McBrearty and Conner investigated, and from the comments made during the investigation by Ms. Justice (also under investigation for possible harassment of the Senior Manager) that Wetzel had complained to Ms. Justice about her performance review and questioned the Senior Manager’s qualifications, and 2) Wetzel asked that Shea approve her vouchers during her assignment at NEI because of her fears that the Senior Manager would use them as an investigative tool. The Senior Manager had in fact used travel vouchers as the basis for initiating the investigation into McBrearty’s travel with Conner in 2016. It’s not clear how Wetzel’s stated concern was addressed by Shea. It is also not described how TVA will address Wetzel’s departure with NEI.
- ECP has questions regarding the mitigation plan itself. The last page of Forms 41647 and 41648 contemplates a company-wide reinforcement of whistleblower protection principles, but the attached Communication plan only addresses the site and corporate Regulatory Affairs employees. The Communication plan might also need to consider addressing what limitations there are for an employee engaging in what they believe to be protected activity, and when that can lead to disciplinary action. The OGC report points out that Wetzel consistently made the same allegations against the Senior Manager, so it’s possible that she believed she was again engaging in a protected activity when talking with Mr. Slater.

- ECP also questions the consistency of this particular adverse action when compared to Schrull's. While ECP has not seen a copy of the involuntary separation package being offered to Schrull, during the multiple ERB discussions, it was stated that Schrull intended to retire in January 2019, and that this offer would be moving it up by a few months. With Wetzel, who has allegedly violated company policy, will be initially offered a no-fault separation with a potentially extended leave with pay status until eligible for retirement in March 2019.
- It's also unclear how management plans to structure the ORAU SCWE assessment to address both terminations, since it was included as a major part of both mitigation plans to address Schrull (termination for performance issues) and Wetzel (termination for a disciplinary action). It's likely that the remaining employees will draw conclusions that Schrull, Wetzel, McBrearty and even Tom Hess (who also recently resigned) were all a part of the harassment efforts against the Senior Manager.
- Three employees of the Senior Manager will have left TVA since July 2018, and McBrearty also left TVA during that period. This has not been recognized in any of the ERB mitigation plans as a potential stressor to the remaining employees. When asked about it during the Schrull ERB, the Senior Manager stated that employees perceptions would improve and more CR's would be generated once a new manager was in place.

Number	Case Name	Date Recorded
NEC-18-00289	ECP initiated concern	3/30/18
NEC-17-00683	Concern that SM Licensing retaliating against SQN Licensing Manager	7/31/17
NEC-18-00598	OC-questioning why no ERB at SQN	8/7/18
NEC-18-00680	OC-questioning why no ERB at SQN	8/1/18
NEC-16-00638	Concern-Licensing Retaliation (Conner)	6/23/16 * this was not included in the OGC report
NEC-17-00410	Concern-Licensing Harassment (McBrearty)	5/5/17
NEC-16-00576	OC-Referral from Henderson re: Licensing CFAM	6/7/16
NEC-17-00269	RR-questions about staying in Mode 4 at WBN U2	3/30/17
NEC-16-00132	CNL concern that conduct at BFN and WBN eroding safety culture	1/29/16
NEC-15-01192	Concern-Anonymous Hydrology Reporting issue	12/17/15
NEC-18-00528	OC-Contractor pay not approved on time by VP, Licensing	6/15/18

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NEC-16-00638 Findings

Concern Statement: Whether the Concerned Individual (CI) has been the subject of harassment and retaliation for raising safety concerns regarding (a) the reporting of the isolation of the High Pressure Fire Protection (HPFP) System at SQN, and (b) questioning Corporate Nuclear Licensing's (CNL) handling of a Notice of Unusual Event report at BFN. The acts of alleged harassment and retaliation include the following: (1) the Senior Manager, Fleet Regulatory Operations, made disparaging statements to another Corporate Functional Area Manager (CFAM) about the CI and asked the CFAM to mentor the CI; (2) the Vice President (VP) of Nuclear Licensing directed a CNL Senior Program Manager not to support a regulatory analysis, after the CI had specifically requested the Senior Program Manager's support, and later the VP directed the CI to communicate through their Senior Manager; (3) the Senior Manager, Fleet Regulatory Operations, reprimanded the CI for meeting with an NRC team leader during an NRC Component Design Basis Inspection (CDBI) at SQN; (4) the Senior Manager, directed the CI not to generate a Condition Report (CR) documenting the CNL's involvement regarding the failure to properly report a Notice of Unusual Event report at BFN to the NRC and suggested that the CI apologize to NPG Senior Management for raising the issue; (5) the Senior Manager made a new requirement that the CI be physically present for the 0830 phone call as a condition of employment and suggested that the CI may need to find a different position; (6) the Senior Manager initiated an HR investigation alleging that the CI and the SQN Licensing Manager were engaging in an inappropriate relationship; and (7) the CI has been required by the Senior Manager to take annual leave over the past four months while still working an average of 60-hour work weeks.

After a follow-up interview was conducted with the Concerned Individual, an additional concern was identified regarding (8) whether there is a chilled work environment within the Corporate Nuclear Licensing Organization.

Findings:

I. Harassment and Retaliation for Raising Safety Concerns-Not Substantiated

The CI has engaged in protected activity by expressing concerns to management about site activities regulated by the NRC. The CI was the subject of an adverse action that occurred when the CNL Senior Manager requested an HR investigation into the CI's alleged relationship with the SQN Licensing manager. Interviews reveal that the CI has also been the subject of continued rumors about this relationship in the Corporate, Watts Bar and Sequoyah Nuclear Plant licensing offices. A number of other experiences were validated as having had an impact on the CI. These include instances in which employees outside of the CNL group have offered to mentor the CI, based on their perceptions that the CI was struggling in his/her new role as CFAM, and circumstances in which the Nuclear Duty Officer (NDO) work group was informed by their manager in a team meeting that the CI felt as though the NDOs were creating a hostile work environment for the CI. This was after the CI expressed this concern to the Senior Manager of Fleet Regulatory Operations. As of the date of this report, the CI had also applied

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for a Voluntary Reduction in Force, stating to the investigator that this situation contributed to their decision to leave the company.

There are differing opinions as to whether the aforementioned actions were harassment or retaliation against the CI for engaging in protected activity. The CI believes that the various actions by management were part of an ongoing pattern of harassment by their CNL management, specifically by the Senior Manager of Fleet Regulatory Operations. Most of the events listed above are confirmed as having at least partially occurred as described by the CI (in particular, Nos. 2, 3, 4, 6).

The investigation reveals that there are legitimate non-discriminatory basis for the actions taken. For example, concern No. 2 involved a decision by the VP of Licensing to initially deny the CI's "request" for another employee, who did not work for the CI, to support a regulatory analysis. The VP of Nuclear Licensing made the decision based upon the manner in which the CI made an assignment for this employee. The VP did not consider this a request for an employee to assist, but rather, it came across as a directive from the CI to the employee to go to Sequoyah. At the time the CI made the assignment to the employee, it had not been coordinated properly with Site VP of Watts Bar, who would be losing this particular employee's expertise on a special project at his site. Once this was properly coordinated by the VP of Nuclear Licensing, then the employee was sent to Sequoyah to support the regulatory analysis.

While No. 3 may have occurred as described by the CI, there is a plausible explanation for the conversation that the Senior Manager had with the CI after the CI spoke with the NRC team leader during the SQN CDBI. The reprimand the CI described in No. 3, was very likely not a blanket prohibition against speaking with the NRC, contrary to the CI's allegation. The Senior Manager admitted having a conversation with the CI about whether the site had a licensing point of contact present during the CI's meeting with the NRC, and then she encouraged the CI to always have someone from the site present when meeting with the Regulator. The CNL group has a well-established practice of designating points of contact with the NRC and clear preferences of not speaking with the Regulator unless the site licensing point of contact is present. All Licensing employees, at both Corporate and the Sites, were able to describe these expectations. None of them described this as limiting their interactions with the Regulator or that they had ever felt pressured not to speak freely with the NRC.

As for No. 4, the Senior Manager confirmed that she had a conversation with the CI after hearing from multiple individuals that the CI had made statements accusing certain TVA executives of hiding information on a Notice of Unusual Event after a phone call with the affected site. Someone had also alerted the VP of Nuclear Licensing about the incident, and the VP and Senior Manager agreed to address the statements with the CI. The Senior Manager admitted expressing to the CI that this was a hurdle to overcome, and that the CI should tell the VP of Nuclear Licensing what happened. The CI was also instructed to let the VP know what the CI's perspective had been in making the comment and that the CI should ask for the VP's help in rebuilding that relationship with the executive the CI had questioned. The CI then acted on their own to have a conversation with the executive without talking with the VP of Nuclear

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Licensing. The Senior Manager explained that the discussion about not writing a CR was during a separate incident, and that was again expressed to the CI as a preference that CNL employees, in their oversight function, first get the affected site to write a CR and to own the issue. If the affected site declined to write a CR, then the CNL employee would write a CR to document the issue. The Senior Manager also pointed to the increase in CRs generated in CNL during the first six months of her tenure, with 77 written from October 1, 2015 to April 12, 2015, compared to only 47 written by CNL in the six months prior to her coming to CNL, to illustrate that she actively encourages her employees to write CRs.

In regard to No. 6, that the CI was subject to an HR investigation, there were a number of data points supporting the Senior Manager's request for investigation into the alleged relationship between the CI and the SQN Licensing manager. One concern expressed by the Senior Manager was the importance of the CI, as Licensing CFAM, providing unbiased oversight to each of the site licensing managers. Other observations included a defensiveness that the CI had for decisions made by Licensing at SQN that they did not exhibit for decisions made by other site Licensing departments. Management had a responsibility to determine whether the CI could perform the function in the event an inappropriate relationship had been substantiated.

It does not appear that the CI was the victim of harassment or retaliation for engaging in protected activity. Instead, the record reveals that there were a number of documented performance deficiencies that the management team was attempting to coach the CI to improve upon. Specifically, there have been a number of missed deliverables, issue elevations, and challenge meetings the CI did not set up at sites. The record indicates that the CI has been unresponsive to this feedback, from his/her chain of command.

Other CFAMs, NDOs, and site Licensing employees who work outside of CNL, but alongside the CI, confirmed CNL management's concern that the CI initially struggled in the new role as the CNL CFAM. Many of the employees interviewed indicated that they viewed the CI as having an aggressive, confrontational attitude when questioning others. It was also reported that the CI was prone to becoming emotional over perceived slights, and that the CI still needed to learn what the expectations were for the CNL CFAM position. Interviews further reveal that the CI has worked to improve the other CFAM's and NDO's perceptions of the CI, and those same employees stated that they had seen some improvements in the CI's communication style. Several indicated that they had shared feedback with the CI's Senior Manager noting the improvement. However, the record also reveals that the CI has not always followed through on requests made by their chain of command. The Senior Manager confirmed that the CI has not completed a number of promised actions that were a part of the CI's annual performance review, and the CI has not requested any extensions or provided explanation for the missed deadlines.

The investigation revealed that there are credible explanations for other actions taken by management. For example, mentoring is a common practice at the CI's level within the company, and there is no evidence that the manager made disparaging comments about the CI when discussing the need for a mentor. To address other examples given by the CI,

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attendance at the fleet phone call was not a new position requirement that was communicated after the CI engaged in protected activity. The CFAMs in other departments confirmed that is a regular expectation of their jobs. HR also confirmed this was discussed with each interviewee on the CNL CFAM position, prior to the CI accepting the position.

TVA policy also governs concern no. 7, that the CI was required to take Annual Leave when working 60-plus hour weeks. The CI is a manager, and as such, is subject to working more than 40 hours a week when necessary to meet the needs of the business. Compensatory time is not recognized in the CNL department. There is no dispensation within the TVA Leave Policy, TVA-SPP-11.420, for managers to be exempt from taking leave if they are not at work, or for any employees who have not been approved to work from home. The CI, as a manager, is expected to understand that they are an example for the employees who work for them and follow all TVA policies. All other instances raised by the CI can be similarly explained by policy or practice. Therefore, the CI's claims of harassment and retaliation are not substantiated.

Management Behaviors/SCWE Risks

While CNL management may have a legitimate business reason for each of the events alleged by the CI, there are still a number of areas that the CI's management must address to avoid an unhealthy work environment. Twenty-two (22) individuals were interviewed, some of whom currently work for the CNL group, some work with CNL staff in Corporate and at each of the sites, and some worked for the Senior Manager of Fleet Regulatory Operations in a previous role.

The Senior Manager of Fleet Regulatory Operations has a pattern of writing up individuals on service reviews including comments related to the employees' need for respectful communications when the employees may have expressed an opinion that differed from hers. The investigator noted five separate instances in three different departments in the past three years (not including the Concerned Individual's stated fear of being written up), where employees were either placed on a Performance Improvement Plan or have received negative comments on service reviews for what they perceived as disagreeing with the Senior Manager. Two individuals indicated that they are under a physician's care for ongoing stress-related illnesses that developed once they began working for the Senior Manager.

Commented [FDL1]: This total increases to 10 in five years when Conner, McBrearty, Hess, Schroll and Wetzel are added.

ECP does not have the technical expertise to second guess management's evaluation of the CI's performance within Licensing. However, interviews reveal that the peers of the Senior Manager have expressed concerns with her style of communication to her subordinates and peers. Just as the CI has missed a number of days since working for the Senior Manager, there are other instances where employees report that the Senior Manager's management style may have caused other employees to miss work and be less productive when working for her.

In several instances, the Senior Manager's peers reported feeling uncomfortable about the way the Senior Manager talked about individuals after fleet phone calls. Many others, both within the CNL group, and outside of it, characterized the Senior Manager as lacking in Licensing

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experience, which some speculated was a cause for the disagreements the Senior Manager may be having with the CI. More than one employee at a site stated that they did not trust the Senior Manager, based on previous experience with her. Others echoed a sentiment that the executives had a much higher opinion of the Senior Manager than employees who had worked for her.

The investigation concludes that behaviors exhibited by the Senior Manager have the potential to create a work environment that is not conducive to raising safety concerns. It should be noted that ECP provided this feedback to the Senior Manager who was receptive to the observations.

II. Chilled Work Environment-Not Substantiated

Nine individuals who work in Corporate Nuclear Licensing were interviewed. Questions focused on whether there were any events or nuclear safety concerns impacting the level of trust within the CNL work group. All indicated that a Safety Conscious Work Environment existed within CNL. Similarly, all stated that they would raise a nuclear safety or quality-related concern if they had one. Four of the nine stated that the work environment had improved, and two stated that there had not been a decline in the past couple of years. While the work environment is not currently chilled, there are still some precursors which must be immediately addressed.

One-third indicated that they would not utilize HR to report management/personnel concerns. Similarly, one-third indicated that they still would not raise other concerns to CNL management. Their reasons ranged from having a doubt that they would get a straight answer to their concern, to feeling as though they could not talk with the Senior Manager of Fleet Regulatory Operations. Some interviews revealed a lack of confidence that issues raised to the VP of Nuclear Licensing would be appropriately addressed. Two employees stated that they believed they had been retaliated against in the past for making statements that they believed the Senior Manager disagreed with or that may have questioned her experience or judgment. One stated that they had expressed concerns with the way in which a nuclear safety-related incident was being reported on, and the Senior Manager retaliated during the performance review process. This same individual stated that it should not have to rise to the level of a nuclear safety concern for them to lose trust for the Senior Manager. A third individual confirmed that they did not always know whether it was appropriate to express a differing opinion from that of the Senior Manager. There has been a history of work environment concerns in the CNL organization, and ECP recommends that those historical concerns again be reviewed with actions taken to preclude recurrence of similar issues.

Two employees also indicated that they knew of an instance where CNL employees were discouraged from writing a CR. They both acknowledged that it was an employee working for the VP of Operations who discouraged the CRs from being written, and that no one from CNL management had ever discouraged them for writing a CR. One of these employees reported feeling chilled from using CAP based on that person's position within the company, as a nuclear safety culture program owner. Copies of the emails from this Operations employee to the CNL employees were provided to ECP.

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This same individual also played a role in the CI's stated concern (Concern No. 1) that they believed their Senior Manager had made disparaging remarks about their performance in requesting a mentor for the CI. The Senior Manager denied that she had solicited the Operations employee to speak with the CI or that she made disparaging remarks about the CI to the Operations employee. The Operations employee then spoke, of his own accord, with the CI in a manner which the CI and others who witnessed it described as being embarrassing. The issue of the Operations employee's involvement with matters within CNL has been referred to both the VP of CNL and the Senior Manager of ECP to address outside of this investigation.

Recommendations

Immediate actions must be taken to:

- reinforce support for reporting conditions in CAP without fear of retaliation;
- clearly communicate that all employees have the right to express differing opinions without fear of retaliation;
- develop a strategy to improve the overall CNL working environment and repair trust; and
- address issues related to the Senior Manger's performance management style, communication skills and perception of retaliation for disagreeing with her.

A Corrective Action Letter will be issued reiterating the recommendations listed above.

This report was prepared by Deanna L. Fults, Senior Program Manager, Nuclear Employee Concerns Program. Ms. Fults has over 12 years experience in resolving workplace issues through alternative dispute resolution and in all other avenues TVA employees utilize for the expression of concerns. She has completed investigation training at the Equal Employment Opportunity Commission and the National Association of Employee Concerns Professionals. In addition Ms. Fults has completed Next Level Leadership training at INPO. Ms. Fults has a Bachelor of Arts in Political Science and Spanish from Converse College and a Juris Doctorate from Tulane University. She is licensed to practice law in Tennessee and Alabama.