

From: Alan Kabat <kabat@bernabeipllc.com>
Sent: Friday, March 8, 2019 4:58 PM
To: Luina, Scott; Checkle, Melanie
Subject: [External_Sender] FW: McBrearty / TVA, 4-1760-18-153
Attachments: 2019 03 08 McBrearty response to TVA letter.pdf

Dear Mr. Luina and Ms. Checkle,

On behalf of Michael McBrearty, attached please find a letter just sent to OSHA regarding TVA's response to his retaliation complaint.

Thank you for your interest,

Alan

Alan R. Kabat
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From: Alan Kabat
Sent: Friday, March 8, 2019 3:55 PM
To: 'Fehlman, Lauren - OSHA'
Cc: 'Chin, Steven C' ; 'Bernier, Michael Vincent' ; 'Rhinehart, Carol B'
Subject: McBrearty / TVA, 4-1760-18-153

Ms. Fehlman,

The attached response to TVA's supplemental submission is also being sent to you by regular mail; TVA's counsel is copied here.

Sincerely,
Alan

Alan R. Kabat
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Subject: [External_Sender] FW: McBrearty / TVA, 4-1760-18-153
Sent Date: 3/8/2019 4:57:58 PM
Received Date: 3/8/2019 4:56:28 PM
From: Alan Kabat

Created By: kabat@bernabeipllc.com

Recipients:

"Luina, Scott" <Scott.Luina@nrc.gov>
Tracking Status: None
"Checkle, Melanie" <Melanie.Checkle@nrc.gov>
Tracking Status: None

Post Office: BW-Ex.bernabeipllc.local

Files	Size	Date & Time
MESSAGE	3441	3/8/2019 4:56:28 PM
2019 03 08 McBrearty response to TVA letter.pdf		105213

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By Email and First Class Mail

March 8, 2019

Ms. Lauren Fehlman, Regional Investigator
U.S. Department of Labor-OSHA
2296 Henderson Mill Road, NE,
Suite 200
Atlanta, GA 30345-2739

Re: *McBrearty / Tennessee Valley Authority*, No. 4-1760-18-153

Dear Ms. Fehlman:

I write to provide Mr. McBrearty's response to TVA's February 11, 2019 submission. In summary, Mr. McBrearty's initial response letter (December 14, 2018), already addressed the information contained in TVA's February 11 submission (which merely contained an unredacted version of the TVA investigation report provided previously). TVA's February 11 submission again failed to address Mr. McBrearty's original complaint, including the safety issues he raised to both Joseph Shea and Erin Henderson during a Corporate Licensing Peer Team teleconference just over two weeks prior to his suspension and constructive discharge (*see* December 14, 2018 letter, at 16-17).

The unredacted version of the TVA investigation report relies primarily on information obtained from James Polickoski (the Corporate Licensing CFAM and a direct report to Ms. Henderson). As described in Mr. McBrearty's December 14, 2018, letter (*see* pages 6-8), Mr. Polickoski, who was a friend of Mr. McBrearty's, was the person who most frequently contacted Mr. McBrearty to air his numerous and significant complaints about Ms. Henderson's abusive management style and her mistreatment of him. Not surprisingly, at about the same time that Ms. Henderson's complaint was apparently filed, she gave Mr. Polickoski an unusual promotion wherein his current position was upgraded to a higher level resulting in a higher salary, evidently to reward him for changing sides so that he would now support Ms. Henderson.

Exhibit 1 to TVA’s February 11 submission (Page 12 of the Report of Investigation), states, in relevant part, that:

On October 4, 2017, Mr. Shea informed Ms. Henderson that “Mike was leaving me off of emails again” and forwarded Ms. Henderson a teleconference invitation, organized by Mr. McBrearty, to “discuss the pros and cons of either requesting a Regulatory Conference or providing a written response to a pending Choice Letter” -- an issue on which Ms. Henderson was directly involved but was not included on the call. On October 19, 2017, Mr. McBrearty informed Mr. Shea that he had scheduled a meeting with the Chief Nuclear Officer “to brief him on the decision to not request a Regulatory Conference for the Security SGI issue” but failed to include Ms. Henderson . . .

Both of these statements are false. The facts regarding the October 4, 2017, teleconference were already addressed in Mr. McBrearty’s December 14, 2018 response letter (*see* page 9).

Following the teleconference on October 4, 2017, Mr. Shea asked Mr. McBrearty to arrange a briefing for the Chief Nuclear Officer (Michael Balduzzi), and Mr. Shea asked that both he and Ms. Henderson be included in the meeting. Mr. McBrearty did just as Mr. Shea asked: he contacted the CNO’s senior administrative assistant and asked her to schedule the meeting and invite both Mr. Shea and Ms. Henderson, as well as TVA Corporate Security Director Fred Marcussen. On the morning of the scheduled CNO briefing, Mr. McBrearty travelled to the TVA Corporate Office (location of the CNO’s office) and attended the daily TVA Fleet Plan of the Day (POD) meeting (this is a daily management meeting facilitated by the Corporate Office in which Mr. McBrearty normally participates via televideo from his work site). While awaiting the start of that meeting, Mr. Balduzzi (the CNO) asked Mr. McBrearty and Mr. Marcussen what would be the subject of the briefing scheduled later in the morning. Messrs. Marcussen and McBrearty explained to Mr. Balduzzi that Mr. Shea requested the briefing be scheduled in order to explain the recommended position on the NRC security violation. After a brief discussion, Mr. Balduzzi noted he understands the issue and concurs with Mr. McBrearty’s and Mr. Marcussen’s recommendation, and instructed them to have his administrative assistant cancel the briefing as it was unnecessary. In other words, the CNO himself (who outranks Mr. Shea) decided that there was no need to have a separate meeting with Mr. Shea and Ms. Henderson. Mr. McBrearty promptly contacted Mr. Shea to let him know about the discussion with the CNO, and the direction of the CNO to cancel the meeting. Mr. Shea is well aware of this sequence of events, so that TVA’s assertions above are false.

These two examples are typical of the harassment and intimidation that Mr. McBrearty was constantly subjected to by Mr. Shea and Ms. Henderson, including repeatedly falsely accusing Mr. McBrearty of omitting Ms. Henderson from emails and meetings, and raising false complaints with Mr. McBrearty's manager.

As TVA noted on page 4 of the TVA ECP file NEC-16-00638 (Exhibit E in TVA's Position Statement, November 20, 2018):

The Senior Manager of Fleet Regulatory Operations (Ms. Henderson's position at the time) has a pattern of writing up individuals on service reviews in a manner that can appear to be retaliatory. For example some individuals reported having negative comments added to their service reviews about the 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 Individuals 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. (emphasis added).

Note that the "three different departments" actually involved three different physical locations – Watts Bar Plant near Spring City (2013); Sequoyah Plant near Soddy Daisy (2014-2015) and TVA's Corporate Office in Chattanooga (2015-2016).

TVA's own ECP investigations established that Ms. Henderson has a long, established pattern of retaliating against individuals who disagree with her. TVA failed to take any action to stop Ms. Henderson's behavior. Instead, Mr. Shea (the Vice President of Regulatory Affairs) has behaved in an inappropriate manner that encourages Ms. Henderson to continue this retaliatory management style. TVA is now reduced to arguing that numerous, highly experienced, senior managers and individuals, all with very good work performance histories both at TVA and with other previous employers, are now all of a sudden conspiring against Ms. Henderson. TVA's conspiracy theory is false and OSHA should not condone TVA's attempt to conjure up a vast conspiracy out of thin air. There is no conspiracy; the only common thread is that all of the named individuals, including Mr. McBrearty, properly disagreed with Ms. Henderson on regulatory issues. Ms. Henderson and TVA have now retaliated against all of the individuals (Mr. McBrearty, Ms. Conner, Ms. Wetzel and Mr. Schrull) by either direct termination,

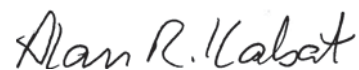
Ms. Lauren Fehlman, Regional Investigator
U.S. Department of Labor – OSHA
March 8, 2019
Page 4 of 4

constructive termination, or removing the individual from their position. TVA's actions explain why an experienced individual like Thomas Hess chose to quietly resign from TVA Corporate Regulatory Affairs in July 2018 rather than face continued retaliation if he had raised concerns about the toxic and corrosive work environment that Ms. Henderson created (*see* Mr. McBrearty's December 14, 2018, letter, at 10).

In conclusion, Mr. McBrearty conscientiously performed his job functions, and for over two years, tried to get Ms. Henderson and Mr. Shea to address two NRC-identified violations of regulatory requirements. Instead of addressing those violations, shortly after Mr. McBrearty raised safety concerns anew during an April 2018 Corporate Licensing Peer Team meeting – concerns that could reflect poorly on Ms. Henderson's and Mr. Shea's organization – TVA placed him on indefinite paid suspension, with the threat of termination, until his constructive discharge in August of 2018.

For the foregoing reasons, and those set forth in Mr. McBrearty's OSHA complaint, and his December 14, 2018 supplement, OSHA should find that TVA violated the Energy Reorganization Act, 42 U.S.C. § 5851 *et seq.*, and NRC Regulation 10 C.F.R. § 50.7, when it initiated a retaliatory investigation of Mr. McBrearty, and used that investigation to place him on paid leave in order to force his termination.

Sincerely,



Alan R. Kabat
Attorney for Michael McBrearty

cc: Mr. Michael McBrearty
Stephen C. Chin, Esquire (TVA)