

unreasonable and, given that it was based in part on Dr. Ben-Haim's demeanor at the hearing (see 49 NRC at ___, slip op. at 87), it is subject to deference on appeal.⁽²⁾ In any event, because the Board's order has no precedential effect, any arguably incorrect rulings by this Board will have no adverse effect on the staff in future enforcement proceedings. See *Sequoyah Fuels Corp.*, CLI-95-2, 41 NRC 179, 190 (1995) ("Licensing Board decisions ... have no precedential effect beyond the immediate proceeding in which they were issued"). Under these circumstances, we do not consider it an appropriate use of the Commission's resources to set this case for briefing and to engage in a full review of the "penalty" portion of LBP-99-4.

II. DR. BEN-HAIM'S PETITION FOR REVIEW

Dr. Ben-Haim in his petition objects principally to the Board's finding that he had "deliberately" caused the licensee NMA to be in violation of several of the Commission's requirements. He insists that his errors stemmed from an inadequate understanding of the regulations rather than from a conscious attempt to circumvent them. The remainder of his petition consists of either challenges to specific findings of fact or reiterations of his good intentions.

Dr. Ben-Haim does not attempt to satisfy the requirements of section 2.786(b)(4), *supra*, and our review of his pleading reveals no arguments that rise to the level of substantiality necessary for us to grant discretionary review. The Board's finding appears to be supported by the record, including Dr. Ben-Haim's own admissions, leaving us doubtful that any purpose would be served by plenary briefing and decision on the issues Dr. Ben-Haim raises.

CONCLUSION

The Commission denies the staff's and Dr. Ben-Haim's petitions for review.

IT IS SO ORDERED.

For the Commission
Original signed by
Annette L. Vietti-Cook

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 26th day of April, 1999.

1. 10 C.F.R. § 2.786(b)(4). See generally *Emerick S. McDaniel* (Denial of Application for Reactor Operator License), CLI-96-11, 44 NRC 229, 230 (1996) (denying reactor operator candidate's petition for review for failure to present substantial issues); *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-96-9, 44 NRC 112, 113 (1996) (denying intervenors' petition for review for failure to present substantial issues).

2. See *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), ALAB-772, 19 NRC 1193, 1218 (1984) (where the credibility of evidence turns on the demeanor of a witness, an appellate board will give the judgment of the trial board, which saw and heard the testimony, particularly great deference), *rev'd in part on other grounds*, CLI-85-2, 21 NRC 282 (1985), and cited authority.