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Subject: Draft Discrimination Task Group Report

Below is the result of your feedback form. It was submitted by
Michael Stein (jackmike@erols.com) on Thursday, June 7, 2001 at 10:06:03

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Comments: The Draft Report states clearly that the NRC uses the preponderance of evidence standard. However, the most recent discrimination enforcement action against Union Electric Company, EA 01-005, dated May 14, 2001 states as one of its bases:

"Union Electric took adverse action against the security officer, at least in part, because of their protected activity."

The agency isn't even hiding the almost zero tolerance standard being used. Any first year torts or second year evidence law student will tell you that preponderance of the evidence is evidence that shows it is more likely than not that discrimination occurred- 50.1%. For all the years I was involved in this program, before we took any actions we measured the evidence and many times when it was very, very close-like the case of the radiographer in Montana- we opted not to take action or to withdraw any action taken. I remember one time in Chicago, before the Millstone changes, where we obtained evidence at the PEC from the licensee which made us conclude that we did not have the preponderance of the evidence. To reach a preponderance conclusion you have to weigh all the evidence, including the evidence obtained from the alleged discriminator either in writing or at a PEC.

The NRC doesn't care anymore. So long as there is a scintilla of evidence of adverse action against an employee, at least in part tied to the protected activity-it is enough. I would hope that someday someone would challenge both the denial of due process and this weak excuse for an evidentiary standard that any law student would argue against. I am so thankful that when I left the NRC I did not go and work for a utility and be under the NRC's jurisdiction.

Mike Stein

Mike

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