

From: David Vito *RI*
To: David Nelson (HQ-OE); Dennis Dambly; Hubert J. Miller; Jim Dyer; Lawrence Chandler; OEMAIL; Rani Franovich
Date: 1/22/04 2:17PM
Subject: 3-week e-mail for OI Cases 1-2003-010, 010S, 008, 001, 015F, and 017
Place: OEMAIL

Closure of OI Case 1-2003-010 (relates to Allegation RI-2002-A-0113 - Salem/Hope Creek)

On January 9, 2003 OI Region I initiated case #1-2003-010, to determine if a senior engineer PSEG Nuclear, working at Salem/Hope Creek, was discriminated against for engaging in protected activity. Specifically, the senior engineer believed that he was suspended, had his site access removed, and was threatened with receiving a poor performance appraisal and termination in August 2002, because he raised a concern via the Artificial Island corrective action program in July 2002, about the adequacy of the transient review (TARP) procedure and his own qualifications to be on TARP. The OI investigation revealed that a pivotal issue was related to the fact that the senior engineer did not want to accept, as part of his normal work activities, the duties of a TARP responder, which included the occasional need to respond to the site at abnormal hours and times. As such, site management's actions toward the senior engineer's refusal to accept a position on the TARP appeared to be actions in response to a matter of work performance, rather than engagement in protected activity. The senior engineer was given administrative leave (paid) to reconsider his refusal of the assignment, and his site access was also put on administrative hold at the time. The senior engineer then took a week of sick leave, and when he returned to the site, his site access was still on hold. as his supervisor assumed he was continuing to refuse the TARP assignment. When the supervisor learned that the senior engineer had accepted the assignment, the suspension was rescinded and the supervisor apologized to the senior engineer. Ultimately, the senior engineer did not have to participate on the TARP due to a medical condition.

A Region I ARB on September 3, 2003 agreed with OI's conclusions, and recommended closure of the allegation. However, shortly thereafter, before the allegation closure could be processed, the senior engineer provided additional information to Region I, which he believed indicated that an unsatisfactory performance appraisal on August 28, 2003, demonstrated continuing discrimination against him. A subsequent Region I ARB on September 22, 2003, directed OI to open a supplemental investigation to determine if the newer information would have any bearing on the earlier conclusions.

On September 22, 2003, OI Region I initiated supplemental case #1-2003-010S, to determine if PSEG was engaged in a continuing pattern of discrimination against the senior engineer, including the issuance of an unsatisfactory mid-year performance appraisal in August 2003, because the senior engineer raised concerns through the CAP in July 2002 regarding qualifications for and procedural compliance associated with the transient assessment response plan (TARP).

It was OI's view that the senior engineer possibly misrepresented his mid-year performance appraisal to the NRC by not providing the complete appraisal for context. The senior engineer only provided the NRC with an excerpt from his mid-year appraisal which reflected one "unsatisfactory" rating, when, in fact, he had received an overall mid-year evaluation of "satisfactory." By providing only selected information, the senior engineer's credibility was called into question. Furthermore, the mid-year review was found to be specifically designed to identify weaknesses in performance and provide opportunities for improvement. The end of the performance appraisal becomes the official rating of record.

Contrary to the senior engineer's assertion that he received an unsatisfactory mid-year performance evaluation in 2003, OI deemed the Engineering Supervisor's testimony that the purpose of the appraisal was to identify areas for improvement and that the senior engineer was rated satisfactory overall, to be credible. Based on testimonial and documentary evidence, OI opined that the Engineering Supervisor's mid-year review of the senior engineer's performance was a good faith effort to help the senior engineer focus on the one area that needed improvement.

Based on the results of this supplemental investigation, OI reaffirmed its conclusion that the senior

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engineer was not discriminated against for having engaged in protected activities.

The OI (supplemental) report was distributed to the staff on December 23, 2003. An ARB was held on January 8, 2004, to discuss the matter. The ARB agreed with the conclusions of the OI case and directed that a closeout letter be sent to the senior engineer and that a letter be sent to the licensee describing the conclusions of the OI investigation, pending any further comments. If no other views are received within 3 weeks of the date of this e-mail, these letters will be distributed.

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