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March 25, 2011

DECISION AND ORDER OF

THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner:	Mary Ravage
Date of Filing:	January 19, 2011
Case Number:	TBA-0102

This Decision considers an Appeal of an Initial Agency Decision (IAD) issued on January 6, 2011, involving a complaint of retaliation filed by Mary S. Ravage ("Ravage" or "Complainant") under the Department of Energy (DOE) Contractor Employee Protection Program, 10 C.F.R. Part 708. In her complaint of retaliation (hereinafter "the Complaint"), Ravage alleged that her former employer, Medcor, Inc. (Medcor), retaliated against her for making a protected disclosure under Part 708 regarding an alleged incident where a fellow employee slapped another fellow employee on the arm. In the IAD, an Office of Hearings and Appeals (OHA) Hearing Officer determined that Ravage had not shown, and could not show pursuant to 10 C.F.R. § 708.5(a), that she reasonably believed that in disclosing the alleged arm slap to her superiors, she revealed either (1) a substantial violation of law, rule or regulation, or (2) a substantial and specific danger to employees or to public health and safety. The Hearing Officer therefore granted a Motion for Summary Judgment filed by Medcor, and then dismissed the Complaint without a hearing. Ravage appealed the decision. As set forth below, the appeal is denied.

I. BACKGROUND

A. The DOE Contractor Employee Protection Program

The Department of Energy's Contractor Employee Protection Program was established to safeguard "public and employee health and safety; ensur[e] compliance with applicable laws, rules, and regulations; and prevent[] fraud, mismanagement, waste and abuse" at DOE's government-owned or-leased facilities. 57 Fed. Reg. 7533 (March 3, 1992). Its primary purpose is to encourage contractor employees to disclose information which they "reasonably and in good faith" believe exhibits unsafe, illegal, fraudulent, or wasteful practices and to protect those "whistleblowers" from consequential reprisals by their employers. 10 C.F.R. § 708.5 (a). Thus, contractors found to have taken adverse personnel actions against an employee for such a

disclosure or for seeking relief in a "whistleblower" proceeding [a "protected activity"] will be directed by the DOE to provide relief to the complainant. *See* 10 C.F.R. § 708.2 (definition of "retaliation").

The DOE Contractor Employee Protection Program regulations set forth at 10 C.F.R. Part 708 establish administrative procedures for the processing of complaints. Under these regulations, review of an IAD, as requested by Ravage, is performed by the Director of OHA. 10 C.F.R. §708.32.

B. History of the Complaint Proceeding

For purposes of review, I set forth the pertinent facts as averred in the Report of Investigation (ROI) and in the subsequent IAD.[1] Medcor ran two clinics as a subcontractor of Bechtel National Inc. (Bechtel). Bechtel is the contractor responsible for the environmental clean-up operation for the DOE's Office of River Protection (ORP). Medcor hired Ravage in June 2009 to work on an "as needed" basis as a nurse for the clinics.

Ravage contends that on October 8, 2009, she was told by a co-worker, Kristine Welsh, that the previous evening Welsh had been struck by another co-worker, XXXXX. That evening, Ravage verbally reported Welsh's allegations to Medcor's Director of Operations, Cindi McCormack. Welsh subsequently informed McCormack that, on October 7, 2009, XXXXX had "slapped my left arm pretty hard." October 12, 2009, e-mail from Welsh to McCormack. On October 28, 2009, XXXXX was promoted to XXX XXX, and on October 29, 2009, Ravage was hired as a full-time nurse.

In her Complaint, Ravage contends that she found Welsh's allegation credible because she alleges that she too was struck by XXXXX during the week prior to XXXXX's alleged arm-slap of Welsh. Although Ravage asserts that in her October 8, 2009, conversation with McCormack, she told McCormack that she (Ravage) had been struck by XXXXX on a separate occasion, McCormack has stated that she has no recollection of Ravage making this assertion. Instead, McCormack contends that on October 8, 2009, she asked Ravage if she had ever experienced any physical assault or threat of violence in the workplace, and Ravage denied having experienced them. November 12, 2010, Affidavit of Cindi McCormack, Exhibit A to Medcor's November 23, 2010, Motion for Summary Judgment at 2. On November 1, 2009, Ravage sent an e-mail to McCormack reiterating the concerns about XXXXX's conduct towards Welsh that she had verbally expressed on October 8, 2009. Ravage's November 1, 2009, written account does not assert that Ravage was ever struck by XXXXX. The November 1, 2009, e-mail does, however, accuse XXXXX of speaking to her with "an angry voice and

[1] The events leading to the filing of Ravage's complaint are fully set forth in the IAD. *See Mary Ravage/Medcor, Inc.*, Case Nos. TBH-0102, TBZ-0102 (2011). Decisions issued by OHA are available on the OHA website located at http://www,oha.doe.gov. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at http://www.oha.doe.gov/search.htm.

with a mean face." November 1, 2009, e-mail from Ravage to McCormack. A subsequent, December 7, 2009, e-mail from Ravage to McCormack complains about XXXXX's aggressiveness but also fails to contain an allegation that Ravage was struck by XXXXX. The first record of an allegation that Ravage was struck by XXXXX appears in a December 22, 2009, e-mail from Ravage's husband, Dr. Chris Ravage, M.D., to Medcor's Chief Operating Officer, Bennet W. Petersen. In that e-mail, Dr. Ravage alleges that XXXXX "hip-checked" his wife during the week prior to XXXXX's alleged striking of Welsh. [2]

Medcor contends that Ravage's poor work performance in November and early December 2009 resulted in two written warnings to Ravage. On December 8, 2009, Ravage was warned by a Medcor supervisory team that future problems could result in disciplinary action including termination. On January 6, 2010, Medcor asked Ms. Ravage to resign.[3] When Ravage refused to resign, Medcor terminated her employment. IAD at 3.

On January 21, 2010, Ravage filed her Complaint. The Complaint alleges that "Medcor had been given copious warning[s] that there were issues in their Richland operation and the response was to try and reign [sic] in the squeaky wheel." Complaint at 4. In this regard, the Complaint alleges that XXXXX systematically harassed and undermined Ravage in retaliation for Ravage's reporting of Welsh's allegation to McCormack. As noted above, the Complaint alleges that XXXXX had struck Ravage less than a week before the alleged incident involving Welsh. Complaint at 1.

Medcor filed responses to the Complaint on March 4, 2010, and on May 14, 2010, arguing that Ravage had made no disclosures protected under Part 708, and that her termination was not retaliatory. In June 2010, ORP's Employee Concerns Manager transmitted the Complaint to OHA for an investigation followed by a hearing. On June 9, 2010, the OHA Director appointed an Investigator (OHA Investigator) who conducted an investigation into the allegations contained in Ravage's Complaint. On September 8, 2010, the OHA Investigator issued a Report of Investigation (ROI) in this case. In the ROI, the OHA Investigator concluded that Ravage was alleging a single protected disclosure, *i.e.*, reporting to McCormack on October 8, 2009, that Welsh alleged that she was struck by XXXXX. With regard to that one disclosure, the OHA Investigator found that Ravage had not demonstrated, by a preponderance of the evidence, that this information met the criteria for a Part 708 protected disclosure. ROI at 4.

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[2] In Ravage's Response to Medcor's Motion for Summary Judgment, Dr. Ravage refers to this alleged action by XXXXX as "a hip check like in a hockey game." Response at 1. A "hip-check" is a term used in ice hockey to describe the action that occurs when a player drops to a near-crouching stance and swings his hips towards an opposing player in order to knock him off balance. *See* http://en.wikipedia.org/wiki/Checking_(ice_hockey)

[3] Although not mentioned in the IAD, Medcor cited a subsequent event in which Ravage allegedly did not follow security rules.

Upon the issuance of the ROI, the OHA Director appointed a Hearing Officer to conduct a hearing concerning the Complaint. On November 12, 2010, Medcor submitted a Motion for Summary Judgment contending that Ravage had not met her burden of proof. Specifically, the Motion asserted that Ravage's report of an alleged arm-slapping incident involving Welsh and XXXXX does not constitute a protected disclosure under 10 C.F.R. § 708.5. Ravage filed a Cross-Motion for Partial Summary Judgment on November 12, 2010, and submitted a supplemental response to Medcor's Motion on November 22, 2010. The Cross-Motion requested a ruling that her October 8, 2009, report of an alleged arm-slapping incident constitutes a protected disclosure. Ravage asserted that her October 8, 2009, report met two of the criteria for protected disclosures set forth at § 708.5. She asserted that the reported incident "was a violation of law" under § 708.5(a)(1), and that her disclosure communicated a reasonable belief that "XXXXX posed a substantial and significant danger to employees" under § 708.5(a)(2) and. IAD at 4, *citing* Ravage Supplemental Response at 1.

C. The Initial Agency Decision (IAD)

The IAD set forth the Hearing Officer's decision regarding Medcor's Motion for Summary Judgment and Ravage's Complaint. The Hearing Officer found that it is Ravage's burden to prove, by a preponderance of the evidence, that she made a protected disclosure as described in 10 C.F.R. § 708.5, and that, if she cannot meet this threshold showing, then judgment cannot be awarded in her favor. In this regard, the Hearing Officer found that it was appropriate to grant summary judgment against Ravage if she has failed to make a showing sufficient to establish the existence of this element essential to her case. IAD at 5, *citing Celotex v. Catrett*, 106 S. Ct. 2548, 2552-2553 (1986). The Hearing Officer then considered whether Ravage had shown, or could show, that she reasonably believed that in disclosing the alleged arm slap of Welsh by XXXXX, she revealed either (1) a substantial violation of a law, rule or regulation, or (2) a substantial and specific danger to employees or to public health and safety.

1. Reasonable Belief Concerning a Substantial Violation of Law, Rule, or Regulation

The Hearing Officer found that Ravage was correct that intentionally slapping a fellow employee could violate state law depending on the circumstances and severity of the slap. However, the Hearing Officer also found that, under Part 708, a protected disclosure must communicate a reasonable belief of a *substantial* violation of a law, rule, or regulation in order to receive protection. 10 C.F.R. § 708.5(a)(1). In reviewing the record of the alleged arm slap of Welsh by XXXXX, the Hearing Officer found that Welsh contemporaneously described the alleged incident as an intentional, hard arm slap, and he concluded that while such an arm slap may have resulted in a technical violation of the law, it did not constitute a sufficiently substantial violation of law to be protected under § 708.5(a)(1). The Hearing Officer also observed that Welsh's failure to immediately report the incident indicated that Welsh did not believe that a substantial violation of law had occurred. The Hearing Officer therefore concluded that the record

contained no reliable evidence supporting Ravage's contention that she could reasonably believe that a substantial violation of law had occurred. He, therefore, granted summary judgment to Medcor on the issue of whether Ravage disclosed information that she reasonably believed revealed a substantial violation of law, rule, or regulation.

2. Reasonable Belief Concerning a Substantial and Specific Danger to Employees or to Public Health and Safety

The Hearing Officer noted that Ravage had conceded that "no reasonable person" would believe that "a simple, isolated slap on the arm . . . poses . . . a danger. It is our contention that the assault was violent, not isolated, and XXXXX showed a consistent pattern of aggressive abusive behavior." Ravage Supplemental Response at 1. The Hearing Officer found that Ravage was attempting to re-characterize her October 8, 2009, report to McCormack by asserting that she had reported a pattern of aggressive, violent, and abusive behavior, as well as an alleged incident in which XXXXX hip-checked Ravage. IAD at 6-7. The Hearing Officer found that Ravage's accounts of the alleged incident were inconsistent, and that Ravage's written communications with McCormack on November 1, 2009, and December 7, 2009, discuss allegations of angry behavior by XXXXX but do not allege any physical aggression by XXXXX against Ravage. Finally, the Hearing Officer noted that (i) McCormack denied being told by Ravage on October 8, 2009, of any physical aggression against Ravage by XXXXX, and (ii) more importantly, that Ravage admitted at her deposition that she did not know if she told McCormack of the hip-checking incident on October 8, 2009. Accordingly, the Hearing Officer found that Ravage's claim that she reported a hip-checking incident to McCormack on October 8, 2009, "is simply not credible." *Id*. at 7. He concluded that, considering all of the evidence in the light most favorable to Ravage, Ravage "will not meet her evidentiary burden regarding an alleged, hip-checking incident." IAD at 8.

With respect to Ravage's contention that she reported a pattern of aggressive, violent, and abusive behavior to McCormack on October 8, 2009, the Hearing Officer found that Ravage's statements at her deposition do not support and, in fact, undercut this claim. He notes that in her Complaint, Ravage contends that XXXXX began systematically harassing and undermining Ravage "very shortly *after*" she reported the alleged arm-slapping of Welsh to McCormack, and that, during her deposition testimony, Ravage stated that XXXXX had started being aggressive to her at some point *after* Medcor's investigation of the alleged arm-slapping incident with Welsh had been concluded. IAD at 8, *citing* Complaint at 1, November 2010 Deposition Transcript at 16. [emphasis added].

Based on these findings, the Hearing Officer concluded that Ravage would not be able to establish that she disclosed information that she reasonably believed revealed a substantial and specific danger to employees or to public health or safety, and that no reasonable trier of fact could find in her favor on this issue. IAD at 8. Accordingly, the Hearing Officer granted summary judgment in favor of Medcor on the issue of whether

Ravage had disclosed information that she reasonably believed revealed a substantial and specific danger to employees or to public health or safety.

In the IAD, therefore, the Hearing Officer concluded that no rational trier of fact would be able to conclude that Ravage made a disclosure protected by Part 708 on October 8, 2009. Accordingly, he granted Medcor's Motion for Summary Judgment and dismissed Ravage's Complaint.

D. The Appeal

On January 19, 2011, Ravage appealed the Hearing Officer's findings in the IAD and identified the issues that she wished the Director of OHA to review in the appeal phase of the Part 708 proceeding.[4] *See Appeal*. On February 22, 2011, Medcor filed a response to Ravage's Appeal. *See Response.* In the Response, Medcor requested that the IAD be affirmed.

In her Appeal, Ravage contends that the investigation of her Complaint was incomplete because individuals that she identified who could corroborate various aspects of the complaint were not interviewed. She also states that the Hearing Officer offered to facilitate discovery if the parties were unable to reach agreement, and then failed to respond to requests by Ravage for assistance with discovery items that Medcor had refused to provide. Appeal at 1.

With respect to the Hearing Officer's factual findings in the IAD, Ravage first contends that the Hearing Officer erred in stating that Medcor "issued" two written warnings to Ravage for inappropriate conduct. Ravage asserts that one of the warnings was never presented to her and that the other warning has notations from Ravage and McCormack that mitigate the concern presented in the document. *Id.*

Ravage next contends that the Hearing Officer should have found that Ravage had established by a preponderance of the evidence that she had informed McCormack in their October 8, 2009, conversation of her allegation that XXXXX had struck Ravage. In this regard, Ravage asserts that the Hearing Officer mischaracterized Ravage's deposition testimony by stating that Ravage "admitted that she does not know if she informed Ms. McCormack of this incident . . ." IAD at 7. Ravage refers to testimony at the deposition where she stated that "I know I told her - - I had to have told her that because that was the whole realm of the whole thing, of her anger, and she had done it to me." Appeal at 2, *citing* Deposition Transcript at 36.

Ravage also contends that the Hearing Officer erred in stating that none of the written communications between Ravage and Medcor in November and December 2009 state that Ravage discussed XXXXX's alleged striking of Ravage in her October 8, 2009, conversation with McCormack. Ravage asserts that Dr. Ravage's December 22, 2009, e-mail to Petersen stated that Ravage discussed this alleged striking in her October 8,

[4] Although it is entitled Notice of Appeal, Dr. Ravage confirmed by e-mail dated January 31, 2011, that Ravage had nothing to add to the issues presented in her Notice of Appeal.

2009, conversation with McCormack. Ravage asserts that this corroborative statement by Dr. Ravage "should reasonably swing the preponderance of the evidence toward believing [Ravage's] version due to its timing." Appeal at 2. Based on this finding, Ravage contends that the Hearing Officer should have concluded that Ravage did report an alleged pattern of aggressive, violent and abusive behavior involving XXXXX in her October 8, 2009, conversation with McCormack, and that therefore she disclosed information that she reasonably believed revealed a substantial and specific danger to employees or to public health and safety. *Id.*

II. ANALYSIS

The Part 708 regulations do not include procedures and standards governing motions for summary judgment. In the absence of such standards, the Federal Rules of Civil Procedure, though not governing this proceeding, may be used for analogous support. *See, e.g., Hansford F. Johnson*, Case No. TBZ-0104 (November 24, 2010); *Billy Joe Baptist*, Case No. TBH-0080 (May 7, 2009); *Edward J. Seawalt*, Case No. VBZ-0047 (August 20, 2000) (applying standards of Fed. R. Civ. P. 56 to Motion for Summary Judgment). In the instant case, we find that the Hearing Officer correctly applied the standards for determination found in Fed. R. Civ. P. 56(c) to Medcor's Motion for Summary Judgment. That rule states that summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." The IAD correctly states that summary judgment may be entered, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. It notes that a moving party is "entitled to a judgment as a matter of law" because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof. *Celotex v. Catrett*, 106 S. Ct. 2548, 2552-2553 (1986). The Supreme Court has further articulated the following test: "If the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." *Matsushita v. Zenith Radio Corp.*, 475 U.S. 574, 597 (1986) (*Matsushita*). IAD at 5.

As an initial matter, we need not address Ravage's argument that the OHA investigation of her Complaint was incomplete. Such an allegation has no bearing on our review of the IAD. 10 C.F.R. § 708.22(a) clearly indicates that an investigation is not an essential element of a Part 708 proceeding, and our current review is confined to the determinations made by the Hearing Officer in the IAD. See 10 C.F.R. § 708.32. Nor can Ravage rely on investigative findings to support her Complaint. The complaining employee alone has the responsibility to prove the elements of his or her complaint. 10 C.F.R. § 708.29.

We also need not review Ravage's contention that the Hearing Officer erred with respect to the discovery process. 10 C.F.R. § 708.28(b) invests the Hearing Officer with all powers necessary to regulate the conduct of the hearing proceeding. It is certainly within the Hearing Officer's discretion to decline to order discovery requests that he believes are unnecessary, and to halt discovery while considering a Motion for Summary Judgment based on the present record of the case.

Furthermore, we need not review Ravage's contention that the Hearing Officer made erroneous factual findings in the IAD with respect to written warnings contained in Ravage's personnel file at Medcor. The written warnings are relevant to the issue of Medcor's basis for terminating Ravage's employment. The Hearing Officer's determination in the IAD to grant Medcor's Motion for Summary Judgment and to dismiss the Complaint is based solely on the finding that Ravage failed to make a protected disclosure under Part 708.

We now turn to Ravage's contention that the Hearing Officer erred when he concluded that Ravage would not be able to establish that she disclosed to McCormack, in their October 8, 2009, conversation, that Ravage allegedly had been struck by XXXXX. That contention is without merit. As discussed below, Ravage's own description of this alleged incident at her deposition, as well as the characterization of it in her Complaint, does not establish that it was an instance of angry striking by XXXXX that Ravage would have been likely to report to McCormack in the context of informing her about XXXXX's alleged slapping of Welsh. Moreover, Ravage admitted in her deposition testimony that she could not specifically recall relating this incident to McCormack.

At the outset, we note that Ravage's deposition testimony does not support an account of Ravage being struck by XXXXX in a manner that would necessitate mention of the incident in any discussion of XXXXX's alleged anger. At her deposition, Ravage stated that she was struck by XXXXX while XXXXX was teaching Welsh to operate the x-ray machine. She stated that XXXXX grabbed an x-ray cassette from Welsh, "walked by and pushed [Ravage] against the door and went over to the x-ray machine and slammed [the x-ray cassette] in the x-ray [machine]." Ravage stated that XXXXX "struck me with her elbow" as she "pushed me away so that she could get by me to go put [the x-ray cassette] into the x-ray machine." *Id.* at 37-38. When Dr. Ravage later asked her if XXXXX's action was an elbowing or a hip check, she replied that "It was both at the same time. Move over so she could get by." *Id.* at 75. Based on our review of the record, we find that the Hearing Officer reasonably concluded from Ravage's deposition testimony that the incident of XXXXX allegedly striking Ravage was not a clear instance of anger-motivated violence that Ravage would have been likely to report to McCormack in the context of XXXXX's alleged striking of Welsh. In this regard, we note that the Complaint described XXXXX as acting "more in arrogance than anger." Complaint at 1.

We conclude from our review of Ravage's deposition testimony that the Hearing Officer did not err in concluding that this testimony indicated that Ravage did not recall if she informed McCormack of the incident. At the November 2010 deposition, Medcor counsel asked Ravage if, during her October 8, 2009, conversation with McCormack, she had told McCormack she was struck by XXXXX. Ravage stated:

> Yes. I told her that [XXXXX] had been aggressively getting anger [sic] at everything. And I said she's even done things to me. **I don't know if I said she struck me.** But we talked to her prior - - [McCormack] prior to that, to this incident, me and Kerry did, that [XXXXX] was getting angry at work."

Deposition Transcript at 35 [emphasis added]. She was then again asked to answer the specific question of whether she told McCormack that XXXXX allegedly struck her. She stated:

> I know that I told her – I had to have told her that because that was the whole realm of this whole thing, of her anger, and she had done it to me.

Id. at 36. The Hearing Officer rationally viewed this testimony as an admission that Ravage did not recall if she told McCormack on October 8, 2009, that XXXXX allegedly struck her. Ravage's statement that she "had to have told her" because they were discussing XXXXX's alleged anger is not a statement that she recalls telling McCormack, but a rationalization based on the subject of the conversation. As discussed above, the record does not support Ravage's reasoning that she must have told McCormack of the incident because it was an instance of XXXXX's alleged anger. In the IAD, the Hearing Officer finds that, at her deposition, Ravage's initial account of allegedly being struck by XXXXX was simply being struck by XXXXX's elbow as XXXXX brushed Ravage aside, and that she mentioned XXXXX giving her a hip-check only in response to a leading question from Dr. Ravage. IAD at 7. We concur with the Hearing Officer's assessment of Ravage's account.

Finally, we find no merit in Ravage's contention that the Hearing Officer erred in not considering Dr. Ravage's December 22, 2009, e-mail to Petersen, where he states that Ravage told McCormack on October 8, 2009, of allegedly being struck by XXXXX. The Hearing Officer specifically states that Dr. Ravage made this allegation to Petersen on December 22, 2009. IAD at 7. The Hearing Officer notes that Ravage's written communications with McCormack on November 1, 2008, and December 7, 2008, discuss Ravage's concerns about XXXXX's anger in the workplace, but that these communications fail to mention XXXXX's alleged striking of Ravage in early October 2009. We find that it was reasonable for the Hearing Officer to find the omission of this incident from Ravage's communications with McCormack as support for his conclusion that Ravage's claim to have discussed this incident with McCormack on October 8, 2009, is not credible. In light of the other evidence discussed above concerning this incident, we reject Ravage's contention that Dr. Ravage's corroborative statement to Petersen on December 22, 2009, "should reasonably swing the preponderance of the evidence toward believing [Ravage's] version due to its timing." Appeal at 2.

Accordingly, we find that the Hearing Officer rationally concluded that Ravage did not report an alleged pattern of aggressive, violent and abusive behavior involving XXXXX in her October 8, 2009, conversation with McCormack, but rather an isolated act of XXXXX allegedly striking a co-worker. We therefore find that the Hearing Officer correctly concluded that Ravage did not disclose information to McCormack that she

reasonably believed revealed a substantial and specific danger to employees or to public health and safety.

III. CONCLUSION

In sum, we find that the Hearing Officer correctly concluded that Ravage did not make a disclosure to Medcor officials that is protected under 10 C.F.R. § 708.5. We also affirm the Hearing Officer's grant of the Motion for Summary Judgment, and his dismissal of Ravage's Complaint. For the reasons discussed above, we find that Ravage's Appeal is without merit and should be denied.

It Is Therefore Ordered That:

(1) The Appeal filed by Mary Ravage from the Initial Agency Decision issued on January 6, 2011, is hereby denied.

(2) This Appeal Decision shall become a Final Agency Decision unless a party files a petition for Secretarial review with the Office of Hearings and Appeals within 30 days after receiving this decision. 10 C.F.R. § 708.35.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: March 25, 2011