Case No. VBH-0059

December 21, 2001

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Hearing Officer Decision

Name of Petitioner: Janet L. Westbrook

Date of Filing: March 20, 2001

Case Number: VBH-0059

This Decision involves a complaint that Janet L. Westbrook (Westbrook) filed under the Department of Energy's Contractor Employee Protection Program against UT-Batelle, LLC, the contractor that manages the Oak Ridge National Laboratory (the Laboratory). That program is codified at Part 708 of Title 10 of the Code of Federal Regulations. 10 C.F.R. Part 708. In her complaint, Westbrook maintains that she was retaliated against and ultimately discharged for making a series of disclosures about radiation safety at the Laboratory.

I. 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 that they believe exhibits unsafe, illegal, fraudulent, or wasteful practices and to protect such "whistleblowers" from any consequential reprisals by their employers.

The regulations governing the DOE's Contractor Employee Protection Program are set forth at Part 708 of Title 10 of the Code of Federal Regulations. The regulations provide, in pertinent part, that a DOE contractor may not discharge or otherwise discriminate against any employee because that employee has disclosed, to a DOE official or to a DOE contractor, information that the employee reasonably and in good faith believes reveals a substantial violation of a law, rule, or regulation; a substantial and specific danger to employees or to the public health or safety; or fraud, gross mismanagement, gross waste of funds, or abuse of authority. See 10 C.F.R. § 708.5(a). An employee of a DOE contractor who believes she has been discriminated against in violation of the Part 708 regulations is entitled to receive an extensive series of protections. She may file a whistleblower complaint with the DOE. In response to such a complaint, she is entitled to an investigation by an investigator appointed by the Director of the Office of Hearings and Appeals (OHA). 10 C.F.R. §§ 708.21-.23. After the investigator's report on the complaint is issued, an OHA Hearing Officer will generally conduct an independent fact-finding and evidentiary hearing. 10 C.F.R. §§ 708.24-.25. The Hearing Officer will issue a formal, written opinion on the complaint. 10 C.F.R. § 708.31. Finally, a party may request review of the Hearing Officer's Initial Agency Decision by the OHA Director. 10 C.F.R. § 708.32.

II. Factual Background

Westbrook is a former employee at the Laboratory. She received Master of Science degrees from Purdue University in physics and nuclear engineering. Transcript of Hearing (hereinafter referred to as Tr.) at 24. After her full-time education, Westbrook worked for an engineering firm that helped design nuclear power plants. Westbrook then started working for the Laboratory in 1989 as a radiation safety engineer. She worked there for approximately 12 years until she was released as part of a widespread reduction in force on December 1, 2000.

During the 12 years she was employed at the Laboratory, Westbrook was responsible for radiation safety reviews under a principle called ALARA. “The guiding principle behind radiation protection is that radiation exposures should be kept ?As Low As Reasonably Achievable (ALARA),’ economic and social factors being taken into account. This common-sense approach means that radiation doses for both workers and the public are typically kept lower than their regulatory limits.” http://www.hps.org/publicinformation/radfactsheets/ radfact1.html.

From 1996 through 2000, Westbrook:

> disclosed on several occasions to the management of [the] Laboratory . . ., representatives of the U.S. Department of Energy, and other government agencies, her belief that ALARA radiation safety reviews were not performed in cases where [Laboratory] procedures required them, or reviews were performed, but not in accordance with the requirements of [Laboratory] procedures. During this period, Ms. Westbrook further believed and disclosed to [Laboratory] management and others that these alleged procedural violations caused a potential for unnecessary radiation exposure to workers at [the Laboratory].

Joint Stipulation at 1 (August 14, 2001).

Duringt his time period, Westbrook’s supervisor was Dr. Gloria Mei, the head of the ALARA engineering group. Dr. Mei reported to Dr. Ron Mlekodaj, and Dr. Mlekodaj in turn reported to Dr. Steve Sims, who was the Director of the Office of Radiation Protection. Dr. Sims was in that position until October 2000, when there was a general reorganization within the Environment, Safety, Health and Quality Directorate. After October 2000, Dr. Sims became the Deputy Director of the Occupational Safety Services Division of the Directorate. Ms. Carol Scott is the Director of that Division.

On June 8 and 12, 2000, Westbrook met with Ms. Scott to discuss concerns that she had about radiation safety at the lab.(1) Shortly thereafter, in August 2000, Ms. Scott and Dr. Sims decided to reduce the number of ALARA engineers from three to one. As a part of that reduction, they chose to dismiss Westbrook. On September 29, 2000, Ms. Scott provided a written response to Westbrook about the concerns she had raised in their June 2000 meetings. Westbrook’s dismissal was effective December 1, 2000.

III. Legal Standards Governing This Case

A. The Complainant's Burden

It is the burden of the complainant under Part 708 to establish “by a preponderance of the evidence that he or she made a disclosure, participated in a proceeding, or refused to participate, as described under § 708.5, and that such act was a contributing factor in one or more alleged acts of retaliation against the employee by the contractor.” 10 C.F.R. § 708.29. *See* *Ronald Sorri*, 23 DOE ¶ 87,503 (1993).

B. The Contractor's Burden

If the complainant meets her burden of proof by a preponderance of the evidence that her protected activity was a "contributing factor" to the alleged adverse actions taken against her, "the burden shifts to

the contractor to prove by clear and convincing evidence that it would have taken the same action without the employee's disclosure . . . ." 10 C.F.R. § 708.29. *See Ronald Sorri*, 23 DOE ¶ 87,503 (1993) (citing McCormick on Evidence, § 340 at 442 (4th ed. 1992)). Accordingly, in the present case, if Westbrook establishes that she made a protected disclosure that was a contributing factor to an adverse personnel action, the Laboratory must convince me that it would have taken the same actions even if Westbrook had not raised any concerns. *Helen Gaidine Oglesbee*, 24 DOE ¶ 87,507 at 89,034-35 (1994).

IV. Whether Westbrook Has Made A Prima Facie Case of Retaliation

Section 708.5 provides that a disclosure is protected if an employee reasonably believes that she is disclosing a substantial violation of a law, rule, or regulation; a substantial and specific danger to employees or to public health or safety; or fraud, gross mismanagement, gross waste of funds, or abuse of authority. 10 C.F.R. § 708.5(a). Such a disclosure must be made to "a DOE official, a member of Congress, any other government official who has responsibility for the oversight of the conduct of operations at a DOE site, your employer, or any higher tier contractor." *Id*. In this case, Westbrook claims that Laboratory management chose her for dismissal during the reduction in force because of her long series of protected disclosures, especially the disclosures she made during her June 2000 meetings with Ms. Scott.

There is no dispute that Westbrook disclosed to her employer what she believed to be violations of Laboratory rules governing procedures to be followed when the potential exists for radiation exposure. However, the Laboratory takes the position that no reasonable person, especially a radiation engineer like Westbrook, could have reasonably believed that the problems that Westbrook noted revealed a **substantial** violation of a law, rule or regulation, or a **substantial** and specific danger to employees or the public health and safety. 10 C.F.R. § 708.5(a). The DOE investigator found that Westbrook articulated at least six concerns during her June 2000 meetings with Ms. Scott. Report of Investigation at 3. To make a prima facie case of retaliation, Westbrook must show only one disclosure that is protected under the DOE Contractor Employee Protection Program.

As an initial matter, I note that the preamble to the rule implementing the Contractor Employee Protection Program discussed the requirement that a disclosure be of a substantial nature as follows:

> The imposition of this requirement in § 708.5(a)(1) would not result in the adoption of a subjective test that a whistleblower would have to pass to qualify for protection. As noted in the preamble to the interim final rule, ??substantial violation of law'' is the same standard that is used in the Section 6006 of the Federal Acquisition Streamlining Act of 1994 (FASA), Pub. L. 103–355, codified in 41 U.S.C. 265, and implemented by the regulation found at 48 CFR part 3, Subpart 3.9, ??Whistleblower Protection for Contractor Employees.'' The interim final rule emulated the standard in the FASA because it represents a balanced approach designed to ensure that minor, insubstantial issues do not waste limited resources, so whistleblower protection is available to those workers who legitimately need it.

While DOE rules are designed to husband resources by not providing protection to persons who raise issues of a minor nature, they are not supposed to put an employee at risk that the concern raised would be deemed to be insubstantial when it relates to core DOE business. Issues of radiation safety and following procedures for conducting radiation safety reviews are at the core of DOE's business. Part 708 provides an equitable remedy for restitution to protect members of the DOE contractor workforce from reprisals. As much as Part 708 is about protecting contractor employees, it is also about protecting a culture where information flow is encouraged. Indeed, considering the statutory basis for the rule, the culture of openness is arguably the primary purpose, because it promotes health and safety, and helps check waste, fraud, and abuse.

I will now review a number of the concerns that Westbrook raised in her June 2000 meetings with Ms. Scott. First, the Laboratory cites as insubstantial Westbrook's concern that the Laboratory raised the dosage level to 5 rem(2) per hour before an ALARA review was required to be done, a level that Westbrook noted is significantly higher than one rem per hour used at other DOE facilities. The Laboratory's logic seems to be that since radiation exposure at the laboratory in the past ten years has been substantially lower than permitted, concerns about the health effects of changing individual exposure limits are insubstantial. I reject this logic. This is like saying that we do not have to be so concerned about safety because we have not had an accident in the past ten years. Testimony at the hearing supports a finding that substantial issues were involved. Ms. Scott testified that Dr. Mei (Westbrook's supervisor) raised some concerns about the effect of raising the trigger for conducting a radiation review could have on certain areas of the Laboratory. Tr. at 345. And Ms. Scott believes that it was reasonable to raise these questions and be concerned about raising the limit. *Id*.

Dr. Mlekodaj's testimony (he was Dr. Mei's supervisor) corroborates a finding that raising this concern was reasonable and disclosed a substantial health or safety issue:

> Q: Five seems to me like a lot more than 1.
>
> A: Yes, it is.
>
> Q: Okay. Just wanted to make - -
>
> A: We fought it. That's one where [Westbrook] and I were on the same page. And her boss, [Dr. Mei] and I, we fought it down to the bitter end. But out –
>
> Q: Who wanted it?
>
> A: Some of the operating groups and it appeared like some of - people in another section of Office of Radiation Protection.
>
> Q: Why?
>
> A: In my opinion just to reduce the number of reviews they had to do and the –
>
> Q: Why didn't they want to do reviews?
>
> A: Well, because they didn't – in their words now, not mine, they didn't want to deal with our people. They said that they didn't have the right experience. They slowed them down. They added no value. I don't agree with those statements, but that's –
>
> Q: No, I hear you.
>
> A: -- the things they said.
>
> Q: Were those things the sorts of concerns lobbed at [Westbrook] personally?
>
> A: Oh, I'm sure they were, yes.
>
> Q: Would it be reasonable for a person – well, you agree with her and you all had the same experience. You all think you're being reasonable in thinking that jacking it up to 5 is unreasonable?
>
> A: Yes. We fought it to the bitter end.
>
> Q: Were you worried about worker safety?

A: Sure.

Tr. at 212-13. But after reviewing information, management disagreed with staff and believes that the limit could be raised to 5 rem per hour before a radiation safety review needs to be performed. While experience certainly dictates the need for occasional changes in procedures, limits or actions, it is hard for me to understand why the Laboratory during this proceeding has deemed a professional discussion about the effects a change of that nature may have on the safety of its workers to raise insubstantial issues. Where a radiation safety engineer complains about matters that could lead to higher radiation exposures for workers at the Laboratory, and fellow engineers share her belief, substantial issues are raised. I find this issue to be based on reasonable beliefs and to raise substantial concerns about dangers to employees for purposes of the Contractor Employee Protection Program.(3)

The Laboratory also cites as insubstantial Westbrook's concern that Dr. Sims approved a waiver of Laboratory rules to implement the change from using engineers to technicians in clear violation of written Laboratory procedures. Westbrook testified about a number of separate issues surrounding this matter. First is Westbrook's concern that Dr. Sims did not follow written procedures when he granted the waiver. Second is Westbrook's concern that Dr. Sims was pressured into granting a waiver of standard Laboratory rules to a line organization and therefore circumvented normal Laboratory procedures for the approval of such waivers. And third is her concern that a change from using engineers to lower-trained technicians for certain radiation safety reviews could degrade safety.

Ms. Scott testified that it was reasonable for Westbrook to come to her, as Dr. Sims' supervisor, with her concern that he had violated Laboratory procedures when he approved the waiver. Tr. at 341. She also testified that she believes that Westbrook "truly" believed that Dr. Sims had been pressured by a line program to grant the waiver outside of normal Laboratory procedures. *Id*. The Laboratory has stipulated "Ms. Westbrook reasonably believed that the actions taken by Dr. Sims in granting the waiver violated ORNL procedures 110 and 310." Tr. at 196. However, the Laboratory downplays this action by claiming that the waiver that Dr. Sims approved – allowing safety reviews to be done by radiation technicians working for line management instead of engineers working for the safety organization – was insubstantial and thus could not affect employee health or safety in a negative way.

The Laboratory takes the position that there are no substantial issues raised by allowing radiation technicians who report to the management of line organizations to perform safety reviews instead of engineers working for a central safety organization. However, the testimony on this issue is mixed. While Ms. Scott pointed out that the radiation technicians were Certified Health Physicists who in her opinion are fully capable of doing ALARA reviews, she also noted the following:

Q: Ms. Scott, don't you think that it would be reasonable to assume that if you have a medical problem, a Doctor might be better for you than a Medical Technician?

A: It depends on the extent of your medical problem.

Tr. at 343. That answer shows that Ms. Scott knows that a fully trained doctor, as opposed to a lower trained Medical Technician, may best do the diagnosis of certain medical problems. The same seems both true and reasonable for Westbrook to believe about ALARA reviews. While technicians could reasonably be expected to be fully capable of doing a number of ALARA reviews, engineers might better do others.(4) But it seems clear that it is reasonable to believe that the switch from using engineers to technicians to perform these reviews could significantly affect employee health and safety in the appropriate case. That is not to say that management cannot review the situation and decide that it was willing to accept the risks associated with technicians doing all radiation safety reviews, and I voice no opinion as to whether this change was appropriate. Nevertheless, for purposes of the Contractor Employee Protection Program, I find this concern raises substantial health and safety concerns.

As a part of her case in chief, Westbrook must also show that any one of her disclosures was a contributing factor to her discharge or any other adverse personnel action. In this regard, an OHA Hearing

Officer has concluded:

> A protected disclosure may be a contributing factor in a personnel action where "the official taking the action has actual or constructive knowledge of the disclosure and acted within such a period of time that a reasonable person could conclude that the disclosure was a factor in the personal action." *Ronald A. Sorri*, 23 DOE ¶ 87,503 (1993) *citing McDaid v. Dep't of Hous. and Urban Dev*., 90 FMSR ¶ 5551 (1990); *see also County v. Dole*, 886 F.2d 147, 148 (8th Cir. 1989) (*County*). In addition, "temporal proximity" between a protected disclosure and an alleged reprisal is "sufficient as a matter of law to establish the final required element in a prima facie case for retaliatory discharge." *County*, 886 F. 2d 147, 148 (8th Cir. 1989).

Russell P. Marler, Sr., Case No. VWA-0024 (footnote omitted). It is clear in this case that there was temporal proximity between the June 2000 disclosures and the alleged act of reprisal. The evidence shows that Ms. Scott made the decision as to whom to terminate in her division during the planning phase for the December 2000 reduction in force. That decision was made in August 2000, two months after the eventful meetings between Westbrook and Scott. That two-month period is clearly a period of time within which any reasonable person could conclude that the disclosures made in June could have influenced the personnel action that Ms. Scott took in August of the same year. Thus, Westbrook has met her burden of showing that she made a protected disclosure that, because of temporal proximity, was a factor in her discharge. This showing is sufficient to establish a prima facie case of retaliatory discharge.

V. Whether the Laboratory Has Rebutted That Prima Facie Case

I now turn to the evidence regarding the contractor's burden. In its post-hearing brief, the Laboratory argues that it should not be held liable in this case because there is clear and convincing evidence that it would have discharged Westbrook even absent the protected disclosures.

Testimony at the hearing shows that Westbrook was professional and diligent in the manner in which she performed her job. Nevertheless, Dr. Sims testified that a number of individuals at the Lab called him over the course of many years to complain about Westbrook. Sims testified "[a] recurring theme seemed to be that [Westbrook] would take issues that seemed to be insignificant and continue on with them in a very tenacious manner, and just not let go of these things." Tr. at 362. Sims also received multiple complaints that individuals at the Laboratory would no longer work with her. Tr. at 365-66.

Testimony at the hearing also showed that Westbrook would have been terminated during the December 2000 reduction in force even if she has made no protected disclosures. A human resources generalist, Ronald Honeycutt, testified for the Laboratory about the practices and procedures followed at the Laboratory during a reduction in force. He testified that there were nine reductions in force during the period 1996 through 2000 and that he advised the Occupational Safety Services Division, headed by Carol Scott, about the procedures to follow for the December 2000 reduction in force. Tr. at 70. Honeycutt testified that during the previous eight reductions in force during the period 1996 through 1999, many employees in the Office of Radiation Protection, the predecessor to the Occupational Safety Services Division, were discharged and that the head of the Office, Dr. Steven Sims, would have decided whom to terminate. Tr. at 67. Dr. Sims chose no individual in the ALARA group for termination in the eight reductions in force. Tr. at 68-69. Honeycutt also testified about charts that were made purporting to show ranking factors for the ALARA engineers. Those charts purported to list the factors underlying management's decision as to which employee to let go in the December 2000 reduction in force.

> The thing that I do is to look at, once they've established a structure, looking at the peer groups of the people that would be impacted. In other words, if you have five people performing a function, and you only have funding for two people, and all these people are in a common peer group as defined by the process, work with [management] to gather the data and look at the forms they need to complete, the information they need to, you know, put on the

> forms and once they have completed that and they've filled out the forms, then my role is to become somewhat of a - - instead of assistance with them, and look at organizational development, but a devil's advocate of the data. Reviewing the data that they've recorded on individuals to see if, you know, when I read this, it means that to me, you know. Explain that to me, how do you justify the differences in that. We go through that dialogue and then take the paperwork to the review committee. This is not like we did in the morning, afternoon and the evening. It's over a time frame, and then the review committee's established. We bring outside individuals, people who have not participated at that point to review the same documentation.

Tr. at 71. The forms that were completed show that, for the three ALARA engineers in the peer group that included Westbrook, six criteria were to be considered in the retention decision: 1) Possession of Critical Skills, 2) Performance Reviews, 3) Skills for Current Position, 4) Transferability of Skills, 5) Length of Service, and 6) Time in Current Position. Admin. Record at 226. Two of the engineers were given a "low retention" rating, while one was given a "medium retention" rating. Westbrook was one of the two who was given a low retention rating. There is no apparent weight factor that was assigned to each criterion.

The two managers who were primarily responsible for the reduction in force in this area were Carol Scott and Steven Sims, and they were candid in describing how individuals were picked for retention. Both testified that Kelly Beierschmitt, Director of the Environment, Safety, Health & Quality Directorate, told them when UT-Batelle assumed responsibility for the Laboratory in April 2000 that ALARA reviews would have to move to being a service that was charged to the programs that used them. Sims testified that:

> Dr. Beierschmitt made that decision [that the Alara Engineering Group was to be a Charge-out function and not get any money from overhead].
>
> The first time that I ever saw him – again, when preparing for this, I looked at my notes, and the first time I ever met him was on February the 10th of the year 2000.
>
> He came to my office and we discussed a wide variety of things, and one of the things that he told me that day was that this would be the last year that the Alara Engineering Group would be paid from out of overhead.

Tr. at 372. Sims also noted that Laboratory management had discussed moving the ALARA Engineering Group from an overhead-based function to a charge-out function "during the ESH&Q Re-Engineering effort in 1996 and, I think, actually went on in to 1997." *Id*. Sims also testified that despite the fact that there were eight previous reductions in force between 1996 and 2000, no one in the ALARA Engineering Group was laid off. Tr. at 368. He testified that he resisted efforts in 1996 to change the ALARA Engineering Group funding from overhead to a charge-out basis because "the people would not support that at that particular time" and as a result, the employees in the ALARA Engineering Group would lose their jobs. Tr. at 372-73. He also noted that the reason there was a reduction in force in December 2000 was:

We had a new Organization that came in, and the specific thing that changed in the past year that made that different was that they were really going to cut the budget by a tremendous amount.

> The thing that really did it for the RAD [Radiation Protection] Organization was the fact that I was told by the new administration that came in very early on – actually, before they took over – that the year that we were currently in at that time would be the last year that the Alara Group was funded out of overhead.
>
> They said that they were going to be a Charge-out function.

Tr. at 369.

Beierschmitt confirmed that he had told his subordinates that he wanted to move services in the Directorate from an administrative function for budget purposes to a charge-out function. Tr. at 259. As a charge-out function, the office doing a particular project would pay for any services provided by the ALARA Engineering Group. However, Beierschmitt denied making the decision to require that ALARA engineering services be charged-out. Tr. at 259-60. Nevertheless, given the fact that Sims made contemporaneous notes of his February 2000 meeting with Beierschmitt and believed from that conversation that the ALARA Engineering Group must be funded on a charge-out basis, Tr. at 385, it seems clear that the decision to fund the ALARA Engineering Group on a charge-out basis occurred before Westbrook made her protected disclosures in the June 2000 meetings with Ms. Scott.

The Sims testimony and the Scott testimony are clear on this point. After considering historical information about the amount of time ALARA engineers had been able to charge to programs, and reflecting on their own knowledge of the engineers' work, both Scott and Sims thought that they would be able to charge to other programs the work of only two ALARA engineers, the engineer who had supervisory experience and one of the three others. In deciding which of the three ALARA engineers to keep, Scott and Sims appear to have had only one consideration in mind: who among the three would be able to charge out his cost. Westbrook was not in that category. One engineer had charged out one-third of his time that year, and the office using his services had already indicated that it would agree to pay for one-half of his time in the coming year. No office had expressed a similar willingness to pay for Westbrook's time. In fact, Sims testified that over several years line officials who had difficulties with dealing with Westbrook had contacted him with negative comments. Tr. at 361-66. *Compare* *Eugene J. Dreger*, Case No. VBH-0021 (February 7, 2000) *affirmed*, Case No. VBA-0021 (June 27, 2000). Several asked for her removal from projects. Tr. at 366. Given that history, Scott and Sims did not believe that project offices would be willing, in effect, to hire Westbrook to perform ALARA safety reviews. Thus, it was easy for Scott and Sims to focus on the one engineer for whom they already had a commitment from a project office to pay for one-half of his time. In the end, Scott and Sims decided that they would retain that engineer and dismiss the other two. Their testimony in this respect was clear and convincing. That, in a nutshell, is the reason why Westbrook was discharged. (5)

VI. Conclusion

The record convinces me that Westbrook's discharge would have happened even if she had made no protected disclosures. Her discharge occurred because (i) senior management required the cost associated with positions in her group to be charged to parts of the Laboratory that utilized their services, (ii) management believed that it might be able to charge out time associated with two ALARA engineer positions, and (iii) frictions between potential customers and Westbrook meant her time was the least likely to be able to be charged out to customers. Thus her discharge would have occurred even in the absence of any protected disclosure.

The record clearly indicates that Westbrook may at times have been a difficult person to deal with. Nevertheless, the record also shows that she sincerely believed the issues she raised could affect the safety and health of workers at the Laboratory. When she had concerns, she brought them to her line management for resolution. When that was not forthcoming, or when the response did not assuage her concerns, she brought them to the company's employee concerns program. When she was not successful there, she finally went to the DOE's employee concerns program. She allowed line management the opportunity to correct issues within their purview, and went to the company's concerns program before seeking help from DOE. That is the type of behavior that DOE policy has attempted to encourage, and it should be commended. Contractor employees should not be concerned that the company will retaliate against them for this. They are protected against this type of reprisal. In the present case, I am convinced, by the clear and convincing evidence presented during this proceeding, that Westbrook would have been terminated during the reduction in force that occurred in December 2000 even if she had made no protected disclosures.

Accordingly, I will deny Westbrook's request for relief under 10 C.F.R. Part 708.

It is Therefore Ordered That:

(1) The complaint for relief under 10 C.F.R. Part 708 submitted by Janet L. Westbrook, OHA Case No. VBH-0059, is hereby denied.

(2) This is an initial agency decision, which shall become the final decision of the Department of Energy unless, within 15 days of issuance, a notice of appeal is filed with the Office of Hearings and Appeals, in which a party requests review of this initial agency decision.

Roger Klurfeld

Hearing Officer

Office of Hearings and Appeals

Date: December 21, 2001

(1) These disclosures are described in the section of this opinion that discusses whether Westbrook has made a prima facie case of retaliatory discharge.

(2) A rem is "the dosage of an ionizing radiation that will cause the same biological effect as one roentgen of X-ray or gamma-ray exposure." http://www.m-w.com/cgi-bin/dictionary.

(3) I voice no opinion as to whether it was appropriate to raise this value to 5 rem per hour.

(4) It is also interesting to note that not all engineers could perform all reviews at the same level of competence. There was testimony that Westbrook was the only ALARA engineer who could run certain elaborate computer codes that were necessary for some of the reviews. Admin. Record at 226.

(5) Whether this comports with the rules governing reductions in force is not in issue in this proceeding, since it is not an appeal of the dismissal action.