

United States Department of Energy
Office of Hearings and Appeals

In the Matter of Yolanda A. Parker)
)
Filing Date: October 17, 2017)
)
_____)

Case No.: WBH-17-0008

Issued: July 2, 2018

Initial Agency Decision

Steven L. Fine, Administrative Judge:

This Decision concerns a Complaint filed by Yolanda A. Parker (hereinafter referred to as “Ms. Parker” or “the Complainant”) against her employer, Savannah River Nuclear Solutions, LLC (hereinafter referred to as “SRNS” or “the Respondent”), under the Department of Energy’s (DOE) Contractor Employee Protection Program regulations found at 10 C.F.R. Part 708.¹ Ms. Parker alleges that SRNS has retaliated against her for engaging in protected activity. As discussed below, I have concluded that Ms. Parker is not entitled to the relief that she seeks.

I. BACKGROUND

A. Regulatory Background

The DOE established its Contractor Employee Protection Program 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. *See* Criteria and Procedures for DOE Contractor Employee Protection Program, 57 Fed. Reg. 7533 (1992). The Program’s primary purpose is to encourage contractor employees to disclose information that they believe exhibits unsafe, illegal, fraudulent, or wasteful practices and to protect those “whistleblowers” from consequential reprisals by their employers. The Part 708 regulations prohibit retaliation by a DOE contractor against its employee because the employee has engaged in certain protected activity, including disclosing to his or her employer information that he or she reasonably believes reveals a substantial and specific danger to employees or to the public or fraud, gross mismanagement, gross waste of funds or abuse of authority. 10 C.F.R. § 708.5(a). An employee who believes that he or she has suffered retaliation for

¹ At all times relevant to this proceeding, SRNS operated the DOE’s Savannah River Site (SRS) pursuant to a contract with the DOE.

engaging in protected activity may file a complaint with the DOE. 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. If the complainant meets this burden of proof, “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, participation, or refusal.” *Id.*

B. Background

Except as otherwise noted, the following facts are undisputed. SRNS hired Ms. Parker as a permanent employee with the title of Radiation Protection Technician (RadTech) in June 2015. Statement of Yolanda Parker at 1 (“Parker Statement”). Ms. Parker, however, has been employed on several temporary assignments while waiting to obtain her security clearance. SRNS’s Dosimetry Records Office (Dosimetry) asked Ms. Parker’s management if it could “borrow” an employee with radiation technology experience to assist Dosimetry by helping respond to a large number of discovery requests filed by individuals seeking compensation for asbestos and radiation exposure. In December 2015, Ms. Parker began working in Dosimetry under the day-to-day supervision of Ms. Harriet Priester, Dosimetry’s Records Lead. Parker Statement at 1. On February 2, 2017, Ms. Parker was informed that her assignment with Dosimetry was ending. Parker Statement at 8.

On February 16, 2017, Ms. Parker contacted the DOE’s Savannah River Operations Office (SR), Employee Concerns Program (ECP) alleging that SRNS retaliated against her “for making a disclosure of inadequate tracking of radiation and chemical exposures.” Memorandum from Darren Parham, SR ECP Specialist, to the Director, Office of Hearings and Appeals, dated July 5, 2017 (Parham Memorandum) at 1. Ms. Parker began another temporary assignment, with SRNS’s Calibrations Office (Calibrations) on February 27, 2017.

On March 21, 2017, Ms. Parker filed a Complaint under 10 C.F.R. § 708. As discussed below, this Complaint was subsequently amended during OHA’s investigation of Ms. Parker’s allegations.

On July 5, 2017, SR ECP referred Ms. Parker’s Complaint to the Office of Hearings and Appeals (OHA) along with her request for an investigation followed by a hearing. OHA received this request on July 11, 2017. An OHA Attorney (the Investigator) conducted an investigation of the allegations set forth in the Complaint and issued a Report of Investigation (ROI) on October 16, 2017. At the Investigator’s invitation, Ms. Parker amended her Complaint.² On October 17, 2017,

² On July 17, 2017, the Investigator wrote the parties with an initial request for information. To this end, the Investigator stated:

I request that Ms. Parker provide me with a specific and concise list of her protected disclosures along with the date of each disclosure and a brief description of the nature of each disclosure and **why each disclosure is protected under the Part 708 regulations and the factual basis upon which she formulated each disclosure**. . . . Ms. Parker should also provide me with a list of specific acts of retaliation she may have

OHA's Director appointed me as the Administrative Judge for this case. On that date, I wrote the parties, instructing them to submit a brief identifying: any disagreements with the ROI findings; the basis for any disagreement; and any areas of agreement with the ROI to which each party was willing to stipulate.

After reviewing the respective parties' exhibits and briefs, I wrote the parties a letter on November 22, 2017, in which I issued a number of rulings narrowing the scope of the present proceeding. After the conclusion of discovery, I issued a set of requests for information from Ms. Parker on January 17, 2018 (the January 17, 2018, RFI). After receiving Ms. Parker's response to this request, I issued an Order To Show Cause to Ms. Parker on January 24, 2018. Following receipt of her response to this Order, I issued a decision in which I found that any protected disclosures that may have occurred prior to February 1, 2016, could not, as a matter of law, have been a contributing factor to any of the acts of retaliation alleged by Ms. Parker in her Complaint or Amended Complaint. *Yolanda Parker, Case No. WBZ2-17-0008* (2018).

On January 19, 2018, SRNS filed a Motion for Summary Judgment. On February 2, 2018, Ms. Parker filed her Response to SRNS's Motion for Summary Judgment (the Response). On February 9, 2018, I issued an Interlocutory Decision in which I granted SRNS' Motion for Summary Judgment in part, once again narrowing the scope of this proceeding. *Yolanda Parker, Case No. WBZ1-17-0008* (2018). In this Interlocutory Decision, I found that four allegations of protected activity and five allegations of retaliation remained at issue in this proceeding. In February 2018, I held a four day hearing from February 12–15, 2018, in Aiken, SC, on the allegations remaining at issue in this proceeding.

II. Analysis

A. Ms. Parkers' Allegations of Protected Activity

Ms. Parker has the burden of establishing by a preponderance of the evidence that she made a disclosure, or participated in a proceeding as described under § 708.5. 10 C.F.R. § 708.29. After my Interlocutory Orders, only four of these allegations remain at issue in this proceeding. Ms. Parker has met her burden of proof for two of these allegations: Her reporting of Part 708 concerns to the SRS on February 16, 2017, and her filing of her Complaint under Part 708 on March 21, 2017. These two allegations clearly constitute employee conduct protected under 10 C.F.R. § 708.5(b). Moreover, her engagement in this protected conduct is clearly documented in the

allegedly suffered, and the dates they occurred, along with the names of the individuals involved in each retaliation.

Letter dated July 17, 2017, from Richard A. Cronin, Jr., OHA Attorney, to Ms. Parker, and Tawny R. Eley, Esq., Counsel for SRNS (emphasis in the original). On July 27, 2017, Ms. Parker submitted her Response to the Investigator's July 17, 2017, Request for Information (the July 27, 2017, Response). The July 27, 2017, Response totaled 128 pages. Included in the July 27, 2017, Response is a 12-page document (which appears at pages 5 through 16) which provides Ms. Parker's specific and concise list of her alleged protected disclosures and alleged specific acts of retaliation. I will hereinafter refer to these 12 pages as the "Amended Complaint."

record.³ However, as discussed below, Ms. Parker has not met her burden of proving that she made the other two alleged disclosures. See 10 C.F.R. § 708.5(a)(1).

1. Ms. Parker’s Allegation that she disclosed to Ms. Priester and Mr. Hadlock that Industrial Hygiene and Radiation Protection information stored in EDWS had not been placed in individual employee exposure records

Ms. Parker alleges that, during the period January 2016 to December 2016, she disclosed to Ms. Priester and Mr. Hadlock that Industrial Hygiene and Radiation Protection information stored in EDWS had not been placed in individual employee exposure records. Ms. Parker has not submitted any documentary evidence in support of her assertion that she made this disclosure; the only evidence in the record supporting Ms. Parker’s assertion that she made this disclosure are her own statements. Ms. Priester and Mr. Hadlock deny that Ms. Parker made this disclosure to them. Priester Declaration at 2-3; Tr. at II-235-236–36; III-48.

Ms. Parker argues that two statements from Ms. Priester’s Declaration support her contention that she disclosed to Ms. Priester and Mr. Hadlock that Industrial Hygiene and Radiation Protection information stored in EDWS had not been placed in individual employee exposure records. First, Ms. Parker cites Ms. Priester’s statement that “I recall Ms. Parker coming in one day and commenting on the amount of research each request required,”⁴ as support for her contention that she made the disclosure. However, this statement does not support Ms. Parker’s assertion that she disclosed that employee exposure records were incomplete, but rather seems to indicate only that she believed that researching the individual employee exposure records was time-consuming.

Second, Ms. Parker contends that Ms. Priester’s statement that “Ms. Parker did express concern that she was getting incomplete information during her research because Dosimetry Records contained paper records that were not scanned into EDWS,” supports her contention that she disclosed that Industrial Hygiene and Radiation Protection information stored in EDWS had not been placed in individual employee exposure records. Priester Declaration at 3. This contention is without merit, however. First, Ms. Parker has quoted Ms. Priester out of context; the full text of Ms. Priester’s declaration indicates that she was reporting an instance where Ms. Parker was unable to find certain information, and Ms. Priester told her where that information could be obtained.⁵ Second, this statement does not appear to be relevant to the issue of whether Ms. Parker

³ The record of this proceeding includes all of those documents submitted by the parties, by the investigator, by SR ECP, and by the Administrative Judge, during the investigation, during the two proceedings involving interlocutory decisions, and for the hearing.

⁴ Priester Declaration at 2.

⁵ The full text of the paragraph in question states:

However, Ms. Parker did express concern that she was getting incomplete information during her research because Dosimetry Records contained paper records that were not scanned into EDWS. I informed her that all of the data from these records from Quarter 2, 1989 to 2003 had been uploaded from the early database (HPRED-Health Protection Radiation Exposure Database) into the ProRad software so when we run an annual summary report for an individual, a NIOSH research, or

disclosed that Industrial Hygiene and Radiation Protection information stored in EDWS had not been placed in individual employee exposure records.

Accordingly, I find that the only evidence in the record supporting Ms. Parker's assertion that she disclosed to Ms. Priester and Mr. Hadlock that Industrial Hygiene and Radiation Protection information stored in EDWS had not been placed in individual employee exposure records are her own vague and unsupported assertions. These assertions are contradicted by the testimony of Mr. Hadlock and Ms. Priester. Given that neither the record nor Ms. Parker provide any compelling reason to find that her testimony is more credible than that of Ms. Priester and Mr. Hadlock, I find that she has not met her burden of proof on this issue.

2. Ms. Parker's allegations that, in May 2016, she disclosed to Mr. Hadlock that the employee radiation exposure records that had been previously prepared to respond to EEOICPA litigation requests were incomplete

Ms. Parker alleges that "around May 2016," she disclosed to Dennis Hadlock that the Radiation Dose History records SRNS produced in response to discovery requests in the past were incomplete. Parker's July 31, 2017 Response. Ms. Parker has not submitted any relevant and material documentary evidence in support of this assertion, nor does the record contain any third party corroboration of this assertion.⁶ Instead, the only evidence in the record supporting Ms. Parker's assertion that she made this disclosure are her own statements and testimony which have been contradicted by Mr. Hadlock's statements in his declaration and hearing testimony in which he denied that Ms. Parker made this disclosure to him. Hadlock Declaration at 2; Tr. at III-63, 73-76. Since neither the record nor Ms. Parker provide any compelling reason to find that her testimony is more credible than that of Mr. Hadlock, I find that she has not met her burden of proof on this issue.

B. Ms. Parker's Allegations of Retaliation

litigation research, the report contains this Q289 to 2003 monitoring data, if the individual was monitored during that period. These particular paper records were located in Room 155 in 735B ("Room 155"), and they covered dates from 1989 up to 2003.

Priester Declaration at 3.

⁶ On January 17, 2018, I wrote Ms. Parker an email message seeking information on a number of subjects. In my email message, I specifically asked Ms. Parker to identify any evidence supporting her assertion that she disclosed to Mr. Hadlock that the employee radiation exposure records that had been previously prepared to respond to EEOICPA litigation requests were incomplete. In a response dated January 25, 2018, Ms. Parker claimed that, after her conversation with him, Mr. Hadlock told Ms. Priester to use spreadsheets similar to those created by Ms. Parker to complete the remaining litigation requests, allegedly because he then realized that he had been supplying incomplete information. In an attempt to corroborate this theory, Ms. Parker cited an email, dated June 20, 2016, from Ms. Priester to Ms. Parker and Pamela Powell which states, in pertinent part, that "Dennis [Hadlock] has asked that we use a worksheet to ensure that all available dosimetry quarters of monitored years are completed for each of the remaining claimants." January 25, 2018, Response at 13. This email makes no mention of a conversation between Ms. Parker and Mr. Hadlock, and provides no evidentiary support for Ms. Parker's assertion that she disclosed to Mr. Hadlock that the employee radiation exposure records that had been previously prepared to respond to EEOICPA litigation requests were incomplete.

After I issued my Interlocutory Decisions, five allegations of retaliation remained at issue in the instant case: Ms. Parker's allegations that SRNS retaliated against her by: (1) failing to offer her a permanent position in Dosimetry; (2) failing to offer her a position as an Internal Auditor; (3) failing to offer her a position as a Quality Assurance Specialist; (4) failing to offer her a position as Senior Training Specialist; and (5) subjecting her to a hostile working environment.

1. Position In Dosimetry

Ms. Parker's first remaining allegation of retaliation occurred on February 2, 2017, at the latest, when she was informed in a meeting with Ms. Priester and Ms. Jordan that SRNS planned to discontinue her temporary assignment in Dosimetry and reassign her to another temporary assignment in Calibrations. Since Ms. Parker has not shown that she had engaged in any protected activity prior to this date, Ms. Parker cannot show that SRNS' decision to end her temporary assignment was motivated by a retaliatory animus.

2. Applications for Internal Auditor, Quality Assurance Specialist, and Senior Training Specialist Positions

As discussed above, I have found that Ms. Parker engaged in protected activities under 10 C.F.R. § 708.5(b) on February 16, 2017, when she contacted the ECP with her whistleblower concerns and on March 21, 2017, when she filed her Complaint.

SRNS notified Ms. Parker that she had not been hired for positions on April 18, 2017 (the Quality Assurance Specialist position), July 12, 2017 (the Internal Auditor position), and September 21, 2017 (the Senior Training Specialist position). January 23, 2018, Response at 1-3. Because of the difficulty in producing direct evidence of an employer's retaliatory intent, OHA has held that an employee can meet their burden of proof through circumstantial evidence, and that a protected activity can be found to be a contributing factor if there is sufficient temporal proximity between the protected activity and the claimed retaliation, and if the employee can show that the official or official's making the personnel decision in question had knowledge, or constructive knowledge, of the employee's protected conduct. *Curtis Hall, Case No. TBA-0042*, slip op. at 6 (2008); *Kaiser-Hill Company, L.L.C. EG&G Rocky Flats, Inc. Case No. VBA-0033*, slip op. at 5 (2000). In the present case, Ms. Parker has shown that sufficient temporal proximity exists between her filing of her Complaint on March 21, 2017, and SRNS's decisions to hire other applicants for these three positions. Ms. Parker, has not however, met her burden of proving that any of the officials who made the hiring decisions for these three positions were aware of her protected conduct at the time that they decided against hiring Ms. Parker for these positions. Moreover, the record further shows that Ms. Parker was clearly not qualified for the Internal Auditor position, and was clearly not among the most qualified candidates for the Quality Assurance Specialist and Senior Training Specialist positions, for the reasons set forth below.

a. The Quality Assurance Specialist Position

Roger Elmgreen, who was the manager in charge of the hiring process for the Quality Assurance position, testified at the hearing that he evaluated the resumes for the QA Specialist position, including that of Ms. Parker, and that he decided against interviewing her for the position. Tr. at III-217-218, 225. He testified that he assigned each resume that he reviewed a grade based on each applicant's education, "relevant work experience, and other items that may be pertinent to the position," and that he did not interview Ms. Parker for the position because he graded her resume as a four,⁷ while five resumes received a score of seven or higher. Tr. at III-218- 219. Mr. Elmgreen testified that Ms. Parker's resume grade was the only criteria he used in deciding not to interview her for the position. Tr. at III-222. Most importantly, Mr. Elmgreen testified that he was unaware of Ms. Parker's protected disclosures when he graded her resume, and that he was not aware that Ms. Parker had filed a Part 708 Complaint until a week before the hearing. Tr. at III-225-226. Ms. Parker has not submitted any evidence indicating that Mr. Elmgreen had actual or constructive knowledge of her protected conduct when he graded her resume and decided against interviewing her for the Quality Assurance Specialist position and has therefore not met her burden of proof on this issue.⁸

b. Internal Auditor Position

At the hearing, Ms. Parker testified that she did not know what happened with her Internal Auditor application. Tr. at III-246. However, in her pre-hearing written response to questions, she submitted an email from SRNS's internal job posting system informing her that SRNS had "elected to pursue candidates whose qualifications are a closer match with [its] needs." Parker's Response to Judge Fine at 2-3. Ms. Parker did not present any evidence that the resume evaluator for this posting knew about her protected disclosures, and there is no other evidence in the record that the decision against hiring Ms. Parker for this position was made by someone who was aware of Ms. Parker's protected conduct. Accordingly, Ms. Parker has failed to meet her burden of proof on this issue.

However, even if Ms. Parker had met that burden, SRNS advanced legitimate business reasons for not interviewing her for that position. The Internal Auditor posting listed as a requirement a Bachelor's degree in Accounting, Finance, or another business-related field. Ex. ff at 3. Ms. Parker does not possess a Bachelor's degree in Accounting, Finance, or another business-related field, but rather an Associate's degree in Nuclear Engineering Technology. Ex. 69. There was no equivalency option for experience in the field, and, even if there had been, Ms. Parker's resume does not display any background in accounting, procurement, or federal acquisition that the posting requests. *Compare* Ex. ff at 3 *with* Ex. 69. SRNS hired an Internal Auditor who possessed the qualifications listed in the job posting. Ex. ff at 9-22. Moreover, there is no evidence that SRNS interviewed anyone for the Internal Auditor position who did not possess the minimum qualifications for the position. Accordingly, SRNS met its burden of proving by clear and

⁷ He noted that her resume lacked directly relevant work experience. Tr. at III-219-220, 222.

⁸Ms. Parker has asserted that her manager's failure to sign a form almost caused her to miss the deadline for submitting her resume, therefore preventing her resume from being considered in a favorable light. She claimed the manager was motivated by a retaliatory animus. Tr. at III-243-246. This allegation is discussed *infra*.

convincing evidence that it would have declined to interview Ms. Parker for the Internal Auditor position even if she had not made any protected disclosures.

c. Senior Training Specialist

Christie Shuford, SRNS's Deputy Site Training Manager, testified that she was serving as SRNS's Regulatory Facilities Support Training Manager, at the time that Ms. Parker's application for the Senior Training Specialist Position was being considered. Tr. at III-186. Ms. Shuford testified that she and Jerry Denton evaluated Ms. Parker's resume for the Senior Training Specialist position, and decided against interviewing Ms. Parker because it was not evident from her resume that she had sufficient training experience, since she had not yet qualified as an inspector at SRNS, and because she had not served as an inspector or first line manager at SRNS.⁹ Tr. at III-191-93, 201-203, 207-208. The decision against interviewing Ms. Parker ended her candidacy for the Senior Training Position. Tr. at III-208. Ms. Shuford testified that, at the time she decided against interviewing Ms. Parker, she was unaware of Ms. Parker's Part 708 Complaint, and that she first became aware of Ms. Parker's Complaint about a week before the hearing. Tr. at III-194, 208.

John Fitzgerald "Jerry" Denton, SRNS's Acting Manager for RP and Regulatory and General Training, testified that he was involved in the evaluation of Ms. Parker's resume for the Senior Training Specialist position. Tr. at IV-239. Mr. Denton testified that the individuals who were hired for the three Senior Training Specialist positions each had significant actual classroom training experience or "podium time or significant experience working at the SRS." Tr. at IV-241-243. His review of Ms. Parker's resume revealed little formal training experience and little SRS experience. Tr. at IV-244, 269-270.

We note that Ms. Parker did not question Ms. Shuford or Mr. Denton about when they first became aware of her Part 708 Complaint when she cross-examined them. Moreover, Ms. Parker did not allege that Mr. Denton was aware of her protected conduct. Ms. Parker, however, contended that Ms. Shuford was aware of her protected conduct because she is in charge of training and knows Ms. Parker, but she did not elaborate on how Ms. Shuford's position as a training manager, or personal relationship with Ms. Parker, would have provided Ms. Shuford with knowledge of Ms. Parker's disclosures. Tr. at III-243. Accordingly, Ms. Parker has not met her burden of proof of showing that Ms. Shuford or Mr. Denton were aware of her protected conduct when they decided against interviewing her for a Senior Training Specialist. Moreover, even if Ms. Shuford and Mr. Denton were aware of Ms. Parker's protected conduct when they decided against interviewing her for the Senior Training Specialist Position, they testified convincingly that Ms. Parker's resume did not indicate that she had the requisite eight years of training experience required by the position description, and that the three individuals who were ultimately selected for the position were clearly far more qualified than she was. Tr. at III-192 -93; Tr. at IV-249-54.

⁹ She testified that the Senior Training Specialist position requires a Bachelor's degree and at least five years of training experience. Tr. at III-187. The Job Posting for this position, however, indicates that the minimum qualification for this position was a Bachelor's degree with at least six years of training experience, or an Associates degree with at least eight years of training experience. Ex. bb at 2.

3. Hostile Working Environment

Ms. Parker has made a number of allegations of retaliatory actions by SRNS which she alleges created a hostile working environment for her. Ms. Parker bears the burden of proving that the actions which she alleges created the hostile working environment actually occurred, and that they created or contributed to a hostile work environment for her. 10 C.F.R. § 708.29. If Ms. Parker is able to show that these events actually occurred and that they created or contributed to a hostile working environment, the timing of these alleged actions would support an inference of causation, provided Ms. Parker was able to prove by a preponderance of the evidence that the actors in each situation had actual or constructive knowledge of her protected conduct.

The Supreme Court defines a hostile work environment as a workplace “permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.”¹⁰ *Harris v. Forklift Sys.*, 510 U.S. 17, 21 (1993) (interpreting Title VII of the Civil Rights Act of 1964) (internal quotations omitted) (*Harris*). Practically speaking, the environment must be so severely and pervasively hostile that a reasonable person would find it abusive and the complainant must perceive it to be so. *Id.* at 21–22.

For the reasons set forth herein, I find that, even if I were convinced that all of Ms. Parker’s allegations concerning the alleged harassment were accurate, they would fall far short of meeting the “severely and pervasively hostile” test set forth in *Harris, supra*.

a. Timecard

In her Amended Complaint, Ms. Parker alleged that she was “Identified as a Whistleblower on my timesheet for everyone to see every time I have to fill out my time sheet and every time it is approved by others.” Amended Complaint at 5. As an initial matter, I note that the regulations provide that “the identity of an employee who files a complaint under this part appears on the complaint. A copy of the complaint is provided to the contractor and it becomes a public document.” 10 C.F.R. § 708.11. Accordingly, Ms. Parker’s whistleblower status is considered a matter of public record, and she has no expectation of privacy in that regard. Nevertheless, if a contractor were to intentionally draw notice to an employees’ participation in Part 708 with the intention of stigmatizing that person, it might constitute evidence of retaliatory intent on the part of that contractor. There is no evidence in the present case of such intent on the part of SRNS.

Moreover, Ms. Parker’s allegation, as it appears in the Amended Complaint, is somewhat misleading. Ms. Parker did not use a traditional timesheet. Instead, Ms. Parker used SRNS’s computerized time-keeping program, “TACS” which tracked each employee’s hours worked, and use of leave. Ms. Parker used a computer to enter this information into the TACS system. Because an employee might work on projects with different funding sources, the TACS system incorporates spreadsheets known as “Speedcharts.” Tr. at I-143. Employees may use several different

¹⁰ In this context, “discriminatory” means being treated differently from the other employees. It does not necessarily refer to protected classes, such as race, national origin, or gender.

Speedcharts in a pay period, so they are given descriptive titles in addition to the codes¹¹ used to enter them into the TACS system. Tr. at I-143–146. As with other types of projects, SRNS generated a Speedchart code to be used for each whistleblower case, including Mr. Parker’s Part 708 complaint. When Ms. Parker used company time to attend to her Part 708 action, she was required to record that time separately using the 07NMPARKER Speedchart, which was titled “ParkerWhistleblower case #FINANCE OTHERS - GBA – 07NMPARKER”. Ex. 40. As a result, when Ms. Parker opened up the TACS program on a computer in order to report her time use each period, the title “ParkerWhistleblower case” may have appeared in a dropdown menu, depending on when she last used that Speedchart.¹² Tr. at I-146. While it is true that anybody who was invading her privacy by looking at her personal time-keeping information while it was displayed on the computer screen, as well as any SRNS employees responsible for processing her payroll and accounting information, might learn of her whistleblower status, it is clear that SRNS was not trying to stigmatize Ms. Parker by labeling a Speedchart as “ParkerWhistleblower case.”

Ms. Parker notes that the Speedchart code “07NMPARKER” for her whistleblower case was written on the whiteboard of a public area with significant traffic. Tr. at I-12; Parker Allegations at 25. Ms. Parker alleges that this code was posted on the public whiteboard as an attempt to publicize her whistleblower case. Tr. at I-12; Parker Allegations at 25. While the code alone as posted on the white board would not communicate her status as a whistleblower, any employee that typed the code “07NMPARKER” into their timesheet would see the ParkerWhistleblower case Speedchart title displayed. Tr. at I- 145-146. However, several SRNS employees convincingly testified that the posting of the “07NMPARKER” Speedchart code on the whiteboard was done for legitimate business reasons and was not intended to stigmatize Ms. Parker. Swain Carter, a Radiological First-line Manager for SRNS, testified that he was informed that he needed to make four employees available to meet with SRNS’s legal counsel, and that he was instructed to ensure that these four employees would record the time they used to meet with the legal counsel by using the 07NMPARKER Speedchart code. Tr. at III-229. In order to ensure that these four employees used the correct Speedchart code, Mr. Carter wrote “07NMPARKER” on a whiteboard, which was a “standard practice.”¹³ Tr. at III-229-232; Ex. HH. When asked if he wrote the code on the whiteboard, among several other Speedchart codes, to harass Ms. Parker, Mr. Carter testified, “I did not. In fact, when I originally wrote it up there, I had no idea what it was in reference to.” Tr. at III-231. He further testified that he did not realize at the time that it was in reference to Ms. Parker at all. Tr. at III-232. Mr. Carter’s testimony convinced me that his posting of the 07NMPARKER Speedchart code on the whiteboard was not done with retaliatory intent.

¹¹ Speedchart codes are 10 digits long and consist of a Project ID and an Activity ID. Tr. at I-143. The Project ID is the first four characters of a Speedchart code (randomly generated) and represents the funding source. Tr. at I-143. The Activity ID is the last 6 characters of the code and represents the task. Tr. at I-143.

¹² I take administrative notice of the fact that Parker is a very common surname at the SRS.

¹³ Mr. Carter testified that the 07NMPARKER code was left on the whiteboard for about one week. Tr. at III-230–31.

b. Office and Computer Assignments

Ms. Parker alleges that SRNS intentionally isolated her, assigned her a storage cubicle to use as her office, and did not assign her her own computer, all in retaliation for her protected disclosures.¹⁴ Amended Complaint Parker Allegations at 20–23. However, the record provides no support for these allegations. Instead, the testimony of her co-workers clearly establishes that Ms. Parker was treated similarly to other RadTechs who were waiting to receive their security clearances, and that Ms. Parker was actually provided with two special assignments, in Dosimetry and Calibrations, that were not available to the other RadTechs awaiting their security clearances.

Ms. Parker alleges that, when she reported for her temporary assignment in Calibrations, she was assigned a storage cubicle to use as her office space, and that upon her return to RAD-Con she was placed in isolation in a trailer. Parker Allegations at 20-21. These allegations are supported only by her own testimony and are contradicted by the testimony of her coworkers.

Mr. Jeff Brown testified that he worked with Ms. Parker in Calibrations. Tr. at II-150. Mr. Brown's testimony describes a welcoming environment in which Ms. Parker's colleagues made an effort to help her feel comfortable in her new assignment. When he learned that she was coming to the group, he prepared a cubicle for her by cleaning it out, and ensuring that she had a working computer and phone. Tr. at II-150–151. He testified that he wanted her to feel comfortable and that he tried to befriend Ms. Parker, going so far as to get a nameplate made for her, even though she was a temporary employee, so that she would fit in. Tr. at II-151–53. Mr. Brown further testified that the cubicle he prepared for Ms. Parker was numbered office space, not storage, and that Ms. Parker never complained to him about the space. Tr. at II-153. Mr. Brown testified that, while there were some boxes stacked near Ms. Parker's desk, Ms. Parker had told Mr. Brown that she did not have a problem with the boxes being there. Tr. at II-154–155. Ms. Parker did not refute Mr. Brown's testimony, nor did she present contrary evidence.

Mr. Brown's testimony indicates that Ms. Parker's contention that she was assigned a storage cubicle to use as her office is misleading. While the cubicle she used as an office during her temporary assignment in Calibrations had formerly been used for storage, and continued to house a few storage boxes, it clearly was not an inappropriate office assignment for a temporary employee, and was clearly not intended to be unpleasant. Accordingly, I find that her office assignment during her temporary duty with the Calibrations department did not contribute to creating an alleged hostile working environment for her.

Upon completing her temporary assignment in Calibrations in April 2017, Ms. Parker returned to her regular assignment in L-Area RAD-Con. In her Response to Judge Fine, dated January 22, 2018 (January 22, 2018, Response) Ms. Parker stated:

I am in a trailer, in a small room, with little to no contact with people. 10 hours a day, 4 days a week. Isolated.

¹⁴ Ms. Parker alleged that she was required to use a computer located in another building in order to report her timekeeping information. Amended Complaint at 4.

I had very limited ability to communicate with anyone.

I was told that there is a computer across the street to do timesheets. There are 2 computers. They are in meeting rooms which are almost always in use.

January 22, 2018, Response at 21. Ms. Parker's descriptions of her working conditions were often contradicted by her co-worker's testimony at the hearing. Moreover, the testimony of her co-workers indicates that she was treated no differently than her peers; *i.e.* those RadTechs who were waiting to obtain their security clearances due to backlogs of security clearance investigations. Tr. at II-121-22. Upon her return from her calibrations assignment, Ms. Parker joined other uncleared RadTechs in an office trailer. Tr. at II-90; Tr. at IV-44. The trailers were small, usually only two rooms. Tr. at IV-44. The first trailer, which Ms. Parker used for about one month, did not have a computer, but she and the other uncleared RadTechs had computer access in a conference room. Tr. at III-279; Tr. at IV-131. The uncleared RadTechs were then moved to a second trailer, which had at least one computer. January 22, 2018, Response at 29. Ms. Parker alleges that she was forced to sit in a back room alone and that she did not have access to the trailer computers. January 22, 2018, Response at 21. However, her trailer-mates testified that there were no assigned seats in the trailers and that Ms. Parker was usually using the computer. Tr. at IV-45-46, 73-74. Ms. Parker's trailer-mates further testified that they did not observe her being isolated, being singled out for special treatment, being treated unfairly, or being harassed. Tr. at IV-67, 90, 94. They also testified that they did not know about her whistleblower case until mere days before the hearing. Tr. at IV-67, 94.

Mr. Dylan Fanning testified at the hearing that he was a RadTech at SRNS, and that he shared office space with Ms. Parker and several other uncleared RadTechs. Tr. at IV-144. Mr. Fanning testified that initially the uncleared RadTechs had no computer in their shared office space, and eventually received one computer for all of them to share. Tr. at IV-145. Mr. Fanning testified that he never observed Ms. Parker being isolated or treated differently by management or other RadTechs. Tr. at IV-145.

Ms. Deirdre Jones testified that she has been an uncleared RadTech for SRNS since May 31, 2016, that she has shared office space with Ms. Parker, as well as the rest of the uncleared RadTechs during this time, and that she has had to share one computer with the other uncleared RadTechs. Tr. at IV-43-45. She further testified that she has not observed Ms. Parker being treated differently by management or her co-workers. Tr. at IV-45, 67. She testified that Ms. Parker was not forced to sit in a room by herself. Tr. at IV-46. She also noted that the uncleared RadTechs were often left without work, since they could not enter many areas of the SRS without clearances. Tr. at IV-46-47.

Mr. Charles Parker testified at the hearing that he was a RadTech who has shared office space with Ms. Parker. Tr. at IV-72. He testified that he shared a room in a trailer with Ms. Parker and three other people, and that it was so crowded that the five office occupants had trouble all fitting in the office at the same time. Tr. at IV-73. He testified that the uncleared RadTechs would initially have to go to another building to use a computer, but were then given one computer to share. Tr. at IV-73, 75. Mr. Parker testified that Ms. Parker was never forced to be in a room alone by herself. Tr. at IV-74-75. Mr. Parker stated that he was not aware of any RadTech who had their own office.

Tr. at IV-76. He further testified that he never observed Ms. Parker being treated differently or being isolated by Management or her co-workers. Tr. at IV-76. Mr. Parker noted that the uncleared RadTechs often had a lot of free time. Tr. at IV-78.

Ms. Susan Gibson testified that she was a RadTech at SRNS who shared office space with Ms. Parker and three other people in a crowded room in a trailer. Tr. at IV-103-104. She also recalled that the uncleared RadTechs shared one computer among them. Tr. at IV-104. She stated that, because it was hard for all five of the uncleared RadTechs to sit in the office at one time, they would take turns sitting somewhere else. Tr. at IV-105-106. Ms. Gibson testified that she never observed Ms. Parker being treated differently or isolated by management or her colleagues. Tr. at IV-109-110. Ms. Gibson also recalled that the uncleared RadTechs were often left with free time. Tr. at IV-111.

c. Deprivation of Work Assignments

Ms. Parker alleges that she was denied work assignments once she left Calibrations, stating in her amended complaint that “they have had me sitting in a trailer with little to no access to a computer. I have virtually nothing to do except attempt to try and figure out what paperwork to look at for possible training. I have been sitting in the trailer since.” Amended Complaint at 6. She elaborated at the hearing:

I said that we all sat in the trailer with nothing to do a lot of the time. But whenever it was time to go on a job, when a technician came to get them, and I requested that I be contacted and told that they were going because I was right in the other room, that didn't happen. I would come to the other room and find that they had all gone and no one contacted me.

Tr. at III-277. Despite having made these allegations, Ms. Parker references having performed a number of assignments during that time period. *See e.g.*, Amended Complaint at 6 (describing an altercation with a colleague while working on taking apart instruments); Amended Complaint at 7 (stating that she was asked to do a “Housekeeping walk-down”); Tr. at III-278 (describing an assignment in C-Area). She also testified that she turned down assignments so that she could work on her whistleblower case. Tr. at III-278. The other uncleared RadTechs testified that, at first they always asked her to come on jobs with them but, after she turned down those jobs several times, they stopped asking. Tr. at IV-46, 76. One uncleared RadTech, Ms. Jones, testified that Ms. Parker never asked them to tell her when they were going on jobs. Tr. at IV-46. Ms. Jones also provided the names of three inspectors who would offer Ms. Parker assignments. Tr. at IV-69. Ms. Jones and another uncleared RadTech, Mr. Parker, also testified that they often had little or no work to do. Tr. at IV-47, 78. Ms. Parker corroborated those statements. Tr. at III-274 (“I’m not telling you that we didn’t sit in that trailer. I am not saying that.”). Accordingly, Ms. Parker’s own testimony asserts that work was available, but she chose not to accept some of those assignments. Most importantly, the record shows that Ms. Parker has been working on special assignments in Dosimetry and Calibrations for most of her tenure at SRNS. *See* Amended Complaint at 3–4.

Accordingly, Ms. Parker has not submitted any evidence, other than her own assertions, that management has restricted or “deprived” her of work assignments. Her assertion has been

contradicted by several of her coworkers and her own statements. Accordingly, Ms. Parker has not met her burden of proof on this issue.

d. Allegations that a Manager Called Ms. Parker a “Liar”

Ms. Parker alleges that a manager, Michelle Holman-Abbott said, “Yolanda lied,” in front of her other colleagues while they were working. Amended Complaint at 6–7. In her Amended Complaint, Ms. Parker stated that while working to supply trays, another employee asked her for an empty tray and the following verbal altercation ensued:

I leaned back and didn’t see any trays under the table. Extra trays are outside the door a couple of feet away. Michelle Holman-Abbott said: “Yolanda lied”. Michelle said: there is a tray left. I said: I don’t lie. I said: Lie means, intent to deceive. Michelle said: I guess you are too tall to see under the table.

I didn’t appreciate Michelle’s behavior and found it unprofessional for a Manager and her calling me a “liar” was retaliation.

Michelle Holman-Abbott was one of the individuals identified in my previous complaint and her behavior was a blatant attack.

Amended Complaint at 7 (emphasis in original). In her testimony, Ms. Holman-Abbott flatly denied calling Ms. Parker a liar. Tr. at II-302–03. Mr. Fanning testified that he recalled an exchange between Ms. Holman-Abbott and Ms. Parker. He testified that he did not recall Ms. Holman-Abbott’s exact words, but stated that he believed she was joking with Ms. Parker. Tr. at IV-149-150. Ms. Parker has not shown that Ms. Holman-Abbott more likely than not called her a liar. But even if Ms. Holman-Abbott had called Ms. Parker a liar, that single rude utterance in the workplace does not constitute a hostile work environment. Courts have consistently held that “ordinary workplace indignities, such as petty insults, vindictive behavior, and angry recriminations are not actionable.” *Koch v. White*, 134 F. Supp. 3d 158, 168 (D.C. Cir. 2015) (citations omitted). Accordingly, if this verbal altercation did happen, it would not have created or contributed to a hostile work environment.

e. Inquiry about Ms. Parker’s Security Clearance Status

Ms. Parker alleges that manager Robbie Black’s inquiry about the status of her security clearance investigation was part of a hostile work environment. Amended Complaint at 7. In her Amended Complaint, Ms. Parker claimed that Mr. Black had asked her if she had met with an investigator concerning her application for a security clearance, and informed her that **“it might be an issue that I didn’t have my clearance yet.”** Amended Complaint at 7 (emphasis in original). Mr. Black admitted that he asked Ms. Parker about the status of her security clearance. Tr. at II-121-122. However, Mr. Black testified that he asks all of his employees about the status of their clearance investigations and will continue to do so in order to better meet business and operational needs, and this testimony was corroborated by the testimony of four other uncleared RadTechs. Tr. at II-122-123, IV-48, 79, 114, 155. Since Mr. Black asked this question of each of the uncleared RadTechs, it was clearly not directed only at her and hence not motivated by any

discriminatory or retaliatory intent. Moreover, asking an employee on one occasion about their security clearance status is clearly not sufficient to create or contribute to a hostile working environment. Accordingly, Ms. Parker has not met her burden of proof on this issue.

f. Delay in Processing Ms. Parker's Request for Unpaid Leave

Ms. Parker alleges that her request for time off without pay was delayed. Response to Judge Fine's Questions 1-22-18 at 24 ("Response 1-22-18"). She testified that she had planned a trip to Alaska and needed more vacation time for the trip than she had available, and therefore requested unpaid leave from her first-line manager, Lillie Gordon, a month or two in advance. Tr. at II-88, III-166. Ms. Parker alleges that her request was delayed, stating:

I sent Mr. Black and Ms. Gordon an email as a reminder. At first, she sent an email saying "There is a form to fill out for scheduled/short vacation" (The Form is not a SRNS Form). Later that day, I got a call from Ms. Gordon. She stated that they weren't sure that they could allow me to go considering I did not have enough Vacation time to cover the time I requested. I reminded her of the conversation from 06/08/17. I said: her and Mr. Black said that there would be no problem with it. She said that she didn't think they could allow me to go. I said that there has never been a problem with me taking time off without pay in the past. I said: I am sitting in a room, in a trailer, 10 hours a day, doing nothing and that nothing was scheduled for me until September. She said she still didn't think I could go and that she would contact Mr. Black.

I sent an email to the DOE Office of Civil Rights and OHA/Mr. Thompson. On 07/31/17. [sic] Later, Mr. Black came over to assure me that it would be ok for me to go on my trip.

Response 1-22-18 at 24. Though the situation was resolved in her favor, Ms. Parker cites the delay in approving her request and the number of people involved as evidence of a hostile work environment. These facts, even if true, do not describe a situation which could constitute or contribute to a hostile working environment. Ms. Parker requested an exception to the rules so that she could take an extended vacation. Her managers sought the approval of their managers before allowing such an exception, and then granted her request for unpaid leave. Essentially, Ms. Parker is claiming that she was subjected to a hostile work environment when her request for special treatment was granted less quickly than she would have liked. A delay in approving an employee's request for unpaid leave, without more, does not create or contribute to a hostile working environment.

g. Ms. Parker's Failure to Report her Late Arrival

Ms. Parker alleges that she was subjected to a hostile work environment when Willie Lewis called her inquiring about her whereabouts after she had failed to report to work on time. Amended Complaint at 6. Ms. Parker alleges that, when she realized that she would arrive late because of a medical appointment, she called her immediate manager, Lillie Gordon, and left a voicemail message informing her of the change. However, Ms. Gordon was on vacation. Tr. at II-100. Ms.

Parker further alleges that Mr. Lewis informed her that Mr. Black was “mad.” Amended Complaint at 6. Ms. Parker provided no evidentiary support, other than her assertions, for her contention that Mr. Lewis had reported that Mr. Black was angry with her, and she failed to ask Mr. Lewis about this aspect of her contentions during Mr. Lewis’ hearing testimony.¹⁵ A reasonable person would not likely find Mr. Lewis’s phone call and message to be harassment. Based on the factors enumerated in *Harris*, Mr. Lewis’s phone call is not indicative of a hostile work environment. Accordingly, Ms. Parker has not met her burden of proof on this issue.

h. Ms. Parker’s Allegations Concerning Training

Ms. Parker’s RadTech qualifications had expired while she was on her assignment with Calibrations, and it became necessary for her to requalify. Tr. at IV-237. SRNS began the process of training her to pass the qualifications test and to undergo a mock-up training exercise. Tr. at IV-237. Mr. Denton testified that there was “a lot of confusion” about how Mr. Parker would be prepared to meet her qualifications, and the specific qualifications that Ms. Parker was required to meet. Tr. at IV-237. Ms. Parker completed her mock-up training and passed her qualification examination.

Ms. Parker alleges that she was discriminated against in training because she: (1) was not put in a class for training and thus did not have anyone to help her; (2) was made to perform an unusually long mock-up; (3) was tested as a Grade 20 instead of a Grade 18; (4) was not allowed to use her own calculator; and (5) was not given any study time. She alleges that these actions were taken so that she could be terminated when she failed her test. Tr. at III-242. I review these allegations below.

I note that Ms. Parker passed the test.

i) Not Placed In A Class

Ms. Parker alleges that she was placed at a disadvantage by not being tested with a larger class, which would have allowed her to collaborate with peers in preparing for the test. Tr. at III-257. However, the record shows that Ms. Parker was not alone in her class; there was at least one other person in her class. Tr. at III-239. Furthermore, SRNS regularly conducts classes with just one person. Tr. IV-255. Accordingly, Ms. Parker has not shown that her class size was discriminatory or that it altered the conditions of her employment.

ii) Unusually Long Mock-up

Ms. Parker alleges that, while a normal mock-up takes a few hours, hers lasted two days. Ms. Parker further alleges that her allegedly unusually long mock-up was intended to harass or retaliate against her. Response 1-2-18 at 25. However, the trainer, John Denton, testified that it was not unusual for a mock-up to last two days. Tr. at IV-255-256. He testified that Ms. Parker was given a second try at the mock-up because she “was really struggling on some things and they had to put her back through.” Tr. at IV-266, 268.

¹⁵ Apparently, Ms. Parker was not disciplined for this incident.

Ms. Parker has not provided any evidence, other than her uncorroborated suspicions, that her mock-up was extended in order to harass or intimidate her. Ms. Parker eventually successfully completed her mock-up. I find that that record does not support her assertion that the mock-up was extended in order to harass or intimidate her. Accordingly, Ms. Parker has not met her burden of proof on this issue.

iii) Tested at Grade 20

Ms. Parker alleges that on the day of her test, “[a]s soon as I showed up, I was told that I had to take the test and that I was being tested as a Grade 20 not a Grade 18. I stated that Mr. Black had said that I would be testing as a Grade 18.” Response 1-22-18 at 25. Ms. Parker further alleges that SRNS’s decision to test her at a higher qualification level was intended to prevent her from passing the test in order to provide a pretext to terminate her. However, Ms. Parker passed the test on the first try. Mr. Denton testified that Ms. Parker was tested at Grade 20 because, though she was a Grade 18 at the time, she had been with SRNS for over two years and he believed she was upgrading to a Grade 20, in accordance with SRNS’s usual practice. Tr. at IV-256. Ms. Parker presented no evidence that her testing at a higher grade than she expected was a discriminatory action. Accordingly, Ms. Parker failed to meet her burden of proof on this issue.

iv) The Calculator

Ms. Parker alleges she was denied the use of her personal calculator for the test, noting that Mr. Denton had initially assured her that she could use it. January 22, 2018, Response at 25. Ms. Parker acknowledged that Mr. Denton informed her that individuals taking the qualification examination were now required to use calculators provided by the trainers. January 22, 2018, Response at 25. Ms. Parker further acknowledged that she was given additional time to familiarize herself with the training department calculator. January 22, 2018, Response at 25. Mr. Denton testified that he had originally thought Ms. Parker could use her own calculator, but that he was told that a new policy required everyone taking that course to use SRNS calculators to ensure that formulas could not be programmed into the calculators in advance, and that Ms. Parker was provided a calculator, as were the others, and given instruction on how to use it. Tr. at III-257. Ms. Parker has not supplied any evidence to the contrary. Therefore it is clear that this change in the calculator rule affected everyone and was made for a legitimate purpose, and was not intended to harass Ms. Parker, or cause her to fail the test. Therefore, Ms. Parker not met her burden to prove that SRNS’s requirement that she use a particular calculator on her test created or contributed to a hostile work environment.

v) Study Time

Ms. Parker alleges that she was denied the “normal” day of study before having to take her test, stating:

As soon as I showed up, I was told that I had to take the test I asked about the day of study. Mr. James Motin said there wasn’t enough time. I stated that it is not normal to have someone take the test without finishing the Survey and having study

time the day before the test. He said there was no time. I asked about the time that they gave other classes to cover any questions that they had before the test. Mr. Motin said there was no time.

...

I took the test the next morning.

Response 1-22-18 at 25. The record, however, shows that Ms. Parker requested extra study time and received it, despite the fact that SRNS does not typically grant extra time for study. Tr. at IV-238–39, 260. Mr. Denton testified that Ms. Parker came to him requesting extra time to study. Tr. at IV-238. He told her that they do not usually do that and that they have not done that for other people. Tr. at IV-238. However, Mr. Denton escalated Ms. Parker's request; it was granted and Ms. Parker received an extra day to study. Tr. at IV-238. Accordingly, Ms. Parker has not met her burden of proof of showing that SRNS intentionally attempted to prevent her from passing the test by denying her an opportunity to study for it.

i. Instructions to Avoid Working on Her Whistleblower Case on Company Time

Ms. Parker alleges and provided supporting documentation showing that Mr. Black informed her on June 8, 2017, that she could not use SRNS equipment for her case, nor could she meet with DOE on SRNS time. Ex. 81. Parker Allegations at 21–22. However, Ms. Parker also provided documentation that SRNS Legal informed her on June 12, 2017, that she could, in fact, use SRNS time and equipment to fulfill DOE requests. Ex. 81. SRNS then allowed Ms. Parker to spend many hours of SRNS time working on her whistleblower case. Tr. at III-278; Tr. at IV-46, 76. While Mr. Black's original instructions were wrong, SRNS quickly took appropriate action to fix the problem when it learned of Mr. Black's statements, and Ms. Parker has not demonstrated that she suffered any substantive harm from the erroneous instructions. Therefore, Mr. Black's instructions on June 8, 2017, did not create or contribute to a hostile work environment.

j. Meeting With Chief Operations Officer Eyler

Ms. Parker alleges that SRNS's Chief Operations Officer, David Eyler, was angry with her at a meeting intended to resolve her concerns about the records in Dosimetry. Response 1-22-18 at 21. Amended Complaint at 9. However, after hearing Mr. Eyler's testimony at the hearing, Ms. Parker conceded that she believed Mr. Eyler was concerned by what she was telling him, rather than angry at her for telling it. Tr. at III-33. Therefore, Ms. Parker has conceded this issue and has not shown that Mr. Eyler's demeanor was part of a hostile work environment.

k. Mr. Padezanin's Refusal to Sign Forms

Ms. Parker alleges that a manager, Mr. Padezanin, harassed her by refusing to sign forms allowing her to apply for other jobs at SRNS. Response 1-22-18 at 24–25. She stated that:

Mr. Padezanin signed my Managers approval forms, prior to filing 10CFR708 in March 2017. Afterwards, he would harass me and about the jobs that I was submitting for. Then he refused to sign the request.

Response 1-22-18 at 24–25.

Mr. Padezanin admitted to having refused to sign some of Ms. Parker's forms. Tr. at III-140. He testified that he believed, at the time, that he was responsible for determining whether an employee met the qualifications for the job they intended to apply for before signing the form giving them permission to do so. Tr. at III-140. He then identified three other employees whose forms he had refused to sign as well because they did not meet the requirements for the posting. Tr. at III-141. On May 22, 2017, Mr. Padezanin received a call from SRNS's human resources office informing him that he was not to consider an employee's fitness for the job when signing the forms. Tr. at III-142, 162. After that conversation, he signed his employees' forms, including Ms. Parker's. Tr. at III-142. Ms. Parker has not shown that Mr. Padezanin singled her out for special treatment when he refused to sign her form, in that he treated other individuals the same.

Further, in order retaliate against Ms. Parker for her alleged protected activity, Mr. Padezanin would have had to have known about her protected activity. Ms. Parker cited no evidence that Mr. Padezanin knew of her protected disclosures. Mr. Padezanin testified that he did not know at the time he refused to sign Ms. Parker's forms that she had made protected disclosures; he stated that he refused to sign Ms. Parker's form on April 4, 2017, and first learned of Ms. Parker's Part 708 Complaint on April 25, 2017. Tr. at III-145–46; Ex. O; Ex. nn. Ms. Parker again tried to fill an evidentiary void with speculation, alleging that Mr. Padezanin must have been aware of her disclosures because his wife worked for Mr. Hadlock. Tr. at III-42–43. Mr. Hadlock, however, testified that Mrs. Padezanin never worked for him. Tr. at III-58. Accordingly, Ms. Parker has not met her burden of proof on this issue.

I. Hostile Work Environment Summary

Ms. Parker's allegations, taken as a whole, do not create or contribute to a hostile work environment. A hostile work environment is "permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment." *Harris v. Forklift Sys.*, 510 U.S. at 21 (internal citations omitted). Ms. Parker did not show that any of her experiences were discriminatory. Time and again her colleagues testified that they were subjected to the same policies and conditions as Ms. Parker. Time and again her managers testified that they had in the past interacted with other employees as they had with Ms. Parker, and that they would continue to do so in the future.

Even if she had shown that her environment was permeated with discriminatory intimidation, ridicule and insult, Ms. Parker did not show that the conditions of her employment were altered. She retains the same position she has always had and was graded fairly when she applied for other positions. In light of the factors considered under *Harris*, Ms. Parker's environment at SRNS was neither hostile nor abusive. I will address each factor in turn.

The first factor is the frequency of the discriminatory conduct. *Id.* at 23. Even if the alleged indicators of a hostile work environment at SRNS had been discriminatory, they happened too infrequently to alter the conditions of Ms. Parker's employment. None of the behavior was

ongoing. Isolated incidents or quickly corrected behavior are not typically enough to alter conditions of employment.

The second factor is the severity of the discriminatory conduct. *Id.* at 23. Even if the alleged conduct had been discriminatory, it was not severe. No reasonable person would express shock about the conduct Ms. Parker alleges contributed to a hostile work environment. Indeed, that conduct was either benign or promptly mitigated in every instance.

The third factor is whether the conduct is physically threatening or humiliating, rather than a mere offensive utterance. *Id.* at 23. Ms. Parker was never physically affected by the alleged conduct in a way that would affect the conditions of her employment. The only allegation involving physical effects was that she was isolated in the trailer. However, this was neither threatening nor humiliating, especially in light of the fact that she was not required to sit in an isolated room. The majority of Ms. Parker's allegations are mere utterances, only one of which could even be considered offensive by a reasonable person. That one utterance does not approach the level of offense cited in *Harris* and other cases describing hostile work environments involving offensive utterances. *See Id.* At 22.

Finally, we consider whether the alleged conduct unreasonably interfered with Ms. Parker's work performance. *Id.* at 23. There is no evidence in the record indicating that SRNS unreasonably interfered with Ms. Parker's work performance. SRNS awarded Ms. Parker monetarily and provided her with public recognition for her efforts to improve its processes; allowed her to take unpaid leave; and awarded her additional time to study for her qualification exam. Far from interfering with Ms. Parker's work performance, SRNS's conduct allowed Ms. Parker to innovate and improve the areas in which she worked.

All told, Ms. Parker's allegations of a hostile work environment reveal a workplace that a reasonable person would not find abusive or hostile. Accordingly, Ms. Parker has failed to prove that she was subjected to a hostile work environment in retaliation for her protected disclosures.

III. Conclusion

While Ms. Parker has met her burden of proof under 10 C.F.R. § 708.29 to show that she engaged in protected activity under 10 C.F.R. § 708.5(b), by reporting her whistleblower concerns to SR ECB, and filing her Complaint under Part 708, she failed to meet her burdens of proving that: (1) there was a nexus between her protected activity and any alleged acts of retaliation on the part of Savannah River Nuclear Services; and (2) she was subjected to a hostile work environment by Savannah River Nuclear Services. For these reasons, I am denying any relief on Ms. Parker's Complaint.

It is therefore Ordered that the Complaint filed by Yolanda Parker under 10 C.F.R. Part 708 is hereby denied.

This is an Initial Agency Decision, which shall become the Final Decision of the Department of Energy unless a party files a notice of appeal by the fifteenth day after the party's receipt of the Initial Agency Decision, in accordance with 10 C.F.R. § 708.32.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals