

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 29 April 2008

Case Nos.: 2007-WPC-0003
2007-WPC-0004

IN THE MATTER OF:

**STACY A. VEACH and
BECKY VEACH,**
Complainants

v.

**MERAMEC VALLEY OWNERS'
ASSOCIATION,**
Respondent

APPEARANCES:

Stacy A. Veach, *Pro Se*
Becky Veach, *Pro Se*
Complainants

Larry M. Bauer, Esq.
For Respondent

BEFORE: JOSEPH E. KANE
Administrative Law Judge

DECISION AND ORDER – DENYING COMPLAINTS

This proceeding arises under the employee protection provisions of the Water Pollution Control Act, 33 U.S.C. § 1367, *et. seq.* (“WPCA”), as well as the implementing regulations of the Secretary of Labor published at 29 C.F.R. Part 24. Stacy Aaron Veach and Becky Veach (“Complainants”) filed a complaint with the Occupational Safety and Health Administration, United States Department of Labor, on May 8, 2006, alleging that their employer, Meramec Valley Owners’ Association, (“Respondent”) violated Section 507 of the Act by unlawfully discharging them in retaliation for their protected activities.

On September 22, 2006, the Secretary issued a report, finding that Complainants were fired because of insubordination and poor work performance and not because of their protected activity. On September 30, 2006, Complainants filed a timely appeal and request for a hearing. A formal hearing was held on July 17, 2007, in St. Louis, Missouri, at which time I offered both

parties the opportunity to offer testimonial and documentary evidence. The record was held open for the filing of post-hearing briefs, which both parties have filed.

The findings of fact and conclusions of law set forth in this Decision and Order are based on my analysis of the entire record. Each exhibit and argument of the parties, although perhaps not mentioned specifically, has been carefully reviewed and thoughtfully considered.

Findings of Fact and Conclusions of Law

I. Summary of the Evidence¹

I have carefully considered and evaluated the rationality and internal consistency of the testimony of all witnesses, including the manner in which the testimony supports or detracts from the other record evidence. In so doing, I have taken into account all relevant, probative, and available evidence, while analyzing and assessing its cumulative impact on the record. *See, e.g., Frady v. Tenn. Valley Auth.*, 92-ERA-19 at 4 (Sec’y Oct. 23, 1995) (citing *Dobrowolsky v. Califano*, 606 F.2d 403, 409-10 (3d Cir. 1979)); *Ind. Metal Prod. v. Nat’l Labor Relations Bd.*, 442 F.2d 46, 52 (7th Cir. 1971). An Administrative Law Judge is not bound to believe or disbelieve the entirety of a witness’ testimony, but may choose to believe only certain portions of the testimony. *See Altemose Constr. Co. v. Nat’l Labor Relations Bd.*, 514 F.2d 8, 15 n.5 (3d Cir. 1975). Credibility is that quality in a witness which renders his evidence worthy of belief. For evidence to be credible,

[it] must not only proceed from a credible source, but must, in addition, be ‘credible’ in itself, by which is meant that it shall be so natural, reasonable and probable in view of the transaction which it describes or to which it relates, as to make it easy to believe it.

Ind. Metal, 442 F.2d at 52. Moreover, based on the unique advantage of having heard the testimony firsthand, I have observed the behavior and outward bearing of the witnesses and gathered impressions as to their demeanor. In short, to the extent credibility determinations must be weighed for the resolution of issues, I have based my credibility findings on a review of the entire testimonial record and exhibits with due regard for the logic of probability and the demeanor of witnesses. Probative weight is granted to the testimony of all witnesses found credible.

A. Testimony of Stacy Aaron Veach, Complainant (Tr. 105-136)

Complainant Aaron² Veach testified that he started working at the Park in July 2004. (Tr. 109). He worked under the supervision of Park Manger Carroll Mealy, who showed him how to perform various jobs around the Park, such as electrical work, and how the water treatment plant worked. (Tr. 109). Mr. Veach testified that he did not want Carroll Mealy’s job

¹ I have attempted to summarize the witnesses’ testimony in the most coherent sequence as possible. Therefore, the testimony is not necessarily in the same order as the witnesses were presented at the hearing. Testimony from individual witness was often disjointed and difficult to follow. To the extent possible, the facts to which each witness testified are summarized chronologically.

² Mr. Veach stated that he prefers the name “Aaron.” (Tr. 37).

as manager, but he felt he was being trained for it and thought Carroll Mealy “insinuated” that Mr. Veach was being trained to replace him. (Tr. 110, 131).

Mr. Veach testified that he and his wife had an amicable relationship with Carroll Mealy until an incident in the Fall of 2005 when Board member Scott Phinney approached Mr. Veach to ask if Mr. Veach had any concerns about the Park. (Tr. 109). Mr. Phinney also wanted to know what projects he and Carroll Mealy had done at the Park since the last meeting. (Tr. 124). Mr. Veach felt uncomfortable with the conversation and told Carroll Mealy about it, who promised to put a “stop” to the inquiries.³ (Tr. 109). Mr. Veach testified that his relationship with Carroll Mealy deteriorated after this first conversation with Scott Phinney. (Tr. 109).

Mr. Veach testified that an incident⁴ occurred at the water treatment plant in January 2006. (Tr. 125). Mr. Veach observed “sludge” in one of the holding tanks, which he thought was improper. (Tr. 110). Mr. Mealy told Mr. Veach that the “sludge” was not supposed to be where it was. (Tr. 110). Mr. Mealy lowered a pump into the tank where sludge was floating on top and Mr. Veach ran the hose over to a fence for the sludge to run out. (Tr. 110). Mr. Mealy then sprayed water into the tank to dilute the remaining sludge, and then pumped the remaining sludge out of the tank. (Tr. 110). Mr. Veach thought the sludge was “human waste,” and he didn’t think it was “right” to pump human waste from the treatment plant into a creek that ran into a neighboring lake. (Tr. 129-130). The incident lasted about three hours. (Tr. 127). Only Mr. Veach and Mr. Mealy were present, but Mr. Mealy did not tell Mr. Veach not to tell anyone what had happened. (Tr. 127).

Mr. Veach had another conversation with Scott Phinney in February or March 2006, when Mr. Phinney again approached Mr. Veach to ask if he had any concerns about the Park. (Tr. 109-110). At that time, Mr. Veach told Mr. Phinney about the incident at the treatment plant. (Tr. 110). Mr. Veach testified that he didn’t want Carroll Mealy to get in trouble, but he believed that he was being trained for Mr. Mealy’s job, and was afraid that the incident at the treatment plant would “come back on [him]” after Mr. Mealy retired. (Tr. 110). Mr. Veach also stated that he “didn’t want to get sued for something that [he] didn’t do.” (Tr. 111). Mr. Veach was also concerned about retaliation by Mr. Mealy, but Mr. Phinney assured him that he was protected and that Mr. Mealy had no grounds to terminate him. (Tr. 110-111). It was unclear whether Mr. Veach discussed anything else with Mr. Phinney at that time. (Tr. 110).

About two weeks⁵ after telling Mr. Phinney about the incident at the treatment plant, Mr. Veach and his wife were at work and Mr. Mealy confronted them, making a reference to Becky Veach being seen at Sandra Webber’s house.⁶ (Tr. 111). Mr. Veach testified that Carroll Mealy also said something about only a couple of people knowing something, but Mr. Veach’s testimony in this regard was vague and unclear. (Tr. 111). Mr. Mealy asked whether the Veaches had anything to say to him, which Mr. Veach thought was a reference to something

³ Mr. Mealy did not recall saying this. (Tr. 220).

⁴ The use of the term “incident” is for the sake of convenience and should not be construed as a finding that Mr. Mealy’s actions were proper or improper.

⁵ An email from Becky Veach documents that this occurred on March 20, 2006. (CX 4).

⁶ It is unclear whether Mr. Mealy personally saw Mrs. Veach at Sandy Webber’s house or was told about it by someone else.

specific, perhaps the incident at the treatment plant, but Mr. Veach's testimony was unclear. (Tr. 111-112). Mr. Veach told Carroll Mealy that he did not have anything to say to Carroll Mealy and also said something about not wanting to go over Carroll Mealy's head. (Tr. 111).

Aaron Veach described this incident in an email sent on March 20, 2006, to Board Member Charlie Mims. (CX 4). The event had occurred on the same day. The email described the incident more specifically, stating that Mr. Mealy told the Veaches that a couple of things were brought up over the weekend at a Board meeting "that only 2 people would know about." Aaron Veach stated in the email that he did not understand why Mr. Mealy was questioning them or what business of his it was if Becky Veach visited Sandy Webber on the weekend. (CX 4).

Mr. Phinney told Mr. Veach that he should tell Board Member Charlie Mims and Board President Bud Palmer about the incident. (Tr. 113-114). Mr. Veach then told Mr. Mims and Bud Palmer about the incident at the treatment plant, but was not specific about the details of either conversation. (Tr. 113-114). He testified only that Mr. Palmer told Mr. Veach that Mr. Palmer would address the issue to Mr. Mealy, which caused Mr. Veach to fear that his job was in jeopardy. (Tr. 114).

Mr. Veach was not sure what happened after he told Scott Phinney, Charlie Mims, and Bud Palmer about the incident at the treatment plant, but Mr. Phinney and Mr. Palmer both told him that they would bring his concerns to the Board. (Tr. 114). He thought the issue of his and Becky Veach's terminations were brought to the Board one week before they were terminated, but did not state the basis for this belief. (Tr. 115). He also testified that after he told Scott Phinney about the incident at the treatment plant, "everything changed," and that his wife, Mrs. Veach, started being "victimized" by Mr. Mealy. (Tr. 112-113).

Mr. Veach testified that he was terminated on April 14, 2006, but was not specific about how he was notified or what exactly he was told. (Tr. 122). He stated that he experienced "disbelief" when he was fired. (Tr. 122). An eviction notice, which has been admitted into evidence, was placed on the Veaches' trailer on or about April 21, 2006. (Tr. 122; CX 9).

After he was fired, Mr. Veach made a report to the State Department of Natural Resources ("DNR") about the treatment plant incident. (Tr. 128). He did not make a report sooner because he thought the matter would be handled internally by the Board, but after he was terminated, he felt that the Board did not properly investigate the incident. (Tr. 115).

B. Testimony of Becky Veach, Complainant (Tr. 84-104)

Complainant, Becky Veach, Mr. Veach's wife, was hired at the Park as a seasonal employee in the Summer of 2004, approximately one month after her husband was hired. (Tr. 88). She testified that initially she got along very well with Carroll Mealy and his wife. (Tr. 88).

Becky Veach did not witness the treatment plant incident, but was told about it by Mr. Veach. (Tr. 100). One night, Mr. Veach told her that he was "scared," because he thought that Mr. Mealy had "done something that he should not have done." (Tr. 100). Mr. Veach told her that he was being trained to be Park manager and was afraid that the incident could "come back on [him]" after Carroll Mealy retired. (Tr. 100). Mrs. Veach suggested that her husband

“open up and tell somebody.” (Tr. 100). Sometime later, Mr. and Mrs. Veach went to the treatment plant together and she saw the sludge on the ground. (Tr. 100).

Becky Veach testified to a conversation she had with Board Member Scott Phinney, which she believed occurred in March 2006. (Tr. 85). Mr. Phinney told her that she could discuss any concerns she had about the Park with him, and she told him about some concerns she had with how the Park office was being run, specifically relating to how money was counted. (Tr. 85). She also told him about the treatment plant incident, but was not specific about what she said. (Tr. 85).

Becky Veach testified to a confrontation with Carroll Mealy in March 2006 consistent with Mr. Veach’s testimony and the March 20 email. (Tr. 89). Carroll Mealy asked the two if they had anything to say to him and both said no. (Tr. 89). Carroll Mealy told them that there was “one thing that only two people should know about.” (Tr. 89). Carroll Mealy also told them that he had seen them at Sandy Webber’s house and that they could see Sandy Webber on their day off. (Tr. 89). Carroll Mealy then sent them home and told them to “think about it and come back tomorrow and we’ll see.” (Tr. 89). Becky Veach testified that she thought the “one thing that only two people should know about” was the incident at the water treatment plant, but she did not elaborate. (Tr. 91). She thought she was sent home because she was seen at Sandy’s house, but did not explain how or if this related to the treatment plant incident. (Tr. 91). Becky Veach noted that her relationship with Carroll Mealy went downhill thereafter. (Tr. 89-90).

Becky Veach sent emails to Board members on March 20, 2006, and March 28, 2006. The emails contain a laundry-list of grievances, but do not mention the incident at the treatment plant. (CX 10, 11). Sometime after sending the emails, Board President Bud Palmer called Becky Veach on the phone and told her that he thought that Carroll Mealy had found out that she had “come forward about the treatment plant and all the other issues.” (Tr. 90). Bud Palmer also told Becky Veach that Carroll Mealy had no grounds to terminate her and “they would get it resolved through the Board meetings.” (Tr. 90).

Becky Veach thought that the Board held an “emergency” meeting on Saturday, April 7,⁷ 2006, prior to the Veaches being terminated one week later. (Tr. 91). Becky Veach testified that she went to a Board meeting, but it is not clear whether this was the “emergency” meeting or another meeting at a different time. (Tr. 90).

C. *Testimony of Scott Phinney (Tr. 23-38; 233-235)*

Scott Phinney testified that he was a member of the Park for approximately seven years, and was elected to the Board in October 2005. (Tr. 23-24). He acknowledged that he had a poor relationship with Carroll Mealy and with approximately five out of the nine Board members. (Tr. 28, 31). Specifically, he testified that whenever he brought up complaints about Mr. Mealy or his wife, Mr. Mealy would become upset and lose his temper. (Tr. 25, 27-28).

Sometime after he became a Board member, in what he thought was January 2006, Mr. Phinney approached Aaron Veach and asked him some questions about the Park. (Tr. 26).

⁷ Other witnesses have confirmed that the meeting was in fact held on April 8. (Tr. 29).

Mr. Phinney had been approached by other members of the Park with concerns, and these other members had suggested that Mr. Phinney talk to Mr. Veach. (Tr. 26). Mr. Phinney testified that Aaron Veach did not tell him a lot at that time, but was not specific about the nature of the conversation. (Tr. 26.).

Scott Phinney had another conversation with Aaron Veach in March 2006. (Tr. 27). At that time, Mr. Veach began telling Mr. Phinney about more concerns about the Park, and specifically the incident at the water treatment plant. (Tr. 27). During the same conversation, Mr. Veach also mentioned vacation and sick days and concerns about gas in vehicles, but Mr. Phinney did not elaborate about exactly what was said. (Tr. 27).

At some point, Scott Phinney raised various concerns to the Board, and the Board appointed a committee to investigate “the issues.” (Tr. 29). It was not clear when this was and whether the water treatment plant incident was one of the issues that would be investigated. The committee consisted of himself, Jim Mantle, and Charlie Mims. (Tr. 29). Mr. Phinney testified that he did not really investigate anything, because he had already spoken to several people. (Tr. 29). Sometime in March Jim Mantle “backed up” everything Mr. Phinney had told the Board. (Tr. 29). It was not clear whether this was the same meeting that the committee was appointed or at a different time.

Scott Phinney testified that an “emergency” Board meeting was held on April 8, 2006. (Tr. 29). Mr. Phinney testified that at that meeting “everything came out,” including the treatment plant incident, and other complaints that Aaron Veach and other members of the Park had. (Tr. 29). Mrs. Veach appeared at the meeting. (Tr. 30). Mr. Phinney testified that Becky Veach was told that Carroll Mealy would be stripped of the right to fire employees and that he would only be able to fire her if he brought evidence to the Board and the Board made the final decision. (Tr. 30). It was not clear who said this or whether Mr. Mealy was in fact stripped of the authority to fire; however, Mr. Phinney testified that no evidence was ever produced to him as a Board member. (Tr. 30).

Carroll Mealy was also present at the April 8 meeting, but not at the same time as Mrs. Veach. (Tr. 36). Mr. Mealy was present for the final 15 or 20 minutes of the meeting, and the entire meeting lasted about an hour. (Tr. 36-37). Mr. Phinney testified that Mrs. Veach brought up the treatment plant incident to the Board at the “emergency” meeting and that after that the issue was “brought up” again while Carroll Mealy was present. (Tr. 234-235). Mr. Phinney was not specific as to what was said concerning the treatment plant incident and what, if anything, Mr. Mealy said in response. Aaron Veach was not present at the meeting. (Tr. 37).

Scott Phinney testified that Mr. Veach asked him about reporting the treatment plant incident to the DNR prior to his termination, but Mr. Phinney told him to wait and see what the Board would do. (Tr. 37). After the Veaches were fired, Mr. Veach told Mr. Phinney that he was going to contact the DNR and Mr. Phinney said, “okay.” (Tr. 37).

D. Testimony of Charles Robert Mims (Tr. 38-62)

Charlie Mims testified that he was a member of the Park from 1994 until 2006 and that he served on the Board from 2000 until 2003, and then again from 2004 until 2006. (Tr. 39-40).

He thought the Veaches were good workers and were praised by other members of the Park for their work. (Tr. 40, 49). Mr. Mims testified that Carroll Mealy would praise Aaron Veach's work to the Board. (Tr. 40-41).

In October of 2005, Scott Phinney brought several issues to the Board's attention, such as concerns about the attitude and customer service of Carroll Mealy and his wife. (Tr. 41). The treatment plant issue was not raised at that time as it had not occurred yet. (Tr. 51). The Board appointed a committee, which included Mr. Mims, to meet with Park members and discuss their concerns about the Park. (Tr. 41). Mr. Mims testified that from February to March 2006 he met with various Park members, including the Veaches, to discuss concerns about the Park. (Tr. 41). Mr. Mims thought this occurred after a Board meeting in February or March 2006. (Tr. 53-54). In the course of meeting with the Veaches, they told Mr. Mims about the treatment plant incident and expressed concern that the Park could be shut down as a result. (Tr. 53). The Veaches also expressed numerous other concerns regarding office procedures, preferential treatment of other members, and Mrs. Veach being owed wages for certain hours. (Tr. 55-56).

At some unstated time afterward, Mr. Mims asked Carroll Mealy about the treatment plant incident and expressed concern about the Park being shut down, but Mr. Mealy told Mr. Mims that it was "an accidental spill" that he had cleaned up. (Tr. 50).

Once Mr. Mims had all the concerns from Park members and employees he took the concerns to the Board. (Tr. 42). He did not mention the Veaches, but thought that everyone seemed to know that the Veaches were "involved." (Tr. 43). It was not clear whether he raised the issue of treatment plant incident to the Board. Mr. Mims stated that the issue was not raised at a Board meeting prior to the Veaches telling him about it, but he did not state if it was brought up afterward, and if so, when. (Tr. 53-54).

At some point, Mr. Mims testified that Mr. Mealy's opinion of the Veaches "changed," and he began complaining about the Veaches' job performance and threatened or suggested that he would fire them. (Tr. 42, 45). Mr. Mims was concerned that would appear as retaliation. (Tr. 42-43). He suggested to Board President Bud Palmer that if Carroll Mealy had grounds to terminate the Veaches, he should bring the concerns to the Board and let the Board make the decision. (Tr. 43). Bud Palmer responded that he would handle it with Carroll Mealy privately, but Mr. Mealy does not know what happened after that. (Tr. 43).

Mr. Mims testified that Carroll Mealy had the exclusive authority to hire and fire employees at the Park. (Tr. 45). He thought this had been the case for many years, but he also thought the Park's bylaws⁸ gave the Board responsibility for hiring and firing. (Tr. 59). Mr. Mims had reservations about Carroll Mealy having this power and felt that Carroll Mealy should have obtained the Board's approval for firing the Veaches; however, this concern was never addressed. (Tr. 45-46). Mr. Mims testified that there was no question that Carroll Mealy had the authority to hire and fire. (Tr. 59).

Carroll Mealy later told Mr. Mims that Aaron Veach was fired was for "insubordination" and Mr. Veach's failure to change a tire on a golf cart. (Tr. 46). Mr. Mealy told Mr. Mims that Mrs. Veach was fired for incorrectly recording deeds. (Tr. 47). Mr. Mealy showed Mr. Mims

⁸ The bylaws were not offered into evidence.

four deeds that Becky Veach had done, but when Mr. Mealy asked Becky Veach about them, she said she had only done one of the deeds. (Tr. 47).

Mr. Mims thought the reasons given by Carroll Mealy were insufficient; he thought that the Park had an “employee handbook,”⁹ and felt that the handbook’s protocol for termination was not followed. (Tr. 47). Generally, Mr. Mims believed that the Veaches were fired “in retaliation for bringing their concerns to improve and protect the resort forward.” (Tr. 43). He believed that Carroll Mealy thought that he was protected by the “At Will Law” and did not have to provide a reason for firing the Veaches, but when he was required to present a reason, “he made a story to fit the situation.” (Tr. 43, 46).

E. *Testimony of Sandra Webber (Tr. 62-67)*

Sandra Webber testified that she was an employee of the Park from 1979 until 2006. (Tr. 63). She worked in the office with Becky Veach for approximately six to eight months. (Tr. 64). She thought Becky Veach was a good employee and never directly heard any complaints about her performance. (Tr. 64). She quit her job because she was unhappy with management and felt that it was time to move on. (Tr. 65).

F. *Testimony of Gene Hunt (Tr. 67-83; 225-233)*

Gene Hunt testified that he has been a member of the Park for approximately 28 years, and has served on the Board four times, although he was not a Board member during the Veaches’ employment. (Tr. 68-69). He thought that the Veaches were excellent employees. (Tr. 71). He was upset with the Veaches’ dismissals because he felt that the Veaches did not deserve to be fired and that proper procedures had not been followed in their termination.¹⁰ (Tr. 74, 228, 231).

Mr. Hunt believed that Carroll Mealy had temper problems, and was a bully. (Tr. 74, 76). Of nine Park managers he knew of, Gene Hunt believed that Carroll Mealy was the only one who had fired “key employees.” (Tr. 75). In addition to the Veaches, Carroll Mealy had previously fired two other employees, and Mr. Hunt did not fully agree with the decision in either case. (Tr. 81). Although Sandy Webber was not fired, Mr. Hunt believed that Carroll Mealy had forced her out by treating her poorly. (Tr. 74-75, 230-233). Mr. Hunt thought that the Veaches’ terminations were a result of Mr. Mealy’s vindictiveness; he did not know whether their reporting of the treatment plant incident was the real reason for their termination. (Tr. 232).

G. *Testimony of Robert Allen Leonard (Tr. 138-169)*

Robert Leonard testified that he has been a member of the Park for 13 years. (Tr. 138). He became a Board member in the Fall of 2005, at the same time as Scott Phinney. (Tr. 145). Mr. Leonard testified that he only spends a few hours at the Park on the weekends. (Tr. 143). He did not think that he ever spoke more than a few words to the Veaches. (Tr. 150).

⁹ The handbook was not offered into evidence.

¹⁰ Mr. Hunt also referred to an employee handbook; however, the handbook was not offered into evidence. (Tr. 74).

Mr. Leonard testified that he heard Carroll Mealy complain about the Veaches' job performance going back to 2005. (Tr. 149). Although he did not have personal knowledge of the Veaches' performance, based on what he heard from Carroll Mealy he would have terminated them "long before" Mr. Mealy did. (Tr. 142). He testified that an employee named Lucy was hired at some unstated time and quit within a few days; Lucy appeared at a Board meeting when Mr. Leonard was present, and stated that she quit because Becky Veach "intimidated" her. (Tr. 147).

Robert Leonard acknowledged that there was division at the Park and on the Board with certain people supporting Mr. Mealy and others opposing him. (Tr. 154). He testified that at their first Board meeting, Mr. Phinney made it very clear that he joined the Board for the sole reason of getting rid of Mr. Mealy. (Tr. 152). Mr. Leonard thought a lot of the problems and division at the Park and on the Board were due to the Veaches bringing problems to individual Board members rather than the Board as a whole. (Tr. 154). He testified that these problems began in the Fall of 2005, before the special committee was appointed to look into concerns at the Park. (Tr. 158-159).

H. Testimony of Claude "Bud" Palmer (Tr. 170-185)

Bud Palmer testified that he has been a member of the Park since 1985. (Tr. 171). Mr. Palmer became President of the Board in October 2005, the same time that Robert Leonard and Scott Phinney became Board members. (Tr. 171). Mr. Palmer testified that Carroll Mealy was the Manager of the Park and had managerial authority over all Park employees. (Tr. 172-173). Mr. Mealy, in turn, reported to the entire Board. (Tr. 173). Carroll Mealy had authority to hire and fire Park employees. (Tr. 173). Mr. Palmer acknowledged that Board Members Charlie Mims and Scott Phinney wanted to take away Mr. Mealy's authority to hire and fire but the Board declined to strip Mr. Mealy of this authority. (Tr. 173).

Bud Palmer testified that he spoke with Carroll Mealy "often" on the phone, and that Mr. Mealy told him that the Veaches were difficult to work with, complained a lot, and were insubordinate. (Tr. 174-175). He testified that Mr. Mealy's complaints about the Veaches began during the beginning of his Board Presidency in October 2005 and continued until the Veaches' terminations. (Tr. 174).

Mr. Palmer testified that the Veaches also frequently complained about Mr. Mealy, going back to 2005 and continuing until they were terminated. (Tr. 174-175). These complaints involved office procedures and Carroll Mealy's ability to do his job. (Tr. 174-175). These complaints included emails from Becky Veach to Mr. Palmer about office procedures. (Tr. 180; CX 10, 11). In January 2006, the Veaches spoke with four members, including Mr. Palmer, but their concerns related only to office procedures. (Tr. 176, 178).

Bud Palmer testified that he did not learn of the treatment plant incident until after the Veaches were fired and reported the incident to the DNR. (Tr. 175). He also testified that the issue was never brought up in a Board meeting, although it may have been brought up to individual Board members. (Tr. 176).

Mr. Palmer did not have personal knowledge about the Veaches' job performance but Carroll Mealy told him that he fired them for insubordination, poor job performance, and a poor

attitude. (Tr. 178, 182-183). After the Veaches were terminated, Mr. Mealy told him that the DNR had investigated an incident at the treatment plant and there was nothing to be concerned with. (Tr. 177).

I. Testimony of James Edward Mantle (Tr. 186-194)

Jim Mantle testified that he has been a Park member since 1999 and a Board member since 2003. (Tr. 187). Reading from a written statement, he testified that the Veaches never brought up safety or health concerns to the Board before they were terminated. (Tr. 188). He testified that on one occasion he went to Becky Veach's trailer to talk to her about not being paid for a day or two that she was sent home. (Tr. 188). Mr. Mantle testified that his medication impairs his memory, and he had trouble remembering any pertinent events pertaining to the Veaches' termination. (Tr. 191).

J. Testimony of Carroll Dean Mealy (Tr. 194-224)

Carroll Mealy testified that he has been a member of the Park since 1983 and the Park Manager since 1999. (Tr. 195). He was responsible for managing the entire Park, which included the authority to hire and fire Park employees. (Tr. 195-196). Mr. Mealy has a "C Level Operator's license" from the DNR, which authorizes him to operate small water treatment plants, such as the one at the Park. (Tr. 206-207). On one occasion, in 2003, he contacted the DNR about an incident at the plant, which resulted in the Park having to build an addition to the treatment plant. (Tr. 208).

Carroll Mealy testified that he hired the Veaches in July 2004. (Tr. 196). Aaron Veach was hired as the maintenance chief and Becky Veach was hired as reservations clerk and store clerk. (Tr. 196-197). Becky Veach was a seasonal employee. (Tr. 197). Mr. Mealy testified, consistent with the Veaches, that he initially got along well with the Veaches. (Tr. 197). He testified that their relationship went "downhill" beginning in July 2005 when the Veaches' attitudes changed. (Tr. 197). He testified that the Veaches became sharp and sarcastic (Tr. 198). He testified that they exhibited poor work performance and threatened to quit and find a job elsewhere.¹¹ (Tr. 202-204). He also testified that the Veaches ran off an employee named Lucy. (Tr. 198-199).¹² Mr. Mealy testified that he did not initially tell any Board members about the Veaches' poor performance, because he thought he could work things out and handle them on his own. (Tr. 218). However, at some point, he began telling Board President Bud Palmer and other unnamed Board members his complaints about the Veaches. (Tr. 217-218). He testified that he did not take his concerns to the entire Board because he thought Scott Phinney was "out to get [him], and there was no reason to try to talk to the man." (Tr. 218).

Carroll Mealy testified to the treatment plant incident, stating that there was sludge in the chlorine basin of the plant, which he pumped out of the plant. (Tr. 209-210). Mr. Mealy

¹¹ The Veaches denied this. (Tr. 132).

¹² At the hearing I sustained a hearsay objection to this testimony. (Tr. 198-200). Upon further reflection, I hold this testimony is neither "immaterial, irrelevant, [n]or unduly repetitious." 29 C.F.R. § 24.107(d). Information that Mr. Mealy was told about the Veaches, whether true or not, is relevant to his reasons for firing them. Accordingly, the testimony will be considered and given probative weight.

testified that this was “normal and abnormal at the same time,” because a certain percentage of the sludge is allowed to go through the treatment plant. (Tr. 210). Mr. Mealy testified that this is neither unusual nor illegal. (Tr. 210). After Aaron Veach complained to the DNR, Bruce Volner of the DNR inspected the plant and Mr. Mealy told him what happened. (Tr. 211). Mr. Mealy testified that Volner told him that there was nothing wrong with what he had done, but recommended that in the future, he pump the sludge into the holding tank first, rather than pump it onto the ground.¹³ (Tr. 211).

Carroll Mealy fired the Veaches on April 14, 2066. (Tr. 198). He felt that there was no way that he could continue to work with them. (Tr. 204). Reading from a written statement, he summarized his reasons for firing them, stating that the Veaches were insubordinate for running off employees and going over his head to the Board and that he “had a belly full of them whining and complaining.” (Tr. 213-214).

Carroll Mealy testified that he did not know about the Veaches’ complaints to the DNR or that the Veaches had talked to Board members about the treatment plant incident prior to terminating them. (Tr. 201, 206). He never heard about the incident from any of the other Board members. (Tr. 206). He stated that the only time the treatment plant was ever discussed at a Board meeting concerned the addition to the plant, which was unrelated to the incident at issue here. (Tr. 206). He specifically testified that neither Bud Palmer nor Charlie Mims ever mentioned the treatment plant incident. (Tr. 219-220).

Some of Carroll Mealy’s testimony directly contradicted testimony from other witnesses. Mr. Mealy testified that he attended the special meeting held one week before the Veaches’ termination, but stated that the issue of the treatment plant was never raised. (Tr. 223). He denied that he told Aaron Veach that he would put a stop to inquiries by Scott Phinney in the Fall of 2005. (Tr. 220). He also did not remember telling the Veaches that there was something that only two people should know, and stated that he sent them home on that day because there was no work for them to do. (Tr. 222).

K. Documentary evidence

Complainants’ Exhibits 1-14 were admitted into evidence. Complainants’ Exhibits 1, 2, 3, and 14 are written statements from Charlie Mims, Sandra Webber, Gene Hunt, and Scott Phinney, respectively. Complainants’ Exhibits 4 and 13 are email chains involving Mrs. Veach and Charlie Mims. Complainants’ Exhibits 10 and 11 are letters written to the Board from Mrs. Veach. These statements are given probative weight to the extent that they are probative, credible, and affirmed by and consistent with witnesses’ sworn testimony.

Complainants’ Exhibits 5, 6, and 12 are cards from Carroll Mealy and/or his wife to the Veaches. They are presumably offered to show that the Veaches and Mr. Mealy had a positive relationship at some point in time. However, because they are undated, they are of little probative value. Complainants’ Exhibit 7 is a Certificate of Appreciation given to Mr. Veach on October 9, 2005, by a former President of the Board. Mr. Mealy, who had the exclusive authority to hire and fire, testified that he had nothing to do with giving the certificate. (Tr. 221). Therefore, I give little weight to this evidence.

¹³ Neither party offered into evidence any documentary evidence relating to the DNR report.

Complainants' Exhibit 8 is a physician's note stating that Mr. Veach was unable to work for a period of time in the Fall of 2005. Complainants' Exhibit 8(a) contains medical records describing a surgery Mr. Veach underwent during the same period. Mr. Veach testified that Mr. Mealy made him work during this period, despite his incapacitation. (Tr. 134). This evidence was presumably offered to discredit or reflect poorly on Mr. Mealy. However, because this occurred prior to the treatment plant incident, it actually undermines the Veaches' claim that they were discharged in retaliation for protected activity. I give the exhibit appropriate weight. Complainants' Exhibit 9 is a letter demanding that the Veaches vacate their residence at the Park. I give the exhibit weight in that it corroborates that the Veaches were fired in April 2006.

Respondent's Exhibits 1-7 have been admitted into evidence. Respondent's Exhibits 1-4 are written statements from Mr. Mealy, Leonard, Mantle, and Palmer, respectively. These statements are given probative weight to the extent that they are probative, credible, and affirmed by and consistent with witnesses' sworn testimony. Respondent's Exhibits 5-7 relate to the Secretary's preliminary investigation. As this is a *de novo* hearing, findings below are not binding. Therefore, these Exhibits are given minimal weight.

II. *Applicable Law*

The provision of the WPCA relevant here is contained at 33 U.S.C. § 1367(a):

No person shall fire, or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this chapter, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this chapter.

Congress enacted the whistleblower protection provisions of the WPCA to "protect employees who risk their job security by taking steps to protect the public good." *Sasse v. U.S. Dep't. of Labor*, 409 F.3d 773, 780 (6th Cir. 2005); *see also, Passiac Valley Sewerage Com'rs v. U.S. Dep't. of Labor*, 992 F.2d 474, 478 (3d Cir. 1993) (The WPCA is "intended to promote a working environment in which employees are relatively free from the debilitating threat of employment reprisals for publically asserting company violations of the statutes protecting the environment.").

To prevail on their whistleblower claims, Complainants must prove by a preponderance of the evidence that: (1) they engaged in WPCA protected activity; (2) their employer was aware of their protected activity; (3) their employer took adverse action against them; and, (4) their protected activity was the reason for the adverse action, *i.e.*, that a causal nexus existed between the protected activity and the adverse action. *Redweik v. Shell Exploration and Production Co.*, ARB No. 05-052, ALJ No. 2004-SWD-2, Slip Op. at 8 (Dec. 21, 2007). To make the showing of a causal nexus, complainants must prove by a preponderance of evidence that their protected activity was a "motivating factor" in their termination. 29 C.F.R. § 24.109(a). However, even if complainants make this showing, respondent may avoid liability by establishing by a preponderance of the evidence that it would have terminated complainants in the absence of their protected activity. 29 C.F.R. § 24.109(b).

Proving intentional discrimination is challenging for an experienced attorney, much less a layperson. See *U.S. Postal Serv. Bd. of Governors v. Aikens*, 460 U.S. 711, 716 (1983) (“[T]he question facing triers of fact in discrimination cases is both sensitive and difficult There will seldom be ‘eyewitness’ testimony as to the employer’s mental processes.”). In this case, Complainants have chosen to proceed without the assistance of counsel. While Complainants did an admirable job of presenting their case, the record is replete with gaps and unclear testimony that was not clarified. *Pro se* litigants must be given fair and equal treatment and, where practical and appropriate, I attempted to elicit testimony from the witnesses to fill in gaps or clarify their testimony. However, *pro se* litigants cannot be permitted “to shift the burden of litigating [their] case to the Courts, nor to avoid the risks of failure that attend [their] decision to forgo expert assistance.” *Griffith v. Wackenhut Corp.*, ARB No. 98-067, ALJ No. 97-ERA-052, Slip Op. at n.7 (ARB Feb. 29, 2000). *Pro se* complainants have the same burdens of production and persuasion as complainants represented by counsel. *Coates v. Southeast Milk, Inc.*, ARB No. 05-050, ALJ No. 2004-STA-60, Slip Op. at 9 (ARB July 31, 2007).

Accordingly, where the record in this case is unclear or incomplete, the ambiguity is often detrimental to Complainants’ case. Complainants bear the burden of proving each element of their case by a preponderance of the evidence. Where the record does not establish an element of the claim, even if solely due to Complainants’ failure to follow up on unclear testimony, Complainants have not met their burden of proof on a particular issue. When appropriate, I have drawn reasonable inferences from the testimony, but in some cases, the record is so incomplete that it is impossible to fill in the gaps without resort to pure speculation.

III. Analysis

A. Protected Activity

Initially, Complainants must establish that they engaged in protected activity under the WPCA. The WPCA protects employees who file or institute “proceedings” under Chapter 26, Title 33 of the United States Code. 33 U.S.C. § 1367(a). The Board has held that the term “‘proceeding’ includes all phases of a proceeding that relates to public health or the environment, including the initial internal or external statement or complaint of an employee that points out a violation, whether or not it generates a formal or informal ‘proceeding.’” *Redweik*, ARB No. 05-052 at 8.

The Veaches must establish that their complaints related to “reasonably perceived violations” of the Act, or to “reasonably perceived threats to environmental safety.” *Erickson v. U.S. Env’t. Prot. Agency*, ARB Nos. 04-024, 04-025, Slip Op. at 7 (Oct. 31, 2006). The Veaches need not prove that the hazard they perceived actually violated the law; however, their complaints must express more than “a vague notion that the employer’s conduct might negatively affect the environment.” *Saporito*, ARB No. 05-004, Slip Op. at 6.

Mr. Veach made a complaint with the DNR concerning the treatment plant incident and the Board’s investigation of the incident. (Tr. 128). This clearly constitutes protected activity under the WPCA; however, it is undisputed that Mr. Veach made the complaint *after* he and Mrs. Veach were terminated. (Tr. 128). Therefore, although the complaint to the DNR constitutes protected activity, it cannot form the basis of Complainants’ discrimination claims.

However, the Veaches also made internal complaints to various Board members prior to their terminations (Tr. 110, 113-114, 85). These internal complaints constitute protected activity under the WPCA if the Veaches reasonably believed that the complained-of conduct violated the WPCA or posed a threat to environmental safety. Mr. Veach testified that he thought that Mr. Mealy was pumping “sludge” or “human waste” from the treatment plant into a creek that ran into a nearby lake, and that he did not think that this was “right.” (Tr. 129-130). Although he could have been more specific about his concerns, I find Mr. Veach’s testimony sufficient to establish that he reasonably believed that Mr. Mealy was violating the WPCA or threatening the environment. The purpose of the WPCA is to “restore and maintain chemical, physical, and biological integrity of the Nation’s waters,” *Redweik*, ARB No. 05-052 at 8 (*citing* 33 U.S.C. § 1367(a)), and the Veaches’ complaints about human waste or “sludge” being pumped into a creek falls clearly within the Act’s purpose. Accordingly, I find that the Veaches engaged in protected activity by reporting the treatment plant incident to Board members.

The Veaches’ OSHA complaint, also filed after their termination, is not protected activity. (Tr. 128). Their general complaints about office and Park procedures are also not protected activities, because they do not relate to reasonably perceived violations of the WPCA or threats to environmental safety. Accordingly, the only protected activity upon which the Veaches can base their whistleblower claims is their internal complaints to Board members about Mr. Mealy’s pumping sludge out of the treatment plant in January 2006. (Tr. 125, 210).

B. Awareness of the protected Activity

To prove that they were fired because of their protected activity, complainants must necessarily show that their employer knew of their protected activity. Specifically, Complainants “must show that an employee with authority to take the adverse action, or an employee with substantial input in that decision, knew of the protected activity.” *Kester v. Carolina Power & Light Co.*, ARB No. 02-007, Slip Op. at 9 (Sep. 30, 2003).

Respondent presented uncontradicted evidence that Mr. Mealy had the exclusive authority to hire and fire Park employees. (Tr. 45, 195-196). The Veaches’ terminations were apparently never submitted to the Board for consideration, notwithstanding the desire of Board Members Scott Phinney and Charlie Mims that Mr. Mealy be required to justify his terminations of the Veaches to the Board. (Tr. 30, 43, 173). Therefore, Complainants must establish that Mr. Mealy had knowledge that the Veaches told other Board members about the treatment plant incident.

Mr. Mealy unequivocally testified that he had no knowledge that the Veaches had spoken with anyone about the treatment plant incident at the time that he fired them. (Tr. 201). The only contrary evidence is from Scott Phinney, who testified that at the April 8 “emergency” Board meeting, Becky Veach brought up the issue when she appeared before the Board. (Tr. 235). The evidence establishes that Mrs. Veach and Mr. Mealy were not present at the same time during the April 8 Board meeting. (Tr. 235). According to Scott Phinney, the issue was then “brought up to [Mr. Mealy] when he came in,” however, the testimony is unclear as to what exactly was said. (Tr. 235). I credit Mr. Phinney’s testimony that the issue was raised in

Mr. Mealy's presence, and thus, Mr. Mealy learned that the Veaches told Board members about the treatment plant incident.¹⁴

However, as explained more fully below, I find that Mr. Mealy's knowledge that the Veaches told Board members about the treatment plant incident did not factor into his decision to fire the Veaches. Thus, it is likely that Mr. Mealy did not recall the issue being raised at the meeting because it was of no significance to him or to anyone else.

C. Adverse Action

The Act prohibits an employer from firing, or in any other way discriminating against an employee by reason of the employee's protected activity. 33 U.S.C. § 1367(a). It is undisputed that Complainants were discharged on April 14, 2006. (Tr. 198). Therefore, I find that Respondent took an adverse employment action against Complainants. The remaining issue is whether the Veaches' terminations were causally related to their protected activities.

D. Reason for Complainant's Termination

Complainants have established that they engaged in protected activity, that Mr. Mealy, the decision-maker, had knowledge of that protected activity, and that they were subjected to an adverse employment action. Therefore, I must proceed to the ultimate issue of whether Complainants' "protected activity was the reason for the adverse action, *i.e.*, that a nexus existed between the protected activity and the adverse action." *Redweik*, ARB No. 05-052 at 8. To establish this causal nexus, Complainants must prove by a preponderance of evidence that their protected activity was a "motivating factor" in their termination. 29 C.F.R. § 24.109(a); *Lopez v. Serbaco, Inc.*, ARB No. 04-158, ALJ No. 2004-CAA-5 (Nov. 29, 2006). However, even if Complainants make this showing, Respondent may avoid liability by establishing, by a preponderance of the evidence, that it would have terminated Complainants in the absence of their protected activity. 29 C.F.R. § 24.109(b).

Intentional discrimination may be shown by direct or circumstantial evidence. *See Jones v. United States Enrichment Corp.*, ARB Nos. 02-093, 03-010, ALJ No 01-ERA-21, Slip Op. at 7 (ARB Apr. 30, 2004). Direct evidence includes "evidence of actions or remarks of the employer that reflect a discriminatory attitude, comments which demonstrate a discriminatory animus in the decisional process, or comments uttered by individuals closely involved in employment decisions." *Beshears v. Asbill*, 930 F.2d 1348, 1354 (8th Cir. 1991) (internal quotations and citations omitted).

The only direct evidence presented at the hearing concerned an incident, which Mrs. Veach believed occurred in March 2006, where Mr. Mealy made reference to the Veaches about something that only two people should know about and then sent them home from work. (Tr. 89, 111; CX 4). Mrs. Veach testified that she thought this was reference to the treatment plant incident. (Tr. 89). Mr. Veach insinuated the same, but was not clear, and neither Mr. nor Mrs. Veach adequately explained why they believed this comment related to their protected

¹⁴ Mrs. Veach testified that after sending the emails in March 2006, Bud Palmer called her and told her that he "thought" that Mr. Mealy had learned that the Veaches had "come forward about the treatment plant and all the other issues." (Tr. 90). I find this testimony insufficient to establish that Mr. Mealy learned of the Veaches' protected activity prior to the "emergency" meeting on April 8, 2006.

activity. (Tr. 111, 91). I find that the comment, even if it occurred, which Mr. Mealy disputes (Tr. 222), is not direct evidence of discrimination. Mr. and Mrs. Veach testified that prior to making the comment about something that only two people should know, Mr. Mealy made a comment about Mrs. Veach being seen at Sandy Webber's house. (Tr. 111). Notably, Mrs. Veach wrote about the incident in an email to the Board, but did not suggest that it was related to the treatment plant incident. Thus, I find that the comment, if made, related to something other than Complainants' protected activity, as there is no evidence that Complainants told Sandy Webber about the treatment plant incident, or that Mr. Mealy thought Mrs. Veach's presence at Sandy Webber's house was somehow related to the treatment plant.

Complainants may also prove discrimination, *i.e.*, that their protected activity was a "motivating factor" in their termination, through circumstantial evidence. Circumstantial evidence of discrimination is generally analyzed under the *McDonnell-Douglas* framework, which initially requires the plaintiff to establish a *prima facie* case of discrimination. However,

... if an employer has articulated a legitimate reason for its actions, it is permissible for courts to presume the existence of a *prima facie* case and move directly to the issue of pretext and the determinative issue of causation when bypassing the *prima facie* case analysis leads to clarity in framing the issues under review.

Stewart v. Indep. Sch. Dist. No. 196, 481 F.3d 1034 (8th Cir. 2007); *see also, Luckie v. United Parcel Serv., Inc.*, ARB Nos. 05-026, 05-054, ALJ No. 2003-STA-39 (ARB June 29, 2007); *Carroll v. Bechtel Power Corp.*, No. 1991-ERA-46 (Sec'y Feb. 15, 1995).

Complainants have established that they engaged in protected activity and that Mr. Mealy, their supervisor with sole authority to fire employees, was aware of the protected activity. It is also undisputed that Complainants were terminated subsequent to engaging in protected activity. Mr. Mealy articulated several legitimate, nondiscriminatory reasons for terminating Complainants, including poor work performance, insubordination, driving off other employees, and generally, his inability to work with them. Complainants may carry their burden of proof by demonstrating that Mr. Mealy's proffered explanation is unworthy of belief. *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 511 (1993). However, disbelief of Mr. Mealy's nondiscriminatory justification for firing Complainants only "permits" a finding of discrimination, it does not require it. *Id.* Complainants "must still persuade the [factfinder], from all the facts and circumstances, that the employment decision was based upon intentional discrimination." *Ryther v. Kare 11*, 108 F.3d 721 (8th Cir. 1997) (*citing Hicks*, 509 U.S. at 511 n.4); *see also, Jones*, ARB Nos. 02-093, 03-010, Slip Op. at 7-8.

From the outset, I observe that April 8, 2006, the date of the "emergency" meeting, was apparently the date that Mr. Mealy first learned of the Veaches' protected activity. Admittedly, this proximity in time suggests that the terminations may have been related to the Veaches' protected activity. However, the Board has held that:

Temporal proximity is sufficient to raise an inference of causation. But once an employer articulates a legitimate, nondiscriminatory reason for its actions, the employee then must prove by a preponderance of the evidence that the employer

intentionally discriminated against him because of his protected activity, and that the employer's articulated reason was pretext.

Barry v. Specialty Materials, Inc., ARB No. 06-005, ALJ No. 2005-WPC-3, Slip Op. at 6 (ARB Nov. 30, 2007). As explained below, based on the evidence presented at hearing, I find that Complainants have failed to establish that their protected activity was a "motivating factor" in Mr. Mealy's decision to terminate them.

The evidence establishes that the relationship between Mr. Mealy and the Veaches began to break down in 2005, months before the Veaches' terminations. Mr. Veach testified that he had a good relationship with Mr. Mealy both on and off the job, until October 2005, when Scott Phinney first approached him asking if he had any concerns about the Park. (Tr. 109). Similarly, Mrs. Veach testified that after she began bringing up concerns to Mr. Phinney, her relationship with Mr. Mealy also started "going downhill." (Tr. 86, 94). Initially, she testified that this occurred in March 2006; however, when pressed, she stated that this began to occur in the period from November 2005 through January 2006. (Tr. 85-86).

Similarly, Mr. Mealy testified that his relationship with the Veaches changed in the Summer of 2005 when their attitudes changed. (Tr. 197). He initially did not tell anyone else, because he thought he could work things out on his own. (Tr. 218). However, the evidence establishes that by the Fall of 2005 Mr. Mealy was frequently complaining about the Veaches. Board President Bud Palmer testified that he became President of the Board in October 2005, and that from the beginning of his presidency, Mr. Mealy often complained about the Veaches. (Tr. 174-175). Similarly, Mr. Leonard testified that, based on what he heard from Mr. Mealy, he would have fired the Veaches "long before" Mr. Mealy fired them. (Tr. 142). This demonstrates that Mr. Mealy was complaining to others about the Veaches' work performance prior to the April 8, 2006, "emergency" meeting, and likely as far back as the Summer or Fall of 2005. I place great weight on such evidence, as it corroborates Mr. Mealy's testimony that he fired the Veaches because he could no longer stand working with them. The evidence suggests that this friction and the ensuing breakdown in the relationship began months before the Veaches reported the treatment plant incident or even the occurrence of the incident itself.

Mr. Leonard's testimony also sheds significant light on the circumstances leading up to the Veaches' terminations. Mr. Leonard testified that there was division at the Park, which resulted in a fractured Board of Directors. (Tr. 154). These problems appeared to come to a head in October 2005 when several new members joined the Board, some of whom were supporters of Carroll Mealy and other members who were not. (Tr. 152-154). Shortly after becoming a Board member, Scott Phinney began talking to members of the Park, including the Veaches, about concerns about the Park. (Tr. 24-26). Undoubtedly, many of these "concerns" must have related to Park management and Mr. Mealy's ability as a manager. Although the evidence is not entirely clear in this respect, it appears that Scott Phinney initially went to the rest of the Board with some concerns in October 2005. (Tr. 29, 41). The Board appointed a special committee to "investigate" issues at the Park. (Tr. 29, 41). This all occurred prior to the treatment plant incident and lends additional support to Mr. Mealy's stated reasons for terminating the Veaches.

I find that the Veaches' reporting of the treatment plant incident to Board members was not a major issue of concern to the Board, Carroll Mealy, or even the Veaches themselves.

Throughout the Fall of 2005 and the Spring of 2006, the Veaches were making complaints to various Board members, and there is no evidence that that the treatment plant incident was ever more than a peripheral concern to any party. For example, Bud Palmer testified that the Veaches spoke with several Board members after a Board meeting. Bud Palmer thought this occurred in January 2006 and that he, Jim Mantle, Bob Leonard, and Charlie Mims were present. (Tr. 176). It was not clear whether this occurred before or after the treatment plant incident, but the Veaches' complaints related entirely to office procedures. (Tr. 176-177).¹⁵

Significantly, in March 2006, well after the treatment plant incident, Mrs. Veach wrote two letters to the Board of Directors. These letters are lengthy, but address only office procedures and personal problems with Mr. Mealy and his wife. (CX 10-11). There is no reference to the treatment plant incident, despite the fact that Mrs. Veach's letter asks that her concerns remain confidential, to avoid "repercussions." (CX 10). Significantly, in all of the correspondence between the Veaches and Board members, there is not a single reference to the treatment plant incident. (CX 4, 10-11, 13). This undermines any claim that the Veaches' reporting of the treatment plant incident was significant to Mr. Mealy, as there is no evidence that it was ever significant to the Veaches.

The immediate events leading up to the Veaches' termination on April 14 also suggests that the treatment plant incident was never a major concern to any party involved, including the Veaches. The Veaches did not testify as to the events that immediately preceded their terminations, such as what was said on the day they were fired. They also did not elicit testimony from Mr. Mealy as to why he decided to fire the Veaches on the specific day that he did. This makes it difficult to understand what was happening in the Park in April 2006 when the Veaches were fired. However, there is uncontradicted testimony that an "emergency" Board meeting was held on April 8, 2006. (Tr. 36, 90). Although there is no testimony as to what precipitated the meeting, it was likely related to Mrs. Veach's emails, one of which was written just a week earlier. (CX 11). There is very little testimony concerning the April 8 "emergency" meeting, other than from Mr. Phinney, who testified that Mrs. Veach raised the issue of the treatment plant at the meeting and that the issue was again raised after Mrs. Veach had left the meeting and Mr. Mealy was present. (Tr. 234-235).

Specifically, Mr. Phinney testified that at the April 8 meeting, "everything came out," including the treatment plant incident. (Tr. 29). However, I find it extremely improbable that the incident at the treatment plant was of any significance to anyone at that meeting. If the Board members were so concerned about the incident or the Veaches were so concerned about telling the Board about it, Mr. Veach, who actually witnessed the incident, would have attended, not his wife, who had only second-hand knowledge of the incident. I place great weight on this detail and infer that the meeting and "everything" that came out related predominately, if not entirely, to Mrs. Veach's complaints about office procedures, which she had expressed in two emails just weeks before.

To summarize, The Veaches' terminations followed just one week after this "emergency" meeting. However, the evidence establishes that the Veaches had been complaining to Board members about Mr. Mealy and office procedures for months before. These complaints likely

¹⁵ This may have been the same meeting to which Mr. Mims was referring, in which the Veaches told several Board members about the incident, but it is unclear from the record. (Tr. 53-54).

culminated with the calling of the “emergency” meeting. There is no evidence that the treatment plant was ever an issue of great significance to anyone, including the Veaches. The evidence further establishes that the Veaches’ relationship with Mr. Mealy began deteriorating long before the “emergency” meeting, and months before the treatment plant incident occurred.

Mr. Mims believed that the Veaches were fired “in retaliation for bringing their concerns to improve and protect the resort forward.” (Tr. 43). This may well be true; however, the evidence establishes that these “concerns” related almost entirely to concerns about office procedures in the Park. The incident at the treatment plant never seemed to be of great significance to anyone, including the Veaches. Thus, while the Veaches may have been unfairly fired for trying to improve the Park by making suggestions about office procedures, the WPCA does not protect these activities. Similarly, Gene Hunt believed that Mr. Mealy’s “vindictiveness” motivated Mr. Mealy to fire the Veaches. (Tr. 232). However, the evidence establishes that this “vindictiveness” related to the Veaches, and especially Mrs. Veach, bringing grievances to members of the Board. I credit as true Mr. Mealy’s testimony that he got tired of the Veaches’ complaining and could no longer continue to work with them. (Tr. 204). While this may be unfair and may demonstrate “vindictiveness” on the part of Mr. Mealy, it does not demonstrate that he violated the WPCA, as there is no evidence that Mr. Mealy was motivated by the Veaches telling Board members about the treatment plant incident.

Although I express no opinion as to whether the Veaches’ termination was fair or just, the evidence that the Veaches were fired for poor work performance is slim, and it is more likely that the Veaches were, in fact, fired as a result of the breakdown in their relationship with Mr. Mealy, which coincided with their complaints to Board members about office procedures. This is consistent with Mr. Mealy’s testimony that he fired the Veaches because of their attitudes and their complaining. (Tr. 200-201; 213-214). However, Respondent is not obligated to prove that it had just cause to fire the Veaches or that the Veaches were treated fairly. Rather the Veaches must prove by a preponderance of the evidence that their protected activity, specifically notifying Board members about the treatment plant incident, was a “motivating factor” in Mr. Mealy’s decision to terminate them. The Veaches have not carried this burden. Accordingly,

It is HEREBY ORDERED that Complainants’ complaints are DENIED.

A

JOSEPH E. KANE
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: This Decision and Order will become the final order of the Secretary of Labor unless a written petition for review is filed with the Administrative Review Board (“the Board”) within 10 business days of the date of this decision. The petition for review must specifically identify the findings, conclusions, or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to

be the date of filing. If the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt.

The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Ave., NW., Washington, DC 20210.

At the same time that you file your petition with the Board, you must serve a copy of the petition on: (1) all parties; (2) the Chief Administrative Law Judge, U.S. Dept. of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8001; (3) the Assistant Secretary, Occupational Safety and Health Administration; and, (4) the Associate Solicitor, Division of Fair Labor Standards. Addresses for the parties, the Assistant Secretary for OSHA, and the Associate Solicitor are found on the service sheet accompanying this Decision and Order.

If the Board exercises its discretion to review this Decision and Order, it will specify the terms under which any briefs are to be filed. If a timely petition for review is not filed, or the Board denies review, this Decision and Order will become the final order of the Secretary of Labor. *See* 29 C.F.R. §§ 24.109(e) and 24.110, found at 72 Fed. Reg. 44956-44968 (Aug. 10, 2007).