CASE NO.:  2016-ERA-00012

In the Matter of:

PATRICIA BOOKER,
Complainant

v.

EXELON GENERATION COMPANY, LLC,
Respondent

DECISION AND ORDER DENYING COMPLAINANT’S CLAIMS

Patricia Booker (“Complainant”), who is proceeding pro se, initiated this matter under the Energy Reorganization Act of 1974 (ERA) against Exelon Generation Company, LLC (“Respondent”). Complainant asserts that Respondent harassed and revoked her facility access revoked, because she complained to management and filed a complaint with the Nuclear Regulatory Commission (NRC) regarding non-complying documents.

FACTUAL HISTORY

Respondent owns and operates nuclear power plants, including the Peach Bottom Atomic Plant in Delta, Pennsylvania. Complainant worked for Respondent at all times relevant hereto. Complainant began working for Respondent as a temporary clerical employee, eventually becoming an Administrative Coordinator. TR 16-17. Tom Powell was the Maintenance Planning Manager and Complainant’s supervisor from 2009 to 2014. TR 764.

One of Complainant’s responsibilities was identifying discrepancies in work package documentation. TR 777. For example, Complainant was expected to pay attention to missing or illegible dates or signatures. TR 777. Complainant’s superiors commended Complainant’s ability to identify mistakes and inconsistencies. TR 174. Complainant testified that she was complimented for her attention to detail. TR 174. As part of her employment, Complainant was granted access to Tom Powell’s email inbox; Complainant received this access in April 2009. TR 815-816. Powell granted Complainant access to his inbox so that she could update him of things that come up when he is busy or in a meeting. TR 815-816.

In late 2013, Complainant noticed that other employees were back-dating documents TR 16-17. Complainant raised the concern that work packages were being completed improperly and that back-dating was occurring on safety documents. TR 17.
One way in which Respondent’s employees can raise safety concerns is to contact Respondent’s Nuclear Oversight Group (NOS) at the plant. TR 747. The NOS is independent group comprised on auditors that test for regulatory compliance. TR 747. When employees wished to report an issue, they were to use the Corrective Action Program by writing a Condition report, also referred to as an incident report or IR. RX-17. Complainant asked NOS whether back-dating was permitted; NOS explained that back-dating documents was a violation of procedure. TR 17. Complainant asked Respondent’s NOS to write an incident report on the backdating issue, as she felt her reporting was “always ignored.” TR 17. NOS completed AR 01587659 Report. CX-22. The report included the following description:

1. There were numerous cases identified of workers not initialing Worker Verifications (WV) in the hard copy of work orders and associated work package procedures. Multiple instances were identified in which WV initials, and in some cases Independent Verification (IV) or Quality Verification (QV) initials were missing after the work order/procedure was completed. In many of the instances reviewed, the performer had circled and slashed the procedure step designator on the left, but had not completed the verification initials on the right. This is contrary to the requirements of HU-AA-104-101, Procedure Use and Adherence.

3. When missing worker verification signatures are identified and pointed out many weeks after the work was completed, workers are initialing and back-dating the steps to the date the work was performed. Individuals are not making any notation in the record that the verification was not initially signed off. There is no evidence that the individuals are referring to any “field copy” or duplicate record to confirm that the verification was performed.


In February 2014, after the NRC’s Condition Report regarding the back-dating, Respondent implemented guidance encouraging accurate recordkeeping and oversight of documentation. RX-41. Specifically, Tom Powell developed a solution to the issues raised in AR 01587659. TR 792. Powell discussed the solution with other employees, including Complainant, to ensure the plan addressed the problems that had occurred. TR 792. Powell’s new guidance was provided in writing and in discussions with management. RX-43; TR 795-796. Powell testified that he was glad that Complainant raised the issue because it was something that the safety governance and procedure did not address. TR 821-822.

In early 2014, Respondent’s procedure of handling overtime changed – a process that Complainant was involved in. The decision to change this process was made by Charles Breidenbaugh. Breidenbaugh testified that he wanted to streamline the process by limiting the number of administrative assistants involved in the overtime process. TR 620. In an email to employees, Breidenbaugh explained that he was “informed . . . that our overtime expenses for the month of January were 3 times the money that was budgeted. . . Some of this overrun was because I didn’t do a good job to challenge the requests. I need your help to get us back on track.” RX-42,
Breidenbaugh then provided a new process for handling overtime approval. RX-42, p. 2. Complainant responded to Breidenbaugh’s email stating that the process “belongs to” her and implying that the change of procedure was related to her “escalat[ion] of an issue.”

In April 2014, Tom Powell revoked Complainant’s access to his email inbox after determining that she may have been misusing the access. TR 816-818.

Kevin Concannon worked for Respondent from 1994 until June 2017. TR 333. Concannon worked as the access authorization lead for Respondent’s eastern nuclear power plants, including the Peach Bottom facility. TR 333-334. One of Concannon’s duties as the access authorization lead was to determine which individuals would obtain unaccompanied access authorization (UAA) based on safety rules and procedures. TR 335. Concannon routinely referred abnormal behavior from the annual behavioral reviews to Respondent’s Medical Review Officer, Dr. Barbara Pohlman. TR 339-340.

Respondent is required to comply with safety regulations, including the NRC’s Behavioral Observation Program (BOP). Respondent maintains a UAA program consistent with the NRC regulations at 10 C.F.R. § 73.56. RX-7; RX-8; TR 343-344. Respondent’s UAA program, Procedure SY-AA-103-500, defines BOP as follows:

An awareness program that meets requirements of both the access authorization and fitness-for-duty programs. Personnel are trained to report legal actions; to possess certain Knowledge and Abilities (K&A’s) related to drugs and alcohol and the recognition of behaviors adverse to the safe operation and security of the facility by observing the behavior of others in the workplace and detecting and reporting aberrant behavior or changes in behavior that might adversely impact an individual’s trustworthiness or reliability, and undergo an annual supervisory review.

RX-7, p. 2.

Respondent’s employees, including Complainant, were required to undergo an annual review of their behavior. RX-7, p. 2. Based on the behavioral reviews, employees could be subject to suspension and holds on their UAA. Respondent’s UAA program sets forth for withdrawal of UAA, setting forth “[a] process to temporarily withhold UAA/UA from an individual while action is taken to complete or update an element of the UAA requirements.” RX-7, p. 2. Complainant needed UAA in order to complete the duties of her employment. TR 335.

Before the events giving rise to this claim, Complainant’s UAA had previously been withdrawn and reinstated after completing the required medical treatment. RX-28.

In September 2014, Jack Connelly received notice that he was required to complete the Annual BOP Supervisory Review forms for each of the individuals who he is the immediate supervisor for – including Complainant. RX-46. In 2014, Connelly completed the BOP form sent the completed form to Concannon. RX-50; TR 361, 534-535. In that BOP form, Connelly described Complainant’s behavior as follows:
Patricia goes out of her way to avoid contact with certain individuals. She will change her route on purpose so she doesn’t have to engage with the person.

Patricia has been talking to herself a lot lately. She will sit at her desk talking out loud to no one.

RX-50, p. 2.

Upon receipt of the BOP form, Concannon determined that Complainant’s behavior was abnormal and referred the matter to Dr. Pohlman. TR 3671-362. On September 19, 2014, Dr. Pohlman determined that further evaluation was required, mandating that Complainant be referred to the Employee Assistance Program (EAP). RX-47.

As part of the EAP, Complainant received treatment from a counselor, Dr. Mary Lou Kunkle. In a letter dated September 24, 2014, Dr. Kunkle made the following findings as to Complainant’s condition:

Patricia Booker was referred for a mental health evaluation due to interpersonal issues. The evaluation has been completed on 9/23/14. Ms. Booker reports she has worked for Exelon for 30 years. She has spent the last 15 weeks working 6 days a week on planning for the upcoming October outage.

Over the last 5 years she stated she had some symptoms that appeared to be depression or anxiety, however, she was found to have hypothyroidism and with the proper medication she is now free of those symptoms.

She states recently that there were issues at work which she understood she was supposed to report because of being unethical and one issue abusive. She was called in for an interview because of her reports. She states she was trying to avoid a site violation, however, it appears some coworkers were not happy with her reports.

When asked about talking to herself, Ms. Booker stated she talks to herself at work because she often has payroll and report spreadsheets up at the same time and is often interrupted. She talks out loud sometimes to stay on task and stay within deadlines as do several other people who work with her.


Dr. Kunkle recommended that Complainant attend six counseling sessions to resolve issues and improve interpersonal communication. RX-30, p. 1. Dr. Kunkle concluded that Complainant was “trustworthy and reliable to maintain nuclear access to protected areas and remain employed as she completes her therapy.” RX-30, p. 2.

On October 7, 2014, a meeting was held amongst several managers to discuss Complainant’s behavior and her UAA. TR 485 The decision was made to place Complainant’s
UAA on hold pending further evaluation. That same day, Zukauckas informed Complainant that her UAA was placed on hold “[b]ecause of [her] current state.” CX-25, p. 1.

On December 1, 2014, Dr. Kunkle recommended a return to work for Complainant, beginning December 9, 2014. RX-30, p. 9. However, Dr. Kunkle recommended that Complainant now report to Elizabeth Haupin, based on a prior good working relationship, and that Complainant’s desk be moved to an open space in the office near Elizabeth Haupin. RX-30, p. 9.

Dr. Pohlman rejected these recommendations, characterizing the conditions to be “a huge red flag.” TR 422-423. Dr. Pohlman explained:

Well, clearly there is something going on here that is not stable regarding her mental health situation. She was able to work in the past without such a restriction, something has now changed, and it suggests that her condition is not at all stable for her that she has to require a specific boss and specific desk location. In my 35 years of practice as an occupational medicine physician, I have never written or approved such a return-to-work recommendation.

TR 423.

On December 2, 2014, Dr. Pohlman determined that Complainant required a full and complete release to return to work with no restrictions. RX-55, p. 2. Thus, Complainant’s badge was placed on hold and would be reinstated upon receiving a full clearance to return to work. RX-57; TR 362.

On February 27, 2015, Dr. Pohlman sent Respondent a letter recommending that Complainant’s UAA not be reinstated. RX-58. Dr. Pohlman stated the following:

Despite being out of the workplace and working with a professional therapist, Ms. Booker appears unable to achieve her prior level of functioning. On 12-2-14, her therapist recommended that Ms. Booker could return to the workplace only if she could report to a specific female manager and have her desk moved in order to be physically near this specific female manager.

These restrictions are not acceptable in a secure nuclear environment. It is simply impossible to guarantee that a specific manager will be physically nearby at all times. If these are the only conditions under which Ms. Booker may return to the workplace, she is clearly not emotionally stable to return to work. These restrictions are not compatible with the NRC standard of being “trustworthy and reliable” to work in a highly regulated workplace.

RX-58 (emphasis in original).

Complainant remained on disability leave, both short-term and long-term. TR 641. Employees at Peach Bottom who are not able to work due to illness or injury may be on disability for a period not to exceed 18 months. TR 642-643. It is Respondent’s policy that employees who
are unable to return to work after 18 months are discharged. TR 642-643. Complainant did not return to work after 18 months on disability leave. TR 641.

**PROCEDURAL HISTORY**

Complainant filed a complaint with the Department of Labor (DOL) on June 25, 2014. Complainant alleges that Respondent discriminated against her in violation of the employee protection provisions of Section 211 of the Energy Reorganization Act of 1974 (ERA). Specifically, Complainant alleges that she was subjected to a hostile work environment and that she improperly lost building access when her UAA was suspended and she was ultimately terminated. Complainant filed a second complaint with the DOL alleging continued retaliation. Complainant seeks both compensatory and punitive damages. On July 10, 2016, the DOL’s Occupation Health and Safety Administration (OSHA) dismissed both complaints, concluding that the evidence did not support a finding that Complainant’s protected activity was a contributing factor in any adverse employment actions. On July 16, 2016, Complainant filed an objection to the OSHA findings and requested a hearing before the Office of the Administrative Law Judges. The matter was assigned to Administrative Law Judge Thomas M. Burke.

On February 9, 2017, Respondent filed a Motion for Summary Decision. Complainant filed a responsive brief on February 24, 2017, and Respondent filed a Reply on March 3, 2017. On April 4, 2017, Judge Burke granted Respondent’s motion for summary decision. Judge Burke concluded that Complainant failed to show a prima facie face claim that her protected activity caused or contributed to the loss of her UAA and ultimately her employment. Judge Burke found that the harassment was not sufficiently threatening to constitute a hostile work environment and that the evidence showed that Respondent was required to revoke Complainant’s UAA because her actions called her emotional or mental condition into question.

Complainant appealed the decision to the Administrative Review Board (ARB). On July 31, 2019, the ARB vacated Judge Burke’s decision and remanded the matter to the Office of the Administrative Law Judges for an evidentiary hearing. Regarding Judge Burke’s decision on Complainant’s harassment claim, the ARB found that Judge Burke erred by weighing additional evidence outside of the appropriate evidence to be considered on a motion for summary decision. The ARB made a similar finding regarding Judge Burke’s decision on the loss of access claim. The ARB found that Judge Burke improperly weighed the evidence. The ARB concluded that looking at the evidence in a light most favorable to Complainant, there is some evidence that Complainant was subjected to retaliatory actions. Thus, the ARB found a genuine dispute of material fact. The matter was remanded to the Office of the Administrative Law Judges.

This matter has since been assigned to the undersigned. On May 14, 2020, Respondent filed a Motion to Dismiss Complainant’s claim that Respondent violated Section 211 of the ERA by suspending her UAA. On January 21, 2021, the undersigned issued an Order Denying Respondent’s Motion to Dismiss.

On February 22, 2021, Respondent filed a Motion to Strike the Complainant’s demands for punitive and compensatory damages. Respondent argued that the regulations do not provide for the recovery of punitive damages in such claims. Respondent also sought to strike
Complainant’s demand for compensatory damages, arguing that Complainant’s request for compensatory damages is simply a veiled attempt at recovering punitive damages. On March 2, 2021, Complainant filed a responsive brief. On March 4, 2021, the undersigned issued an Order granting in part and denying in part Respondent’s Motion to Strike. The undersigned struck Complainant’s request for punitive damages.

A trial was held in this matter before the undersigned commencing on September 14, 2021 and continuing on multiple dates until completion on February 22, 2022. Citations to the hearing transcript are identified as “TR” while citations to Complainant’s exhibits are identified as “CX” and Respondent’s exhibits are identified as “RX.”

Both parties timely filed closing briefs.

**DISCUSSION**

The ERA protects whistleblowers employed in the nuclear power industry. Complainant alleges that she was retaliated against when she lost her UAA, resulting in termination, and was harassed by other employees at the Peach Bottom Facility.

**A. UAA Withdrawal Resulting in Complainant’s Termination**

Complainant alleges that Respondent retaliated against her for reporting backdating to the NRC by withdrawing her UAA and terminating her employment. “No employer may discharge any employee because the employee commenced, caused to be commenced, or is about to commence a proceeding under this chapter or the Atomic Energy Act.” 42 U.S.C. § 5851(a)(1). The regulations require a complainant to establish that:

1. Complainant engaged in an activity protected by the ERA;
2. Respondent subjected complainant to an unfavorable personnel action; and
3. the protected activity was in fact a contributing factor in the unfavorable personnel action


**1. Protected Activity**

The ERA sets forth a list of protected activities at 42 U.S.C § 5851(a). The section provides as follows:

1. No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—
(A) notified his employer of an alleged violation of this chapter or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.);

(B) refused to engage in any practice made unlawful by this chapter or the Atomic Energy Act of 1954, if the employee has identified the alleged illegality to the employer;

(C) testified before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of this chapter or the Atomic Energy Act of 1954;

(D) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter or the Atomic Energy Act of 1954, as amended, or a proceeding for the administration or enforcement of any requirement imposed under this chapter or the Atomic Energy Act of 1954, as amended;

(E) testified or is about to testify in any such proceeding or;

(F) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purposes of this chapter or the Atomic Energy Act of 1954, as amended.

42 U.S.C § 5851(a).

Complainant is not required to establish that the activity about which she complained actually violated federal law related to nuclear safety; instead, Complainant must show that the complaines are based on a reasonable belief that they were related to an unlawful practice under federal law related to nuclear safety. See Mahan v. Public Service Electric & Gas Co., ARB No. 99-045, ALJ No. 1998-ERA-00022 (Jan. 30, 2001).

Complainant complained to her supervisor and the NRC about the back-dating of work orders. Complainant raised concerns regarding documents and procedure related to safety at the power plant. It is clear that Complainant’s action of filing complaints with her superiors and the NRC regarding back-dated safety documents is a protected activity.

2. Unfavorable Personnel Action

Complainant’s UAA was withdrawn after she filed complaints to the NRC. Complainant was required to have UAA in order to work, because the duties of her employment required her to be within the restricted area. Without UAA, Complainant would be terminated. Termination is clearly an unfavorable personnel action under the regulations. The evidence also shows that some of Complainant’s work responsibilities were reassigned to other employees or simply revoked. Complainant was no longer involved in the overtime approval procedure, and she lost her access
to Tom Powell’s email inbox. The undersigned finds that Respondent took unfavorable personnel action against Complainant. The undersigned finds that the unfavorable personnel action in this case are the revocation of Complainant’s UAA, which ultimately lead to Complainant’s termination, and the reassignment and revocation of work duties from Complainant.

3. Relationship Between Protected Activity and Unfavorable Personnel Action

Complainant must establish a causal connection between the protected activity and the unfavorable personnel action. This element is established if Complainant’s protected activity was a “contributing factor.” 42 U.S.C. § 5851(b)(3)(C). The ARB has explained:

Subsection 5851(b)(3)(C) provides that “[t]he Secretary may determine that a violation of subsection (a) of this section has occurred only if the complainant has demonstrated that any [ERA Protected Activity] was a contributing factor in the unfavorable personnel action alleged in the complaint.” This provision creates the “violation” clause of the ERA whistleblower provisions. The plain meaning of “contributing factor” focuses on whether protected activity did or did not, in fact, contribute at all to an employer’s unfavorable employment action. Congress expressly ensured that the causation standard was not defined as meaning an essential (“but for”) or significant (“motivating”) factor as in other discrimination statutes but rather a lower causation standard of “contributory factor.”

Bobreski, at 15-16.

Complainant is not entitled to relief under the ERA if the evidence shows that Respondent would have taken the same unfavorable personnel action absent protected activity by Complainant. 42 U.S.C. § 5851(b)(3)(B).

The focus of this case is whether Complainant has shown that the reason for her adverse action was her protected safety complaints. Complainant alleges that her UAA was withdrawn because she filed complaints with the NRC. Without her UAA, Complainant was unable to work within the protected areas at Peach Bottom Atomic Plant.

Based on the evidence, Respondent determined that Complainant became unqualified for UAA and withdrew Complainant’s UAA as required by NRC rules. Complainant’s immediate supervisor completed the annual behavioral form for Complainant. Brian Zukauckas determined that Complainant’s BOP form contained abnormal behavior. Because of this abnormal behavior, Complainant was referred to the Medical Review Officer, Dr. Pohlman. Dr. Pohlman recommended Complainant participate in the EAP and receive treatment. Complainant received treatment from a counselor who ultimately concluded that Complainant could return to work with conditions. These conditions were not consistent with Dr. Pohlman’s recommendation that a full clearance, free of conditions, was required for reinstatement of UAA and for Complainant to return to work. Thus, the evidence shows that Respondent gave Complainant the opportunity to return to work. Complainant was only willing to do so with the conditions that she report to a specific female supervisor and that her desk be moved near that specific female supervisor. Complainant has failed to show that her protected activity was a contributing factor in the revocation of her UAA.
Respondent’s legitimate reason for withdrawing her UAA is documented and credible. Respondent did not reinstate Complainant’s UAA because she had not been approved for a full clearance to return to work.

The undersigned again notes that Complainant had previously been out of work on the EAP before the events giving rise to this claim. In those instances, Complainant complied with the EAP and received a full clearance to return to work. That has not occurred in this case. Respondent’s refusal to concede to the conditions Complainant demanded for her return to work is neither evidence that the reason for her adverse action was her protected safety complaints nor a violation of the ERA.

Complainant also asserts that Respondent reassigned and revoked work related to her duties because she engaged in a protected activity. Complainant cited to two duty changes in arguing retaliation. First, Complainant alleges that she lost access to Tom Powell’s email address because of her protected activity. TR 196. Second, Respondent developed new policy and procedure for handling overtime – a process that Complainant had previously been involved in. TR 195-196. The evidence shows that Respondent would have taken the same actions regarding Complainant’s job duties absent her protected activity. Tom Powell revoked the email inbox access because of Complainant’s misuse. Charles Breidenbaugh addressed the overtime procedure because overtime expenses had more than tripled the amount budgeted. The undersigned does not find there to be a relationship between Complainant’s protected activity and her loss of certain job duties.

Complainant’s arguments merely amount to a temporal proximity between her protected activity and unfavorable personnel actions. Showing that one occurred after the other is insufficient. Complainant has the burden of showing that her protected activity was a contributing factor to the unfavorable personnel actions. Complainant has failed to do so. Thus, Complainant fails to show that she was retaliated against for reporting the back-dated work orders. Complainant’s claim of retaliation fails and must be denied.

B. Hostile Work Environment

Complainant also asserts that she was subject to a hostile work environment because she reported back-dating of work orders. To prevail on a claim for hostile work environment, a complainant must show:

(1) protected activity;

(2) intentional harassment related to that activity;

(3) harassment sufficiently severe or persuasive so as to alter the conditions of employment and to create an abusive working environment; and

(4) harassment that would have affected a person a reasonable person and did detrimentally affect the complainant.
“Circumstances germane to gauging a work environment include the frequency of the discriminatory conduct, its severity, whether it is physically threatening or humiliating, or a mere offensive utterance, and whether it unreasonably interferes with an employee’s work performance.” *Hoffman*, ARB No. 09-021, slip op. at 12.

As noted above, it is clear that Complainant engaged in a protected activity by reporting the back-dating of safety-related procedure documents. However, Complainant fails to show that she received intentional harassment.

Complainant alleged that Connelly had been physical aggressive and “hollered” at her in a September 25, 2014 meeting. RX-31. Complainant, ultimately, recanted her claim that Connelly was yelling at her in the meeting. RX-31, p. 2. In another instance, Complainant alleged that Connelly was physically threatening in her cubicle on October 3, 2014.

Brian Zukauckas conducted a fact-finding investigation into the incidents. RX-31. Among his findings, Zukauckas found that Complainant was the only one who raised her voice during the September 25, 2014 meeting. RX-31, p. 2. This was substantiated by a witness who was in the area at the time of the meeting. RX-31, p. 2. No witnesses were able to substantiate Complainant’s initial claim that Connelly “hollered” or raised his voice. Based on his investigation, Zukauckas concluded that during the meeting, Connelly was direct in nature but did not raise his voice to Complainant or act in an aggressive way. RX-31, pp. 3-4.

Regarding the October 3, 2014 incident, Zukauckas made the following finding:

This allegation was unsubstantiated based on the investigation findings. Jack Connelly did stand in her cubicle entrance with his arm leaned on top of the opening; Jack asked Patricia to page him if a woman with an Australian accent calls as this would be his foreign exchange student and his wife was out of town. There was no evidence of intimidating/threatening behavior (verbal, physical, or otherwise). She raised the concern immediately to Human Resources and requested that in the future her manager speak to her from outside her cubicle vs. from inside. Action was taken and the item was closed out with her directly in a matter of minutes. Approximately 15-20 minutes after Human Resources addressed her concern she approached Manager, Site Security Phil Simmons and stated it was an open issue. Patricia was not forthright about already reaching out to Human Resources although Phil asked twice during the conversation nor was she forthright about the matter being resolved.

RX-31, p. 4.

Complainant, and other testifying witnesses, discuss, at length, issues that Complainant had with supervisors and her colleagues. For example, Complainant compared her relationship with Tom Powell to be “like husband and wife” and characterized it as “a rocky relationship over
the years.” TR 163. Complainant also stated that she and another employee, Heidi Pabis, did not get along. TR 154.

It is clear from the evidence that there were some less than ideal work relationships between Complainant and some of her colleagues. Complainant fails to show that these issues arose after her protected activity. Further, Complainant fails to show that intentional harassment occurred at all. Thus, Complainant’s claim that she was harassed because of a protected activity fails and must be denied.

**CONCLUSION**

The undersigned finds that Complainant’s claims of retaliation fail and must be denied. The undersigned **DENIES** Complainant’s claim for damages under the whistleblower provisions of the Energy Reorganization Act.

**DREW A. SWANK**
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 date of the postmark, facsimile transmittal, or e-filing 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 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.

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, (3) the Assistant Secretary, Occupational Safety and Health Administration, and (4) the Associate Solicitor, Division of Fair Labor Standards.

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.

**IMPORTANT NOTICE ABOUT FILING APPEALS:**

The Notice of Appeal Rights has changed because the system for online filing has become mandatory for parties represented by counsel. Parties represented by counsel must file an
appeal by accessing the eFile/eServe system (EFS) at https://efile.dol.gov/EFILE.DOL.GOV.

**Filing Your Appeal Online**

Information regarding registration for access to the new EFS, as well as user guides, video tutorials, and answers to FAQs are found at https://efile.dol.gov/support/.

Registration with EFS is a two-step process. First, all users, including those who are registered users of the former EFSR system, will need first create an account at login.gov (if they do not have one already). Second, if you have not previously registered with the EFSR system, you will then have to create an account with EFS using your login.gov username and password. Once you have set up your EFS account, you can learn how to file an appeal to the Board using the written guide at https://efile.dol.gov/system/files/2020-10/file-new-appeal-arb.pdf and/or the video tutorial at https://efile.dol.gov/support/boards/new-appeal-arb. Existing EFSR system users will not have to create a new EFS profile.

Establishing an EFS account should take less than an hour, but you will need additional time to review the user guides and training materials. If you experience difficulty establishing your account, you can find contact information for login.gov and EFS at https://efile.dol.gov/contact.

If you file your appeal online, no paper copies need be filed with the Board.

**You are still responsible for serving the notice of appeal on the other parties to the case and for attaching a certificate of service to your filing.** If the other parties are registered in the EFS system, then the filing of your document through EFS will constitute filing of your document on those registered parties. Non-registered parties must be served using other means. Include a certificate of service showing how you have completed service whether through the EFS system or otherwise.

**Filing Your Appeal by Mail**

Self-represented (pro se) litigants may, in the alternative, file appeals using regular mail to this address:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W., Room S-5220,
Washington, D.C., 20210

**Access to EFS for Other Parties**

If you are a party other than the party that is appealing, you may request access to the appeal by obtaining a login.gov account and EFS account, and then following the written directions and/or via the video tutorial located at:

https://efile.dol.gov/support/boards/request-access-an-appeal
After An Appeal Is Filed

After an appeal is filed, all inquiries and correspondence should be directed to the Board.

Service by the Board

Registered e-filers will be e-served with Board-issued documents via EFS; they will not be served by regular mail. If you file your appeal by regular mail, you will be served with Board-issued documents by regular mail; however, you may opt into e-service by establishing an EFS account, even if you initially filed your appeal by regular mail.