U.S. Department of Labor

Office of Administrative Law Judges
36 E. 7th St., Suite 2525
Cincinnati, Ohio 45202

(513) 684-3252
(513) 684-6108 (FAX)

Issue Date: 10 February 2005

Case No.: 2004-ERA-0016

In the Matter of:

TERESA J. COOPER MILLS,
Complainant

v.

UNITED STATES ENRICHMENT CORPORATION,
Respondent

RECOMMENDED ORDER
GRANTING RESPONDENT'S MOTION FOR SUMMARY DECISION

This action arises under Section 211 of the Energy Reorganization Act of 1974 ("ERA"), as amended, 42 U.S.C. § 5851, and the regulations promulgated pursuant to and set forth at 20 C.F.R. § 1978.

On November 30, 2003, the Complainant, Teresa J. Cooper Mills ("Mills"), filed a Complaint with the Regional Director of the Occupational Safety and Health Administration ("OSHA"), regarding safety concerns over the delivery of batteries at her workplace (United States Enrichment Corporation ("USEC") Mot., Ex. A). In response to questions posed by the assigned OSHA investigator, Mills supplemented her Complaint on January 10, 2004 (USEC Mot., Ex. B). After investigation, the Regional Administrator recommended dismissal of Mills' Complaint on March 8, 2004, because the evidence did not show that she engaged in protected activity covered under the ERA, and because she had not suffered an adverse employment action (USEC Mot., Ex. C). Mills made a timely request for a hearing. By Order dated July 13, 2004, the undersigned set a hearing date of October 26, 2004, in Paducah, Kentucky.

The hearing was continued at the request of the parties, by Order dated October 13, 2004, to allow completion of discovery. The hearing was tentatively rescheduled for December 7, 2004. During a telephone conference held on November 3, 2004, Respondent's attorney stated that he would submit a Motion for Summary Decision in mid-November 2004, which he felt would dispose of the case. At that time, the parties requested that the December 7, 2004, hearing be cancelled to allow Complainant's attorney sufficient time to respond to the

forthcoming Motion for Summary Decision and to permit time for the undersigned to rule on the Motion. The parties' request was granted and the December 7, 2004, hearing was cancelled. By Order dated December 3, 2004, the hearing was rescheduled for February 15, 2005.

On December 30, 2004, the Respondent filed a Motion for Summary Decision on the grounds that Mills did not engage in protected activity covered by the ERA and that she did not suffer an adverse employment action.

On January 25, 2005, Mills filed Plaintiff's Response to Motion for Summary Decision, arguing that there are genuine issues of material fact to be resolved, and that the Complainant must be permitted an opportunity to prove each element of its *prima facie* case under the ERA.

Reply Briefs

On January 31, 2005, the Respondent filed USEC's Request for Leave to File Reply and Reply, stating that Complainant's brief included "erroneous factual and legal assertions" and that good cause exists to permit USEC to file a reply. Citing 29 C.F.R. § 18.6(b), USEC argues that "[t]he Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges provide that further responsive documents can be filed with the approval of the Presiding Judge." On February 5, 2005, the Complainant filed a Request for Leave to Respond to USEC's Reply and Response. All briefs are admitted and have been considered.[1]

Statement of Facts

Mills is a supervisor at USEC's Paducah Gaseous Diffusion Plant ("PGDP") for the Stores/Field Operations Group ("Stores") in the Procurement and Materials Division (Mills Resp., Ex. 2 at 13). In this role, she supervises all aspects of receiving, storage, and internal distribution and shipping of material at PGDP (USEC Mot., Ex. E; Mills Resp., Ex. 2 at 16-18, 43).

The PGDP enriches uranium to the level required for use as fuel in domestic and foreign commercial nuclear reactors (USEC Mot. at 3; Mills Resp. at 1). Electric power is supplied to

[1] On February 2, 2005, the Respondent filed a Motion to Exclude Deposition Testimony of Dr. Charlene Robinson. On February 7, 2005, the Complainant filed a Response to USEC's Motion. This Order grants summary decision in favor of the Respondent. Therefore, the deposition testimony of Dr. Robinson is not relevant, and the Motion is moot and is not further considered.

PGDP from the national electric grid (*Id.*). In the event of power failure, certain systems at PGDP are powered by backup electric generators (USEC Mot. at 3; Mills Resp. at 2). Batteries, similar to automobile batteries, provide an additional temporary backup power supply for limited PGDP functions (*Id.*). USEC's facility has 17 battery rooms to provide temporary, backup power. Sixteen battery rooms are located inside the processing buildings where enrichment takes place (*Id.*). Room C-303 is a small stand-alone building located away from the processing buildings (USEC Mot. at 4; Mills Resp. at 2). Room C-303 contains two computer systems, neither of which controls or impacts any aspect of the enrichment, storage, monitoring, or processing of uranium or any other nuclear materials or processes (USEC Mot. at 4, citing Ex. F at 23:6-17). If a power failure were to occur, the batteries in C-303 provide up to 20 minutes of electric power to these two computers until backup generators engage (USEC Mot. at 4; Mills Resp. at 2). The only time the batteries installed in C-303 would be used is when main electric power is interrupted and backup electric generators have not yet engaged (USEC Mot., Ex. F at 23). As there has been no power failure at the plant in over 20 years, the C-303 battery backup system has never been engaged other than for testing purposes (USEC Mot. at 4).

Somewhere between July 17, 2003, and July 22, 2003, replacement batteries for room C-303 were delivered to the Stores Group warehouse[2] (USEC Mot. at 4; Mills Resp. at 4). Normally battery room deliveries are planned in advance, allowing the batteries to be installed at the time of delivery (USEC Mot. at 4). On July 22, 2003, Mills received a call from either Chris Mason or the Power Operations Manager, Ron Taylor, inquiring where the replacement batteries for room C-303 were (Mills Resp. at 4). After numerous attempts to contact the person who requisitioned the replacement batteries, either Mason or Taylor instructed Mills to go ahead and deliver the batteries to building C-303 (*Id.* at 4-5). Mills knew that there was no drop point inside C-303 and that she could not leave the batteries outside if there was a chance that they would be exposed to the elements (USEC Mot. at 4; Mills Resp. at 4). Mills was told that Lorn Honey, the System Engineer with primary responsibility for C-303, would be present to accept the batteries (USEC Mot. at 5; Mills Resp. at 5). Mills sent her delivery person, Mark Belt ("Belt"), to deliver the batteries

[2] The dates of the incident differ between the Complainant and the Respondent. The Respondent states that the delivery incident took place on July 17, 2003 (USEC Mot. at 4), while Mills states that the incident took place on July 22, 2003 (Mills Resp. at 4). The actual incident date is not relevant to the issue of whether the Complainant engaged in protected activity.

outside of room C-303 so that Honey could then have them moved inside (*Id.*). When Belt arrived, no maintenance personnel were present to move the batteries into C-303 (*Id.*). Honey directed Belt to move the batteries directly into the building (*Id.*). Belt could not move the batteries on the forklift because the gravel way is steep and narrow and he could not maneuver the forklift over a hump near the door (*Id.*). Belt obtained assistance from another employee who drove a second forklift (*Id.*). Using one forklift to lift the other, Belt was able to place the pallets of batteries onto the landing immediately outside of the C-303 entry door (USEC Mot. at 5; Mills Resp. at 5-6). Belt then pushed the skids of batteries into room C-303 (USEC Mot. at 5; Mills Resp. at 6). At no time did either forklift enter building C-303 (USEC Mot. at 5, citing Ex. G at 91-94). After the incident, Belt relayed the incident to Mills, who contacted Tim Reynolds, the safety representative for power issues, to clarify the proper procedure for delivering batteries to C-303 (Mills Resp. at 6). Pat Holland responded to Mills' inquiry and the situation was discussed by email, telephone, and in person (*Id.* at 6-7). At the conclusion of these discussions, Mills was satisfied with Holland's response and the battery delivery issue was concluded (*Id.* at 7).

Summary Decision Standard

A motion for summary decision in an ERA whistleblower case is governed by 29 C.F.R. §§ 18.40 and 18.41. Under those regulations, the Secretary and the Circuits apply the summary judgment standards of Rule 56 of the Federal Rules of Civil Procedure. *Webb v. Carolina Power and Light Co.*, 93-ERA-42, Slip. Op. at 4-6 (Sec'y July 17, 1995); *Howard v. TVA*, 90-ERA-24, Slip. Op. at 4 (Sec'y July 3, *1991), aff'd sub nom. Howard v. U.S. Department of Labor*, 959 F.2d 234 (6th Cir. 1992).

Under Fed. R. Civ. P. 56(c), summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

A party opposing a motion for summary decision must "set forth specific facts showing that there is a genuine issue of fact for the hearing." 29 C.F.R. § 18.40(c). Under Fed. R. Civ. P. 56(e), the non-moving party "may not rest upon mere allegations or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial. ... [T]he party opposing summary judgment must present affirmative evidence in order to defeat a properly supported

motion for summary judgment." *Anderson v. Liberty Lobby*, 477 U.S. 242, 256-257 (1986). A "material fact" is one whose existence affects the outcome of the case. *Id.* at 248. A "genuine issue" exists when the non-moving party produces sufficient evidence of a material fact that a factfinder is required to resolve the parties' differing versions at trial. Sufficient evidence is any significant probative evidence. *Id.* at 249, citing *First Nat'l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 288-290 (1968).

Protected Activity

The employee protection provision of the ERA provides, in relevant part:

> 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 person acting pursuant to a request of the employee) -
>
> (A) notified his employer of an alleged violation of this Act 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 Act 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 Act 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 Act or the Atomic Energy Act of 1954, as amended, or a proceeding for the administration or enforcement of any requirement imposed under this Act 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 Act or the Atomic Energy Act of 1954, as amended.

42 U.S.C. § 5851(a)(1) (1994). The Secretary has consistently held that internal complaints to company management are protected activity under the whistleblower provisions of the environmental statutes. *See, e.g., Bassett v. Niagara Mohawk Power Corp.*, 1985-ERA-34 (Sec'y Sept. 28, 1993); *Helmstetter v. Pacific Gas & Electric Co.*, 1991-TSC-1 (Sec'y Jan. 13, 1993); *Williams v. TIW Fabrication & Machining, Inc.*, 1988-SWD-3 (Sec'y June 24, 1992).

The ERA thus protects employees who raise nuclear safety-related concerns from retaliation in the form of discharge or other actions that rise to the level of discrimination with respect to the terms, conditions or privileges of employment.

Section 5851 must be read broadly to include any action or activity related to nuclear safety. *McNeal v. The Foley Co.*, 98-ERA-5, 8 (ALJ July 7, 1998). An employee will not receive protection under the ERA (or any of the other environmental statutes with similar employee protection provisions), however, for safety concerns implicating only occupational safety. *See, e.g., Aurich v. Consolidated Edison Co. of New York, Inc.*, 86-CAA-2 (Sec'y Apr. 23, 1987) (handling of asbestos in workplace; CAA only covers release of asbestos into surrounding air, not as an occupational hazard); *Ellison v. Merit Systems Protection Board*, No. 92-3057, 1993 U.S. App. LEXIS 27786 (D.C. Cir. Oct. 26, 1993) (Whistleblower Protection Act complaint must be linked to type of fraud, waste, or abuse that WPA was intended to reach). Complaints that relate only to conditions at the workplace and do not touch upon general public safety and health are cognizable only under the employee protection provision of the Occupational Safety and Health Act, 29 U.S.C. § 660(c) (1982). *Sawyers v. Baldwin Union Free School District*, 85-TSC-1 (Sec'y Oct. 24, 1994), citing, *Aurich, supra*, at 4.

Mills states the safety issue in her claim centers on:

> … the delivery of several pallets of heavy batteries to be delivered to the C-303 Battery room. … Under normal working circumstances, the [Stores] employee would not have considered the placement of the batteries into the [C-303] room, because such an action was a tremendous Safety infraction due to: 1) the employee [who delivered the batteries] was not an Electrical employee who performs the removal of and the placement of batteries from the other large four

> battery rooms located in the process buildings; 2) [delivery of the batteries] is, was not the employee's job function; and 3) just one spark from the tow motor/forklift could have set off a large explosion injuring/killing employees working in other buildings in close proximity.

Mills Complaint (USEC Mot., Ex. 1).[3] In her Amended Complaint, Mills stated that her concerns directly implicate nuclear safety:

> One spark from the gasoline-powered forklift could have triggered an explosion of the battery room which is located next to the plant's control center, C-300. Deletion of this building cripples the plant's ability to alert personnel to any dangers of malfunctions of process equipment or activities from all areas of the plant. Plus, the explosion would have killed many employees and expelled chemical hazards. [C-303] is the smaller battery room: there are four other much larger battery rooms, each located in one of the four major production areas. An explosion in one of the larger battery rooms would certainly be devastating not only to the plant personnel and premises, but to the surrounding communities.

Mills Amended Complaint (USEC Mot., Ex. 2).

The facts, generally, are not in dispute. Several pallets of replacement batteries were delivered to USEC. In the process of storing the replacement batteries inside building C-303 for later installation, the replacement batteries were moved by employees of USEC in a manner that the Complainant felt was unsafe. The Complainant made an internal complaint to the Company's Industrial Hygiene and Safety Group, relaying her safety concerns. The dispositive question in this analysis is whether Mills' complaint concerned only occupational safety issues, or whether her safety complaints provide a sufficient nexus to nuclear safety to be covered as protected activity under the ERA.

USEC argues that Mills raised only occupational safety concerns, not nuclear safety concerns, and that her activity is not protected under the ERA (USEC Mot. at 21). USEC supports its position with citations from Mills' testimony, which states

[3] The undersigned notes that the Complainant inconsistently states her safety concerns. In her Complaint, Mills asserts a spark explosion hazard, while in her Response, Mills asserts a puncture explosion hazard.

that she did not raise concerns over an explosion hazard with any employee of USEC[4] (USEC Mot. at 24). Mr. Honey, the Systems Engineer for C-303, testified that the batteries in question do not control anything that would implicate nuclear safety (USEC Mot. at 25, citing Ex. F at 23:1-10).[5] Patricia Holland ("Holland"), a member of USEC's Industrial Hygiene and Safety Group, testified that Mrs. Mills' concerns over the battery delivery dealt with the safety of the employees performing the moving and storing of the batteries and that Mills never stated or suggested that her concerns had, or could have, nuclear safety implications (USEC Mot. at 6, citing Ex. G).[6]

Mills asserts that her Complaint "clearly falls under the Secretary's broad view of activity implicating nuclear safety and does not solely relate to occupational safety concerns" (Mills Resp. at 16). In support she cites the testimony of USEC Internal Safety Inspector Holland, that Mills' Complaint was based on an "unsafe procedure" employed while delivering batteries to a sensitive site within the plant (*Id.* at 17). Mills asserts that:

> … employees who were not properly trained and were unfamiliar with the potential hazards of the C-303 building were pushing *skids* of batteries into the building with one forklift while a second was lifting the first over a concrete lip. Had one of the forklifts jerked forward and punctured a battery, thereby releasing combustible gases which then exploded destroying the power source for the SCADA system controlling the inflow of outside electricity as well as the plant-wide fire detection system, the threat to nuclear safety may have been clearer.

(*Id.* at 17) (original emphasis).

The Complainant cites to *Keene v. Ebasco Constructors, Inc.*, 95-ERA-4 (ARB Feb. 19, 1997), for the proposition that the ERA covers procedures related to equipment that is essential to fire prevention, and therefore, essential to the safe operation of nuclear plants (Mills Resp. at 18). In *Keene*, the ARB held

---

[4] Complainant Mills' deposition was taken over two days, starting on September 3, 2004 (*See* USEC Mot., Ex. G), and concluding on September 13, 2004 (*See* Mills' Resp., Ex. 2).

[5] Lorn Honey was deposed by the Complainant on October 13, 2004 (*See* USEC Mot., Ex. F).

[6] Patricia Holland was deposed by the Complainant on October 13, 2004 (*See* USEC Mot., Ex. I).

that procedures governing the performance of electrical work on pumps and motors that were essential to fire prevention was protected activity under the ERA. *See also, Diaz-Robainas v. Florida Power & Light Co.*, 93-ERA-10 (Sec'y Jan. 19, 1996) Slip. Op. at 11-12 (pursuit of repair of alarm systems monitoring critical nuclear plant conditions protected by ERA).

The Complainant's reliance on *Keene* is misplaced. Unlike the employees in *Keene*, USEC employees were not engaged in procedures to install, test, service, or monitor batteries that were actually in use. They simply delivered replacement batteries to a storage area so that qualified employees could later install the replacement batteries. Second, the batteries in C-303 are a secondary backup system to provide temporary power in the event of primary power failure, not a primary power system for the fire computer. Lorn Honey, the engineer responsible for room C-303, testified that "… the building can run without the batteries, 'cause when we change the batteries out, it's a single bank and we have to cut the batteries out to change the batteries out'" (USEC Mot., Ex. F at 23). Third, if such a power failure occurred (which has never happened in over 20 years of operation), the batteries in C-303 power two computers which do not control or impact any aspect of enrichment, storage, monitoring, or processing of uranium or any other nuclear materials or processes.

Under the appropriate conditions, a general safety concern stated by an employee can have an environmental impact such that it would be covered. *See, e.g., Aurich v. Consolidated Edison Company of New York, Inc.*, Case No. 86-CAA-2 (Rem. Ord., Apr. 23, 1987), Slip Op. at 3-4; *Decresci v. Lukens Steel Company*, 87-ERA-13 (Sec'y, Dec. 16, 1993), Slip Op. at 4. Such a general safety concern must be based on more than speculation to survive summary judgment. *Barwick v. Celotex Corp.*, 736 F.2d 946, 963 (4th Cir. 1984) ("Genuine issues of material fact cannot be based on mere speculation or the building of one inference upon another."); *Exxon Corp. v. Federal Trade Comm'n*, 663 F.2d 120, 128, (D.C. Cir. 1980) ("It is not the intent of Rule 56 to preserve purely speculative issues of fact for trial …."); *Miller v. Newsweek, Inc.*, 660 F. Supp. 852, 860 (D. Del. 1987) ("The existence of evidence which is merely colorable or not particularly probative will not render summary judgment inappropriate."); *Lipsett v. University of P.R.*, 637 F. Supp. 789, 799 (D.P.R. 1986) ("The inferences to be made in favor of the opposing party are only those that may be reasonably drawn from the factual record.").

The Complainant has presented only speculation based upon a series of inconsistent, unsupported inferences. Her concern for

nuclear safety is based upon a series of theoretically possible events without factual support. Her argument is that: 1) One of the forklifts *could have*: a) jerked forward and punctured a battery (Mills Response at 17), or b) sparked during operation (Mills Amended Complaint); 2) which *could have* released combustible gases from the punctured batteries; which 3) *could have* then exploded; thereby 4) a) possibly destroying the backup power source for the SCADA system controlling the inflow of outside electricity as well as the plant-wide fire detection system (Mills Response Brief), or b) possibly destroying C-300, the plant's control center, crippling the plant's ability to alert personnel to any dangers of malfunctions of process equipment or activities from all areas of the plant (Mills Amended Complaint).

In her Complaint and Amended Complaint, Mills describes the safety concern as a forklift spark hazard, which could set off an explosion of batteries damaging buildings, killing employees, and compromising critical monitoring abilities within the plant. In her Response, Mills seemingly changes safety concerns and argues that forklifts could jerk forward, puncturing batteries, thereby releasing combustible gases within the batteries that could explode.

Mills presents no evidence that the batteries, if punctured, would release combustible gases. She presents no evidence that had combustible gases from batteries been released, there was a reasonable explosion hazard. She presents no evidence that a spark was likely to be generated by the forklift during delivery, or that if such a spark were generated, it would be reasonably likely to cause explosion of a, some, or all of the replacement batteries being moved into storage.

Noting that the procedure in question involved two separate forklifts, I presume that forklifts routinely transport batteries and other materials packed on skids at USEC. The Complainant offers no affirmative evidence that these batteries were more likely to be punctured than any other skid of batteries being carried by a forklift or that a spark was more likely to be generated by a forklift during this procedure than during any other transportation of batteries or other materials.

If the puncture theory or the spark theory is plausible, then the necessary argument appears be that no batteries should be carried by forklift anywhere in the plant (to prevent possible spark explosion or rupture damage) and not that this particular, isolated delivery was somehow a nuclear safety issue. Mills' Complaint does not raise the issue of banning

forklifts when carrying batteries. Rather, she limits her complaint to one particular, isolated incident involving building C-303.

Mills provided no evidence to support her contention that had such an unlikely series of events progressed to an explosion, the working batteries inside building C-303 would have been incapacitated. In her Response, Mills claims that employees pushed skids of batteries into C-303 using a forklift. (Mills Resp. at 17) (emphasis added). Forklifts were used, however, to place the skids onto the landing outside the entry door to C-303. Mills testified that to her knowledge, no forklift ever entered room C-303. She offered no evidence that replacement batteries being moved into storage by forklift on the landing represented a reasonable explosion hazard to the operating batteries inside, and she offers no evidence that the replacement batteries manually pushed inside room C-303 by USEC employees were in danger of exploding.

Mills produced no evidence that had C-303 been somehow destroyed by a battery explosion, there was a demonstrable nuclear safety risk to the plant beyond the temporary loss of a battery back-up system that had not been utilized in an emergency in over 20 years. C-303 is a stand-alone building, isolated from the processing buildings. The room contains two computer systems, neither of which controls or impacts any aspect of enrichment, storage, monitoring, or processing of uranium or any other nuclear materials or processes.

In her Amended Complaint, Mills asserts that an explosion in a main battery room located next to the plant's control center, C-300, could cripple the plant's ability to alert personnel to any dangers or malfunctions from all areas of the plant. "An explosion in one of the larger battery rooms would certainly be devastating not only to the plant personnel and premises, but to the surrounding communities." Mills provided no evidence that she ever registered safety concerns regarding the larger battery rooms. In her Complaint, Mills states that her safety concerns focused only on "the delivery of several pallets of heavy batteries to be *delivered to the C-303 Battery room*" (emphasis added). In her Response, Mills cites to her own deposition, stating that she contacted "Tim Reynolds, the safety representative for power issues, to clarify the proper procedure *for delivering batteries to C-303*" (Mills Resp. at 6, citing Mills Dep. (Ex. 2) at 95-97) (emphasis added).

"The distinction between complaints about violation of environmental requirements and complaints about violations of occupational safety and health requirements is not a frivolous

one." *Tucker v. Morrison & Knudson*, 1994-CER-1 (ARB Feb. 27, 1997). Employee complaints about worker health or safety may be protected under the environmental acts if they "touch on public safety and health, the environment, and compliance with the [environmental acts]." *Scerbo v. Consolidated Edison Co.*, 89-CAA-2 (Sec'y Nov. 13, 1992), Slip Op. at 4-5. But when a complaint is limited solely to an occupational hazard, it is not protected under the environmental acts. *Minard v. Nerco Delamar Co.*, 92-SWD-1 (Sec'y Jan. 25, 1995), Slip Op. at 9; *Aurich v. Consolidated Edison Co.*, 86-ERA-2 (Sec. Rem. Ord., Apr. 23, 1987), Slip. Op. at 3-4. The Complainant has presented, at best, occupational hazards only, and her activity is not protected under the environmental acts. As the Complainant alleges only the battery delivery to C-303 as protected activity, I find that the Complainant has not engaged in protected activity covered under the ERA.

As the Complainant has not engaged in protected activity under the Act, the issue of adverse employment action is moot.

It is, therefore,

ORDERED that USEC's Motion for Summary Decision is GRANTED. It is further,

ORDERED that the hearing scheduled to commence on February 15, 2005, in Paducah, Kentucky, is CANCELLED.

A

Robert L. Hillyard
Administrative Law Judge

NOTICE: This Recommended Order will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. § 24.8, a petition for review is timely filed with the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, D.C., 20210. Such a petition for review must be received by the Administrative Review Board within 10 business days of the date of this Recommended Order, and shall be served on all parties and on the Chief Administrative Law Judge. *See* 29 C.F.R. §§ 24.7(d) and 24.8.