



**In the Matter of:**

**ROBERT REDWEIK,**

**ARB CASE NO. 05-052**

**COMPLAINANT,**

**ALJ CASE NO. 2004-SWD-002**

**v.**

**DATE: December 21, 2007**

**SHELL EXPLORATION AND  
PRODUCTION COMPANY,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

***For the Complainant:***

**Robert Redweik, pro se, Tomball, Texas**

***For the Respondent:***

**W. Carl Jordan, Esq., Yvette V. Gatling, Esq., Chris Butler, Esq., Shell Oil  
Co., Houston, Texas**

**FINAL DECISION AND ORDER**

Robert Redweik filed a complaint with the United States Department of Labor alleging that when his former employer, Shell Exploration and Production Co. (SEPCO), terminated him in June 2003, it violated the employee protection provisions of the Federal Water Pollution Prevention and Control Act of 1972 (the WPCA)<sup>1</sup>, the Clean Air

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<sup>1</sup> 33 U.S.C.A. § 1367 (West 2001).

Act,<sup>2</sup> the Comprehensive Environmental Response, Compensation and Liability Act,<sup>3</sup> and the Solid Waste Disposal Act of 1976.<sup>4</sup> After a hearing, a Labor Department Administrative Law Judge (ALJ) issued a Recommended Decision and Order (R. D. & O.) that Redweik's complaint be denied.<sup>5</sup> Redweik appealed. We affirm.

## BACKGROUND

Redweik began working for SEPCO in 1981 as an environmental engineer. By 2000, he was dividing his time between SEPCO's Health Safety and Environment Division (HSE) under Karen Madro and its New Business Development Division (NBD) under Wade Watkins. Madro promoted Redweik to the position of senior engineer.

Beginning in 2000 through March 2001, in a series of emails and face to face discussions with Watkins and others, Redweik reported about a number of incidents at a Colorado project that he believed were caused by Watkins's overemphasis on speed and cost to the detriment of environmental safety.

In mid 2001, Redweik transferred into a full time position with NBD. There, Redweik provided expert advice on environmental safety issues, including compliance with state and federal environmental safety laws during exploration and development of natural resources.

In January 2002, Watkins gave Redweik a slightly below average performance evaluation. Watkins praised Redweik's expertise but also criticized him for not being available to colleagues who needed his advice and for not following expense account rules and procedures. Redweik thought the rating was unfair. He thought that he deserved a better rating because he regularly worked 230 hours a month, mostly on the road, and he served as NBD's expert in three separate subject areas. Watkins felt that Redweik worked the long hours because he did not prioritize properly, made unnecessary trips, and refused to delegate when he could.

Redweik filed a complaint against Watkins with SEPCO's human resources department on February 27, 2002. He asserted that Watkins gave him a low performance evaluation in retaliation for the reports Redweik made in 2000 and 2001 to SEPCO and state regulators about environmental safety problems at the Colorado project. Redweik

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<sup>2</sup> 42 U.S.C.A. § 7622 (West 2003).

<sup>3</sup> 42 U.S.C.A. § 9610 (West 2005).

<sup>4</sup> 42 U.S.C.A. § 6971 (West 2003).

<sup>5</sup> *Redweik v. Shell Exploration & Prod. Co.*, ALJ No. 2004-SWD-002 (Jan. 18, 2005).

described 12 environmental issues that he had raised with Watkins in 2000-2001 that he believed had motivated Watkins to retaliate.<sup>6</sup> He also contended that Watkins had attacked his integrity and damaged his reputation.<sup>7</sup>

In addition, Redweik complained about the fact that Watkins criticized him for non-compliance with SEPCO financial policies and controls. He wrote that, “I fully understand the policies and have adhered to all their requirements. . . . The only incident I can think of is regarding my family coming along on a business trip. However, further to our discussion regarding this incident, I reviewed the policy and found that I was in full compliance with applicable requirements.”<sup>8</sup>

SEPCO referred the complaint to Shell’s Ethics and Compliance Officer, who in turn consulted corporate counsel. Because of Redweik’s expertise and seniority, the Shell officials took his allegations of environmental mismanagement very seriously. They decided that Shell’s Equal Employment Opportunity group should investigate Redweik’s claim that Watkins injured Redweik’s professional reputation. But John Estes, Manager of Investigations for Corporate Security, would lead a separate investigation into the environmental safety problems that Redweik itemized and his claim that Watkins had no basis for criticizing Redweik’s billing practices.<sup>9</sup>

Shell assigned an environmental safety expert and two former FBI agents with accounting expertise to assist Estes and placed the whole group under the General Counsel’s supervision. Estes met with Redweik in March 2002. Estes explained how he intended to proceed on the environmental and expense statement issues and explained that Redweik needed to submit documents to support his allegations.<sup>10</sup>

As a first step to evaluating Redweik’s claim that Watkins had no reason to criticize his billing practices, Estes asked Shell Internal Auditing to review Redweik’s expenses for the period 2000 through March 2002.<sup>11</sup> Internal Auditing reported back that Redweik had claimed \$234,047 in expenses during this period, but an audit would not be possible because Redweik had submitted supporting receipts in only five of 58 instances,

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<sup>6</sup> Respondent’s Exhibit (RX) 1 at SHE 00532-00533; Complainant’s Exhibit (CX) 8 at B53-54.

<sup>7</sup> RX 1.

<sup>8</sup> RX 2 at SHE 00391.

<sup>9</sup> Transcript (T.) 660-665.

<sup>10</sup> RX 28 at SHE 01264; T. 675.

<sup>11</sup> T. 674, 731.

or about 8.6%.<sup>12</sup> Under the procedures in effect at the time, employees submitted their expense statements electronically, with supporting receipts to be submitted by mail within seven days. Payments were processed based on the electronic submittals, and SEPCO did not routinely audit expense statements. The audit group also reported that Redweik appeared to have billed SEPCO two or even three times for some airline tickets.<sup>13</sup>

Estes and the general counsel thought that the environmental safety allegations were more important than the personnel issues. Wanting maximum cooperation from Redweik in that part of their investigation, they decided to complete their assessment of the environmental hazard allegations before confronting Redweik about his expenses.<sup>14</sup> Thus, in about November 2002, as his environmental hazard investigation was winding down, Estes assigned Debra Taylor, one of the former FBI financial analysts, to review the audit results and Redweik's expense statements.<sup>15</sup>

Estes met with Redweik in December 2002. Estes and the Shell environmental safety expert had finished investigating the environmental compliance issues. They concluded that SEPCO had addressed the environmental hazards in a timely and appropriate manner.<sup>16</sup> Redweik agreed with that conclusion. In fact, Redweik indicated that his real concern was not whether SEPCO had properly handled the environmental problems he had flagged, but whether Watkins retaliated because he had called attention to Watkins's mistakes. Furthermore, said Redweik, investigating the environmental problems had only delayed investigating whether Watkins retaliated.<sup>17</sup>

Estes also explained to Redweik that the investigators had not yet been able to determine whether Watkins had grounds for criticizing Redweik's expense practices because Redweik had submitted receipts for only 8.6% of the claims.<sup>18</sup> Therefore, Estes asked Redweik to bring him missing receipts. Redweik did provide some of the missing receipts.<sup>19</sup> Taylor examined these receipts. And when Taylor eventually interviewed

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<sup>12</sup> RX 25; T. 674-675, 678, 731.

<sup>13</sup> RX 25; T. 675-678.

<sup>14</sup> T. 732-733.

<sup>15</sup> T. 674-683, 721.

<sup>16</sup> RX 28; T. 680-681.

<sup>17</sup> RX 28 at SHE 01406; RX 26; CX 86; T. 671-673.

<sup>18</sup> T. 679-681.

<sup>19</sup> T. 734.

Redweik in April 2003, she found that he claimed expenses for airline tickets for which he had already received a refund, had claimed expenses twice for the same airline ticket, and had been reimbursed \$5,703 for a ticket to Amsterdam that he had cancelled. She also found that Redweik had billed SEPCO for travel expenses for his family without authorization.<sup>20</sup>

Taylor identified several patterns in Redweik's manner of submitting his expenses that would have made it more difficult for the company to detect fraud. In addition to withholding receipts, Redweik charged most of his travel expenses to his personal credit card rather than the company credit card, and he did not use the company travel service.<sup>21</sup> Estes asked Madro and Watkins to look at the expenses Taylor had marked as problematic and tell him whether they had authorized these claims. Madro and Watkins said that they did not know about these expenses and did not authorize them.<sup>22</sup>

In April 2003, Taylor asked Redweik about each of the expense claims she had questioned. Redweik had satisfactory explanations for some of her questions but conceded that he had claimed more than one reimbursement for tickets, that he traded a first class ticket for a cheaper seat and kept the difference, and that he cashed in the \$5,703 Amsterdam ticket in November 2000. But he said that these were mistakes and that he was not attempting to defraud SEPCO. He said that he did not realize that SEPCO had paid him for the Amsterdam ticket until late 2002, when he began looking for missing receipts. And he did not realize his other billing errors because his business travel was so extensive and he was so busy that he could not keep track of all his travel and expense statements.<sup>23</sup>

Furthermore, Redweik told Taylor that Madro and Watkins had authorized him to omit subsidiary work such as strict compliance with expense account rules if it interfered with his ability to do his substantive work. He said that they had also authorized him to bill SEPCO for family travel expenses.<sup>24</sup> Redweik was working 230 hours a month and his wife and one of his children were extremely ill and needed him to be with them as much as possible. Redweik explained to Taylor that Madro knew this and thus specifically told him to "do what you need to do to get the job done."<sup>25</sup> Redweik said

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<sup>20</sup> RX 22; RX 26; RX 28, T. 679-684, 734.

<sup>21</sup> T. 537, 555-556.

<sup>22</sup> T. 756-757.

<sup>23</sup> RX 20, T. 332-334, 538-548, 547, 550-554, 646.

<sup>24</sup> RX 9 Attachment 2 at pp 6-8.

<sup>25</sup> T. 551.

Madro and Watkins personally reviewed and approved expense statements that showed he was deviating from various billing rules.<sup>26</sup>

Estes, Robinson, and Taylor testified that they did not believe Redweik. They did not believe that he double billed for airline ticks by mistake because he never claimed a ticket twice on a single statement; the duplicative claims always appeared on separate statements. They did not believe that Redweik did not know he had been reimbursed \$5,703 for the Amsterdam ticket until 2002 because he also had told them that he started repaying SEPCO for that ticket in January 2001 by not claiming all the mileage he could have claimed for business travel. They did not believe that Redweik honestly thought that Madro's instruction to "do whatever you have to do" authorized him to bill SEPCO for family travel expenses because he never told Madro or Watkins that he was claiming family expenses. Nor did they accept that an employee who traveled as much as Redweik, and had been with the company since 1981, did not know that he was supposed to use the company travel agency and the company credit card.<sup>27</sup>

Based on Estes's findings, Shell's counsel recommended to SEPCO HSE manager Jim Robinson that Redweik be fired for fraud and theft.<sup>28</sup> Robinson had known Redweik for years, considered him a highly effective environmental engineer, and was troubled by the fact that firing Redweik would mean the loss of health insurance for Redweik's sick wife and child. But after studying Redweik's reimbursement claims, receipts, and calendar entries, and the investigators' notes and reports, he concluded that Redweik had committed fraud against the company.<sup>29</sup> Because of Shell's long-standing "zero tolerance" policy for theft from the company, Robinson decided that Shell had to fire Redweik but offered him the chance to resign instead. Redweik resigned in June 2003.<sup>30</sup>

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<sup>26</sup> RX 20; RX 27 (Jan. 28, 2003 Redweik email to Estes), Jan. 27, 2003, (Redweik email to Estes); T. 654.

<sup>27</sup> RX 20; T. 570-571, 539-540, 556, 635, 635, 685-686.

<sup>28</sup> In the meantime, the EEO group presented its findings concerning damage to Redweik's reputation. They concluded that SEPCO had not retaliated against Redweik after he reported the environmental hazards to Watkins. They found that the slightly-below-average rating was consistent with Watkins's ratings of other NBD employees. Furthermore, Redweik's reputation had not been injured – as demonstrated by the fact that he requested and received a transfer back to the HSE division in March 2002. Moreover, Watkins recommended a bonus and a promotion for Redweik that Redweik duly received.

<sup>29</sup> T. 882-885.

<sup>30</sup> T. 886-888.

Redweik then filed the aforementioned complaint with the Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that SEPCO forced him to resign because he had reported that the NBD Division was lax in managing environmental safety hazards under Watkins's direction. After an investigation, OSHA concluded that the complaint had no merit. Redweik objected to OSHA's decision and requested a hearing before an ALJ. After a four day hearing, the ALJ recommended that Redweik's complaint be denied. Redweik appealed.

### JURISDICTION AND STANDARD OF REVIEW

We have jurisdiction to review the ALJ's decision.<sup>31</sup> We review questions of law de novo.<sup>32</sup>

At the time Redweik appealed and the parties filed their briefs with the Board, we reviewed questions of fact de novo.<sup>33</sup> A new regulation calls for substantial evidence review.<sup>34</sup> Substantial evidence is that which is "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."<sup>35</sup>

Neither party addressed the standard of review in its briefs to the Board. Nor has either party requested leave to supplement or amend its brief in light of the change in the standard of review for questions of fact. We therefore assume that neither party considers the change in the standard of review material to this case.<sup>36</sup> In any event, applying either standard of review, we conclude that SEPCO did not violate the Act and that Redweik's complaint must be dismissed.

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<sup>31</sup> See Secretary's Order 1-2002, 76 Fed. Reg. 64,272 (Oct. 17, 2002) (delegating the Secretary's authority to review ALJ recommended decisions issued under the environmental whistleblower statutes set out at 29 C.F.R. § 24.100, 24.110 (2007)).

<sup>32</sup> 5 U.S.C.A. § 557(b) (West 1996).

<sup>33</sup> See *Sayre v. VECO Alaska, Inc.*, ARB No. 03-069, ALJ No. 2000-CAA-007, slip op. at 2 (ARB May 31, 2005).

<sup>34</sup> 72 Fed. Reg. 44,956 (Aug. 10, 2007), codified at 29 C.F.R. § 24.110(b).

<sup>35</sup> *Clean Harbors Env'tl. Servs. v. Herman*, 146 F.3d 12, 21 (1st Cir. 1998).

<sup>36</sup> Cf. Fed. R. App. P. 28(j) (the parties have the burden of calling the court's attention to any pertinent and significant authorities that came to the party's attention after its brief has been filed).

## DISCUSSION

### 1. The Legal Standard

As already noted, Redweik claims that SEPCO violated the employee protection provisions of the WPCA, CAA, CERCLA, and SWDA. The ALJ analyzed Redweik's complaint only under the WPCA because he decided that the WPCA was the most applicable of the four statutes.<sup>37</sup> The purpose of the WPCA is to "restore and maintain chemical, physical, and biological integrity of the Nation's waters."<sup>38</sup> Redweik's complaints to Watkins concerned groundwater issues. Therefore, since Redweik's concerns implicate the WPCA and since the parties do not quarrel with the ALJ's decision to analyze the complaint under the WPCA, we too will proceed under that statute.

The WPCA prohibits employers from firing or in any other way discriminating against employees who file or institute any proceeding under the statute.<sup>39</sup> A "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."<sup>40</sup> For example, a complainant employed in the preparation of internal reports documenting noncompliance with environmental safety laws engages in protected activity.<sup>41</sup>

To prevail here, Redweik must prove by a preponderance of the evidence that he engaged in WPCA protected activity of which SEPCO was aware, that he suffered an adverse employment action, and that the protected activity was the reason for the adverse action, i.e., that a nexus existed between the protected activity and the adverse action.<sup>42</sup>

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<sup>37</sup> Recommended Decision and Order (R. D. & O.) at 22.

<sup>38</sup> 33 U.S.C.A. § 1367(a).

<sup>39</sup> 33 U.S.C.A. § 1251(a).

<sup>40</sup> *Passaic Valley Sewerage Comm'rs v. U.S. Dep't of Labor*, 992 F.2d 474, 479 (3d Cir. 1993); *Sasse v. Office of U.S. Attorney*, ARB Nos. 02-077, 02-078, 03-044, ALJ No. 1998-CAA-007, slip op. at 9 (ARB Jan. 30, 2004).

<sup>41</sup> *Pogue v. U.S. Dep't of Labor*, 940 F.2d 1287, 1288-1289 (9th Cir. 1991); *Sasse*, slip op. at 11.

<sup>42</sup> See *Schlagel v. Dow Corning Corp.*, ARB No. 02-092 ALJ No. 2001-CER-001, slip op. at 5 (ARB Apr. 30, 2004).



The record supports the ALJ's finding that Redweik engaged in WPCA protected activity when he reported the environmental problems to Watkins and state regulators in 2000-2001 and when he filed the complaint with human resources in February 2002. SEPCO therefore knew about this activity. The ALJ found, and the parties do not dispute, that SEPCO terminated Redweik and then accepted his resignation.<sup>43</sup>

The ALJ found no evidence that any member of the investigating team or Robinson was biased against Redweik because he had criticized Watkins's management of environmental hazards.<sup>44</sup> Moreover, the record contains no evidence that Watkins had any influence on the persons who investigated Redweik's environmental complaints or on Robinson's decision to fire Redweik.

The ALJ found that SEPCO had a zero tolerance policy regarding theft or dishonesty. He found that SEPCO fired Redweik because company officials believed that Redweik had billed the company for business expenses that he did not actually incur and therefore engaged in theft and fraud.<sup>45</sup> Therefore, since he found SEPCO did not retaliate against Redweik because of protected activity, the ALJ concluded that it did not violate the employee protection section of the WPCA. The record fully supports this conclusion.

## **2. SEPCO's Reason for Firing Redweik Was Not a Pretext**

Redweik argued below, and to us as well, that SEPCO used his violations of its expense account rules as a pretext for forcing him to **resign**. If Redweik demonstrated by a preponderance of the evidence that theft and fraud were not SEPCO'S true reasons for forcing him to resign, the ALJ could have inferred that SEPCO forced him to resign because of protected activity.<sup>46</sup> But the ALJ found that the investigators were not biased against Redweik, that the company conducted a "very thorough" investigation, and that Robinson did not blindly accept the recommendation to terminate. Thus, the "overwhelming weight of the evidence shows that Respondent had a legitimate, non-retaliatory reason for terminating Complainant."<sup>47</sup>

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<sup>43</sup> R. D. & O. at 24.

<sup>44</sup> R. D. & O. at 25.

<sup>45</sup> R. D. & O. at 24-25.

<sup>46</sup> See *Ridgley v. C.J. Dannemiller*, ARB No. 05-063, ALJ No. 2004-STA-053, slip op. at 5 (ARB May 24, 2007); *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 511 (1993) ("The factfinder's disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) may, together with the elements of the prima facie case, suffice to show intentional discrimination. Thus, rejection of the defendant's proffered reasons will *permit* the trier of fact to infer the ultimate fact of intentional discrimination.")

<sup>47</sup> R. D. & O. at 25.

The crux of Redweik’s brief is that the record contains evidence that supports his pretext argument and that the ALJ erred in ignoring it. As we noted above, Redweik admitted that he double billed, kept the difference between a first class ticket and a cheaper seat, cashed in the \$5,703 Amsterdam ticket, and billed for family expenses. But, he argues, these “mistakes” do not constitute fraud because the record proves that Watkins and Madro ratified his “unconventional” billing practices.

***Madro’s Instruction Did Not Authorize Redweik To Violate Company Policy***

The ALJ found that when Madro told Redweik to “do what you need to do to get the job done,” she intended only to give Redweik flexible work hours and the ability to work from home because of his heavy workload and his family’s illnesses.<sup>48</sup> Redweik argues that, contrary to the ALJ’s finding, the record shows that he honestly believed that Madro’s instruction allowed him to submit expense statements without supporting receipts, to by-pass the company travel agency and credit card, and to bill SEPCO for family travel expenses.<sup>49</sup>

But the record does not support Redweik’s argument. Madro testified that when she told Redweik to do what he needed to do, she never meant or suggested that he could violate the written prohibition against charging the company for family travel or any of the business expense processing rules. She valued Redweik’s expertise greatly and knew that he needed to be with his family as much as possible. Therefore, she gave him as much leeway as possible with respect to how he managed his time. This meant that even though Redweik’s greatest value to SEPCO was his ability to give immediate and on-the-spot advice to his colleagues about environmental safety laws, she gave him permission to work at home at least part of the time. And though she was reluctant for him to take the time to drive rather than fly to meetings around the country, she allowed him to drive so he could bring his family along. Furthermore, she offered him paternal leave time that he chose not to accept.<sup>50</sup>

Therefore, Madro’s testimony about her “do what you need to do” instruction proves only that she gave Redweik considerable freedom about managing time. And since Redweik adduced no evidence as to how he could have reasonably believed that her instruction somehow permitted him not to comply with SEPCO’s expense reporting procedures, we reject this argument.

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<sup>48</sup> R. D. & O. at 19.

<sup>49</sup> R. Initial Br. at 3, 10, 18.

<sup>50</sup> CX 104 at 18, 20, 23, 24, 29, 31, 34-36, 40, 56-57.

***Madro and Watkins Did Not Examine and Approve The Suspect Expense Statements***

Redweik contends that the record also establishes that Madro personally reviewed and approved some of the expense statements that SEPCO now claims were fraudulent.<sup>51</sup> Madro testified that she had a system for monitoring, to some extent, her staff's billing practices.<sup>52</sup> She assigned an engineering assistant, Sally Patterson, to monitor some aspects of the HSE budget, including the staff's monthly expense statements. One of Patterson's responsibilities was to track Redweik's monthly expense totals to make sure that he was not exceeding budget limits. She also reviewed all of the engineers' expense statements for gross errors in the billing codes and for unusually large expenses.<sup>53</sup>

Patterson testified that she had a general idea of which projects the engineers were working on and their likely travel routes, but she did not know whether or to what extent Madro had authorized any particular individual to incur any particular expense.<sup>54</sup> Patterson also testified that she never saw the travelers' underlying receipts. Thus, the record shows that Madro's review system was not designed to uncover irregularities such as claims for family travel without authorization. This means that Patterson had no means of discovering and hence informing Madro about Redweik's double billing, the Amsterdam ticket, and the family expense charges.

Redweik also points to an instance in which he had paid for an \$8,000 SEPCO permit fee with a personal check and had submitted it as a "miscellaneous expense." Patterson noted this unusual charge and called it to Madro and Redweik's attention. Madro testified that the proper procedure would have been for Redweik to pay with a company check. Madro approved reimbursement for Redweik in this instance and directed that Redweik be authorized to issue company checks for future permit fees.<sup>55</sup> Redweik appears to argue that since Madro knew about this deviation from company policy, she must have approved all other deviations.<sup>56</sup> But he offered no evidence to support this argument.

Redweik also contends that the ALJ erred in not finding pretext because the record proves that Jeff Wahleithner, his immediate NBD supervisor, "audited" Redweik's expenses in 2001 and concluded they "were reasonable with a few improvements

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<sup>51</sup> R. Initial Br. at 19.

<sup>52</sup> CX 104 at 21.

<sup>53</sup> T. 408-421.

<sup>54</sup> T. 412-414, 420-421.

<sup>55</sup> CX 104 at 23-24.

<sup>56</sup> R. Initial Br. at 15, 17.

recommended.”<sup>57</sup> But the so-called audit to which Redweik refers was not an audit at all. Watkins and Madro both testified that they thought Redweik traveled more than was necessary or in SEPCO’s best interests. And Madro specifically suggested to Watkins that he look at Redweik’s expenses because she had no way of judging his activities on NBD’s behalf.<sup>58</sup>

In response, Watkins asked Wahleithner to look at some of Redweik’s expense statements. The statements were confusing because they did not reflect when the expense was incurred. Therefore, Watkins told Redweik to be “more rigorous on our accounting for where we go. Justification for where we go and what our business purpose is . . . .”<sup>59</sup> Redweik told Watkins that he billed the way he did because he was busy. “I just wrote them all down on the date that they came in on the expense account.” Watkins accepted Redweik’s explanation, but also told him he must “account[] for the expenses in the day that they occur and not . . . three airline fares on one day and things like that.” Watkins eventually noted Redweik’s noncompliance with the expensing rules in the 2001 performance evaluation: “Bob needs to better understand and more rigidly adhere to Shell policies and procedures – particularly in the area of financial policies and controls. Issues arose with Bob this past year on a) Pro-Card use [company checks], b) procedures for paying permit fees, and c) and [sic] expense account documentation.”<sup>60</sup>

Therefore, though Watkins was aware of some irregularities in Redweik’s travel expense statements, the record does not support Redweik’s argument that Wahleithner and Watkins examined and approved the double billings, the Amsterdam refund, or the family expense reimbursements.

In the same vein, Redweik argues that since the investigators did not interview Patterson, the ALJ erred in crediting testimony by the Shell investigators and Robinson that they believed that Redweik double-billed SEPCO deliberately and should be fired for that reason. As Redweik sees it, their failure to interview a person who reviewed his expense statements and found irregularities shows that the investigators did not want to know that Madro knew of and approved Redweik’s billing practices. The only possible reason the investigators and Robinson could have had for avoiding exculpatory evidence, Redweik asserts, would be their wish to cover up their true motive – to punish Redweik for his environmental reporting. As we have already explained, however, Patterson did

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<sup>57</sup> *Id.* at 27-28.

<sup>58</sup> CX 104 at 23-24; T. 777-778.

<sup>59</sup> T. 777-778.

<sup>60</sup> RX 1 at SHE 00391.

not inform Madro about Redweik's egregious expense policy violations because she did not know about them. Thus, this argument fails.

### **CONCLUSION**

The preponderance of evidence does not support Redweik's pretext argument. Instead, substantial evidence supports the ALJ's finding that Shell terminated Redweik because they believed that he committed fraud and theft, not because of his protected complaints about environmental safety at the Colorado project. Since Redweik did not adequately prove that he was terminated because of protected activity, we accept the ALJ's recommendation and **DENY** the complaint.

**SO ORDERED.**

**OLIVER M. TRANSUE**  
**Administrative Appeals Judge**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeals Judge**