

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 18 January 2005

Case No.: 2004-SWD-0002

In the Matter of

ROBERT REDWEIK,
Complainant

v.

**SHELL EXPLORATION AND
PRODUCTION COMPANY,**
Respondent

APPEARANCES:

ROBERT REDWEIK
Pro se Complainant

**W. CARL JORDAN and
YVETTE V. GATLING**
On behalf of Respondent

BEFORE: LARRY W. PRICE
Administrative Law Judge

RECOMMENDED DECISION AND ORDER
(Denying Complaint)

This case arises under the employee protection provisions of Section 507 of the Federal Water Pollution Control Act of 1972, codified at 33 U.S.C. § 1367 (herein the WPCA), Section 322 of the Clean Air Act (CAA), codified at 42 U.S.C. § 7622, Section 110 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), codified at 42 U.S.C. § 9610 and Section 7001 of the Solid Waste Disposal Act of 1976 (SWDA), codified at 42 U.S.C. § 6971, and the implementing regulations thereunder at 29 C.F.R. Part 24.¹ Such provisions protect employees from discrimination for attempting to carry out the purposes of the environmental statutes of which they are a part and specifically prevent employees from being retaliated against with regard to the terms and conditions of their employment for filing

¹ After presentation of his case at the hearing, Complainant withdrew his claims under the Surface Transportation Assistance Act and the Sarbanes-Oxley Act. (Tr. 306).

“whistleblower” complaints or for taking other action relating to the fulfillment of environmental health and safety or other requirements of these statutes.

On June 7, 2003, Robert Redweik (Complainant or Redweik) filed an administrative complaint against Shell Exploration and Production Company (Respondent, SEPCO or Shell) with the United States Department of Labor Office of Safety and Health Administration (OSHA) complaining of various alleged violations of the environmental acts, including his May 8, 2003 termination/resignation. On September 29, 2003, OSHA dismissed the complaint. On November 4, 2003, Complainant filed an appeal and request for hearing.

This matter was referred to the Office of Administrative Law Judges for a formal hearing. The hearing commenced on August 2, 2004, and closed on August 5, 2004. All parties were afforded a full opportunity to adduce testimony, offer documentary evidence and submit oral arguments and post-hearing briefs. The following exhibits were received into evidence:

1. Complainant’s Exhibit Numbers 1-14, 16,17, 19, 20, 23-25, 30, 33, 35, 36, 38-40, 42-44, 48, 54, 56-58, 60, 61, 65, 66, 68, 70,74, 75, 79, 87, 91, 92, 100, 103-106² and
2. Respondents’ Exhibit Numbers 1-22 and 25-43.³

STATEMENT OF THE CASE

Witness Testimony

A. Testimony of Robert Redweik

Redweik began working at Shell Exploration and Production Company in 1981 in the health, safety and environmental department (Tr. 14). Complainant contends that Shell fired him due to filing a code of conduct complaint and that the reasons stated were merely a pretext to cover discrimination against him (Tr. 14-15). He also contends that Mr. Jim Robinson and Mr. Wade Watkins had personal issues with Complainant. Redweik alleges Watkins requested Complainant transfer to a position which Watkins supervised in order to intimidate him (Tr. 16).

Complainant proffered exhibit CX 9, the Shell code of conduct, on page 10 of which states that "Shell US will not retaliate against any person who brings an ethics or compliance issue to our attention in good faith" (Tr. 16-18). Complainant alleges that Employer conducted a "flawed" investigation of his complaints in order to protect Shell from accusations of retaliation (Tr. 19). The investigation originally centered on the complaints filed by Complainant however, by the end of the investigation, the only findings were against him.

² Because they were duplicates, the following Claimant Exhibits are included in the Respondent Exhibits: RX 15/CX 68; RX 22/CX 5; RX 25/CX6; RX28/CXs 2,3,7; RX 38/CX99.

³ RXs 23 and 24 were withdrawn (Tr. 929).

Complainant stated that his performance evaluations over the last few years at Shell were well above average (Tr. 26). Although there are areas of his performance he could have improved on, Redweik believes these not to be chronic performance problems, but an indication of a chronic shortage of employees at Shell. This problem forced employees to prioritize and deal only with urgent or important issues (Tr. 26-7). It also required Complainant to work excessive hours and although he had administrative reports to be completed, there was always something more pressing (Tr. 27-8). He requested additional staff in mid-2000 to ease the job load but Shell refused to hire new employees (Tr. 28). Despite complaints about Redweik's job performance, he was promoted in the beginning of 2000 to the highest ranking environmental engineer at Shell (Tr. 29).

Complainant was found to be in violation of Shell's financial requirements for filing expense reports and was cited for this on his performance evaluation (Tr. 38). It is Shell's position that no variances or family charges are allowed on expense statements. It was also company policy to use an American Express card while on travel (Tr. 38-9). Shell identified expense statement discrepancies and orally requested additional information from Redweik, however, there is no documentation of this request (Tr. 40).

Redweik filed an internal complaint with Shell on February 27, 2001 claiming retaliation for filing twelve compliance issue reports he previously filed (Tr. 41). This complaint launched Shell's investigation into the retaliation claim and also Redweik's expense reports filed between January 2000 and March 2002.

In January 2002, Redweik received his 2001 performance evaluation which was below average (Tr. 52-3). His supervisor, Wade Watkins, advised him that his evaluation could be reviewed by Watkin's supervisor, Gordy Bannister. A review was completed and the performance evaluation was unchanged. Redweik requested a transfer to another department and was required to sign a job scope and responsibilities contract (Tr. 53). Bannister told Redweik he wasn't aware of any other employee having to sign such a document. Complainant wrote a memo to Phil Ritz on February 27, 2002 requesting guidance on filing a complaint for retaliation (Tr. 53-4).

Redweik began working at Shell in 1981 and always received above-average performance evaluations until 1996 (Tr. 59). In 1996, he began working as an environmental engineer on a project in Colorado. He developed environmental compliance manuals and trained employees. Despite receiving excellent performance evaluations in 1997 and 1998, Shell contends that Redweik did not provide adequate training to employees (Tr. 60).

In August of 1999, Redweik's daughter was born with a facial birth defect which started out as a small mark and grew to encompass a third of her face (Tr. 63). His wife began suffering from post-partum depression in September and was no longer able to home school their other children. Redweik began having a difficult time with long hours at work and sleepless nights at home (Tr. 64-5). His wife was eventually hospitalized for her depression and suicide attempts (Tr. 65). Shell allowed Redweik leeway during this time in not submitting necessary receipts to aid him in completing his job. He was told "do what you need to do to get the job done" and did so. His expense reports were never questioned until he raised compliance issue concerns (Tr. 65-

6). Redweik was praised for getting the job done under such difficult circumstances, however, after he raised compliance issues, his expense reports were criticized and he was being investigated (Tr. 66).

Despite these issues, in 1999, Redweik's performance was very good. In June of 2000, he was promoted to JG-2, the highest ranking environmental engineer at Shell (Tr. 66). Redweik was for all intents and purposes working three jobs during this time. He was handling environmental support for new business development, regulatory affairs work for Shell on-shore areas, and a special assignment to help with the acquisition of Barrett Resources (the Bronco Project) (Tr. 66-7).

The Bronco Project was to be Redweik's priority. Shell wanted to move quickly to purchase this company and get into gas in the western part of the country. There were numerous groundwater issues associated with the project and Redweik would serve as Shell's groundwater expert (Tr. 67).

In November, 2000, Redweik was offered a special retention bonus as a member of the new business development team on the Honeycomb project. The initial payment was to be made at that time with the remaining payment made in 2003 (Tr. 68-9). Redweik raised compliance issues at the end of 2000 with the new business development department regarding spills not being reported (Tr. 69). In one case, water bypassed treatment and was discharged on the ground. Redweik reported this problem to the EPA and the state and worked with both agencies to correct the problem.

On January 4, 2001, Redweik discovered that some holes had been drilled incompletely. They were allowing a cross flow of groundwater which allowed contamination to spread to lower aquifers (Tr. 71). He notified the state and Shell as required by regulation. On January 11 and 24, 2001, Redweik discovered that there were unreported spills occurring. He contacted the field supervisor. On March 2, 2001, Redweik sent a note to the field supervisor that the MPDS discharge permitting monitoring was not being conducted per the environmental training manual (Tr. 75-6). He also sent a note to management regarding noncompliance and unreported spills. Two days after sending the memos to management, there was a major noncompliance that shut the project in Colorado down for almost one year (Tr. 77).

On March 4, 2001, Redweik went down to the site and asked how the discharge looked. He was told that it hadn't been checked yet. Redweik discovered a black, oily substance being discharged so he took samples and recommended that discharge be terminated (Tr. 77-8). Shell notified the state regulators and terminated the discharge. Carroll Campbell was one of the operators on site and nothing regarding spills or discharge was mentioned on the morning reports (Tr. 79). Because the facility was brought on line without being fully operational, there was no way to pump the oily substance into tanks. The lines were flooded which damaged the heaters causing the project to be shut down for a year (Tr. 80). Watkins estimated the impact on Shell would be substantial, \$55 million. A similar situation happened previously but the project was fully operational so it didn't have to be shut down (Tr. 81).

On March 5, 2001, Redweik sent an e-mail to the new business development management to alert them to the problems experienced in Colorado. The following day, a decision was reached to turn down the power. Redweik informed the state that Shell was no longer pumping out water due to concern for additional contamination (Tr. 82). Although Redweik believed that all wells had been shut down, one well continued to operate. Shell contends that he was aware of the one operating well. On March 21, 2001, Watkins sent out an e-mail to employees regarding balancing priorities. He acknowledged that employees may be overworked and short staffed (Tr. 87). Although more employees were hired, no additional environmental engineers were added. During a meeting on March 26, 2001, Redweik again voiced concerns over the contamination of water at the project site in Colorado (Tr. 90).

In the second quarter of 2001, Redweik was offered mental health care which he contends was retaliation because of the concerns he raised. He believes that Shell was concerned about his mental health however, no other team members were offered mental health care despite the work conditions. He was also the only team member offered drug and alcohol testing (Tr. 91).

In April of 2001, Redweik requested additional environmental engineering staff to assist with the high work load. Redweik was working 230 hours per month at this time (Tr. 94). He was asked to double the environmental spending to avoid losing funding for the project. Redweik had 25 consultants working for him at this time. Thurman was hired to work on the project in April for new development work in regulatory affairs. Unfortunately, there wasn't much regulatory work to do and he was transferred to work in Wyoming (Tr. 95-6).

In July of 2001, Redweik was transferred out of the Health, Safety and Environmental Group to work directly for Watkins in new business development (Tr. 100). Watkins demanded Redweik work directly under him or be removed from the project. Redweik expressed concerns to his supervisor, Ms. Madro, that this was a conflict due to the compliance issues raised directly regarding Watkins. Despite these concerns, Redweik accepted the transfer (Tr. 101). On July 19, 2001, Redweik's coworker, Mark Bonnickson, died on the job. He was working long hours also and Redweik was forced to take over his job as well (Tr. 103). On top of the additional work, Redweik was assigned to work on the HS&E management system and compliance audit and the scouting study team which was to be a priority (Tr. 104). Watkins criticized Redweik for not devoting enough time to the scouting study team but Redweik still had his normal job duties as well as Bonnickson's to attend to. In August of 2001, Watkins made an effort to offload some of the duties that had been assigned to Redweik (Tr. 106). In October of 2001, Greg Munson was hired to provide environmental engineering assistance to Redweik, whose job performance greatly increased (Tr. 111).

Redweik tried to schedule environmental training at the field location in Colorado in November of 2001. On December 4, 2001, Redweik was notified that the project had been discharging "ugly brown water" for several weeks (Tr. 112). There was no mention of this discharge in the morning reports.

In December of 2001, Redweik was awarded a special recognition for his work on the scouting study team (Tr. 113). He received his employee evaluation on January 8, 2002.

Watkins agreed to change one portion of the write up from urgent to important and Redweik received a rating of 0.9 which is below average (Tr. 115-6). On January 16, 2002, Redweik requested a transfer back to Health, Safety and Environment (HS&E). The request was granted but Redweik was required to sign the transfer document and complete additional work tasks first (Tr. 117). Due to his below average employee review and the request to sign the transfer document, Redweik felt he was being retaliated against because he raised compliance concerns (Tr. 118). Redweik submitted a memo to Phil Ritz stating the same on February 27, 2002. The memo was forwarded to the ethics and compliance officer, Larry Wooden.

Larry Wooden met with Estes on March 18, 2002. The meeting focused on the 12 compliance issues raised by Redweik, not the retaliation issue (Tr. 118-9). An April 15, 2002 memo by Wooden informed Redweik that the investigation would also address code of conduct and retaliation issues. The investigation report was submitted to the ethics and compliance officer on June 17, 2002. Ten days later, Bill Nail, an environmental engineer, was brought in to consider the environmental aspects of the allegations (Tr. 120). Redweik drove out to California to speak with a Shell employee who filed a complaint with the EPA. He submitted this as a business expense (Tr. 122-4).

Redweik met with Robinson on October 1, 2002 at which time he was given a written warning, primarily about his trip to California. On November 11, 2002, Redweik sent an e-mail to Robinson stating numerous errors and accusations in the warning letter that he didn't agree with (Tr. 123-4). On December 3, 2002, he met with Estes and Nail regarding the investigation and expense statement issues were raised at this time. The following day, Redweik sent another e-mail regarding his concern that the scope of the investigation had changed to include expense statements. Redweik was informed that he was being terminated due to the results of the investigation on May 8, 2002. He filed a complaint with the Department of Labor on June 7, 2002 (Tr. 125-6).

Redweik had a history of above average performance evaluations. Despite personal issues in 1999, he "improved his work professes to ensure that all required priority work would be completed while still balancing his personal life" (Tr. 135-6). Redweik's daughter was born on August 4, 1999 with hemangioma, a facial birth defect that can cause brain damage or blindness. His wife suffered from postpartum depression and was unable to care for the baby or their other children (Tr. 136). Due to the heavy work load and problems at home, Redweik began to cut corners by not performing administrative tasks such as submitting expense reports or calendar documentation. His supervisors were aware of his family problems and long work hours. Madro stated that there were times when Redweik came to work apparently without having slept (Tr. 152-3). Shell offered him 30-60 days of parental leave but Redweik chose to continue working if Shell would grant him some leeway.

Expense reports are submitted via computer system and are accepted without management review or approval (Tr. 160). Redweik's expense reports were reviewed and approved by Madro and Watkins. Exceptions were made to allow Redweik to complete necessary duties such as the use of a personal vehicle for business purposes (Tr. 195-8). These guidelines were changed in February of 2004. Redweik tried to limit his travel to be home in the evenings due to personal problems with his wife. He would drive over night to Colorado to

spend as much time at home as possible (Tr. 200). Redweik kept a calendar of his travel expenses because he had trouble accessing a computer while traveling. He would periodically submit expense reports and update his computer calendar (Tr. 210-3).

Inconsistencies in travel expense vouchers were identified in the investigative report. (EXs 19-22). The first inconsistency arose from a trip to Denver. Redweik went to a meeting on February 23, 2000 at the Rocky Mountain Arsenal with the Nature Conservancy (Tr. 214). The following day he had a meeting scheduled in Washington, DC. There were flights scheduled and changed on February 22 and 23, 2000. The investigative report found there was no airline charge for the trip to DC however it was charged to Redweik's account on February 21, 2000 (Tr. 215). This situation arose again in April of 2000. He traveled to Denver on April 25 and charged the ticket on April 17, 2000. He took the company plane to Colorado but needed a one-way ticket to return in time for meetings in Denver on the 27th of April (Tr. 216-7).

The second inconsistency shows Redweik on vacation July 17 - 19, 2002 however, he submitted an expense voucher for a hotel stay from July 16-August 1, 2000. A receipt for airfare was submitted for travel on July 20, 2000 to Vancouver returning July 21. This was a number of trips combined which he took his family with him on (Tr. 218-20). Redweik was on travel from June 19, 2000 through July 13, 2000. He submitted an expense statement for \$17,885.53 which was reviewed and approved by HS&E (Tr. 221). This statement was marked for audit because it was over \$15,000. There are six different trips that had been combined into a single trip to save on cost. Redweik took his family with him to avoid having to travel home between meetings (Tr. 223-4). Shell questioned Redweik's use of rental cars at his home location, but he only had one vehicle and would leave it with his wife in case she needed it for the kids (Tr. 224-5). Shell also accused Redweik of submitting duplicate receipts on separate vouchers. Redweik does not dispute that it may have happened accidentally (Tr. 249-52).

There were 35 total discrepancies listed in Shell's investigative report (Tr. 268). During that time period however, Redweik was working 230 hours a month which alone is extreme. Added to his personal problems at home, 230 hours a month was almost impossible (Tr. 269). His supervisor, Tracy Boyd, wanted him to work less, more conventional hours. Boyd also requested that Redweik keep track of his trips and travel on his calendar (Tr. 273-4).

Shell policy required employees to use the corporate America Express Card for travel expenses (Tr. 311). However, Redweik often used his personal credit card (Tr. 312). On cross-examination, Redweik admitted that he often claimed expenses for a single trip on separate expense statements and sometimes billed twice for the same travel but explained that this was the result of oversight and not fraud (Tr. 326-340). Redweik also admitted that he charged some of his family's lodging, rental car and airfare expense to Shell (Tr. 343, 347) but assert this did not violate Shell's expense policy (Tr. 316; EX 39).

After Redweik received his EMPR in January 2002, he received a \$3500 salary increase and an \$18,000 bonus. He received another bonus of \$4000 in July or August 2002 (Tr. 366).

B. Testimony of Sally Elizabeth Patterson

Ms. Patterson was employed at Shell for 31 years before retiring on December 31, 2003 (Tr. 401). From January of 2000 to 2003, she worked at HS&E as an office ergonomist but was also trained in office investigation, safety audit, management system writing and she maintained the budget for the department (Tr. 402). She monitored how much money was spent for various operations and also expenses from travel to projects. Patterson was assigned by Karen Madro as the person designated to review all expense statements from 2000 until October, 2003 (Tr. 403). Expense statements could be billed to a number of different organizations that funded different projects (Tr. 404-5). Redweik filed expense reports not only to HS&E but also to NBD (new business development) and SEPCO.

Patterson reviewed Redweik's expense statements every month and was aware of his work load and special family circumstances from 2000 to 2003 (Tr. 409). He traveled a lot of the time but she sometimes questioned miscellaneous expenses and would speak to Ms. Madro (Tr. 410). Madro requested that Patterson keep close watch of Redweik's expenses to make sure they were staying within budget and departments were being charged appropriately (Tr. 411). Patterson specifically remembers one instance in which an \$8,000 permit fee was charged on Redweik's expense report because he had no other way to pay the fee. She contacted Madro, who approved the charge, and they tried to develop a better way to pay such expenses (Tr. 413-5).

Patterson reviewed all of Redweik's expense statements while he worked in the NBD department. Although she remembers Madro allowing Redweik to take his family on trips, she does not recall being told that he could charge family expenses on his expense report (Tr. 429-31). Patterson was unable to determine, simply by reviewing expense statements, if Redweik charged trips he did not take or vacation items to his report (Tr. 432). She was aware that Redweik was not submitting all of his receipts but finally submitted most of them at a later date (Tr. 434-5).

C. Testimony of Lee Hanson Borden

Lee Borden has been employed at Shell for 34 years. He currently works in the human resources department but worked in finance as well between 2000 and 2003 (Tr. 436). While working in the finance department, Borden was the manager of internal controls. His duties included compiling reports from departments regarding integrity of accounts for upper level management (Tr. 437).

Borden is familiar with SEPCO's expense policy and testified that families may accompany employees on work trips. With preapproval from a manager, it may be possible to charge family expenses on an expense statement (Tr. 441-2). It is also appropriate to use a personal vehicle for travel but the mileage claimed must not exceed the price of a flight to that location (Tr. 443-4). Any expense over \$50 must be accompanied with a receipt to be reimbursable and the expense statement should be submitted within seven days (Tr. 444-5). Expense statements are submitted electronically.

While on travel, all expenses should be paid for by the company American Express card unless the card isn't recognized. Charges are monitored by the supervisor of the employee (Tr. 449-50).

D. Testimony of Nora Aronstan

Nora Aronstan has been an administrative assistant for SEPCO SAP Blueprint Project since July 1, 2004 (Tr. 459). Previously, she worked for Sure writing prochecks to businesses. She did not write checks to reimburse employees for travel expenses (Tr. 460-1).

E. Testimony of Karen Yost

Karen Yost has been employed by Shell for 27 years. She worked in HS&E with Redweik for Karen Madro and James Robinson (Tr. 463).

F. Testimony of Harold James Sewell

Harold Sewell has been employed at SEPCO in the HS&E department for approximately seven years (Tr. 468). He travels for his position and is away from home about 40% of the time. Between 2000 and 2003, Sewell submitted expense statements without all receipts attached. He was contacted in 2003 about the missing receipts and he submitted a majority of the receipts as soon as possible (Tr. 469-71).

G. Testimony of Doyle Ray Galloway

Doyle Galloway was employed at Shell in NBD from 1995 to 1997. He left NBD to work in Cameroon, West Africa for a year and returned to work in HS&E in 1999 (Tr. 473-4). He performed level 2 audits which are internal audits within SEPCO and his team performed an audit of NBD in the fall of 2000 (Tr. 464-5). Tom Fowler requested the audit but some employees such as Watkins were reluctant to participate. After the audit, two employees within NBD mentioned to Galloway that they had suffered because of the results of the audit (Tr. 477-9). Watkins was upset with the results of the audit and made negative statements about Redweik not "protecting" Shell (Tr. 481-2).

H. Testimony of Gary Louis Sower

Gary Sower began working in HS&E at Shell in 1999. He periodically travels to Houston for his job and his family has accompanied him on such trips (Tr. 486-7). Each time his family accompanied him on travel, he spoke to his supervisor in advance.

I. Testimony of Dana Moore Walton

Dana Walton has been employed at Shell for almost 30 years. She currently works as a senior counsel in the legal department (Tr. 489). She represents the ethics and compliance department, the product compliance department, the consumer products group, and Shell in the Rocky Mountain parcel.

The code of conduct for Shell in the United States has a section in it titled "Protection of intellectual and physical assets" (Tr. 490-1). It states that employees should take care to prevent waste and that an employee is responsible to make sure there is no theft or misappropriation of Shell assets (Tr. 491). If an employee wishes to file a complaint, there are several ways to do so. The employee can speak with a supervisor or manager, legal services, human relations or the ethics and compliance manager. There is also a help line they can call (Tr. 492). No matter who the employee contacts, the complaint is sent to the correct office where it is investigated. Ms. Walton wrote the manual used at Shell that outlines how complaints are to be investigated (Tr. 493-4).

In February 2002, Redweik filed a complaint with Phil Ritz alleging several violations of Shell's code of conduct. An investigative team was put together which included Walton, Joe Pease, Wooden and Estes (Tr. 494-5). Because there were two separate investigations to be conducted, Steve Bulla joined the team to lead one investigation. Bulla determined that there had been no retaliation against Redweik for filing safety complaints (Tr. 496).

Bulla met with Redweik and relayed to him the team's findings. Redweik disagreed with those findings and requested in writing a review of the investigation (Tr. 497). Bulla and Watson decided to meet with Redweik and reinterview him. It took several weeks to set up a time for the meeting and another complaint was filed by Redweik before the meeting could take place (Tr. 499-500). The additional complaint was added to the current investigation and Watson discussed the second complaint at the meeting. The other investigation was concluded in the beginning of 2003 and it was determined that there had been no willful violation of any HS&E policies (Tr. 501-3).

Estes requested that Taylor join the investigative team when he discovered some irregularities in Redweik's expense statements. Taylor discovered numerous incidents of Redweik not following the expense statement guide that controls how and what expenses may be submitted for reimbursement (Tr. 504-5). Redweik submitted the same airline fee on more than one voucher and he took his family on vacation and charged their airfare and hotel stays to the company (Tr. 505). They concluded that Redweik had defrauded Shell out of thousands of dollars and recommended his termination. Watson has first hand knowledge of terminations that occurred over \$25.00 thefts (Tr. 515-17).

J. Testimony of Debra Jean Taylor

Debra Taylor is an investigator in the department of corporate security at Shell (Tr. 530). Prior to her current position, she was a financial analyst with the FBI for 12 years. Taylor was

assigned by Estes to examine Redweik's expense statements and receipts for irregularities (Tr. 531-2). She was given a binder of information that the internal audit team had prepared finding 53 out of 58 expense statements did not have proper receipts attached (Tr. 532). Taylor analyzed the information given to her and methodically went through the statements searching for irregularities. She interviewed Redweik and sent her findings to her supervisor, Estes (Tr. 532-3).

Taylor initially contacted to set up an interview and was told Redweik would not be available for a month to 6 weeks due to his work load. She contacted Redweik's supervisor, Tracy Boyd, who arranged a meeting on April 3, 2003 (Tr. 534-5). The following morning, Taylor prepared a summary of the interview for her report. She found instances where the same airline fare was charged twice and a \$5,703 airline ticket to Amsterdam that Redweik cancelled but was reimbursed for (Tr. 537-9). Redweik said he didn't realize he submitted that receipt until two years later. To pay the company back, he stated he did not submit some receipts for trips but had no records to prove this (Tr. 540-1). There were numerous cases of tickets being refunded by airlines yet still claimed on expense reports (Tr. 542-6).

Taylor also found that Redweik went on vacation with his family and charged his hotel and family expenses to Shell (Tr. 547-8). He told Taylor that due to personal issues, he had to take his family on the trip with him. He felt that this should be covered as a business expense because during his vacation, he had to fly to Vancouver and leave his family behind (Tr. 548-9). He also took his family to Florida and Chicago and charged it as business expenses. He did not have prior approval for these trips (Tr. 549-50).

Taylor found gaps in the expense statements submitted by Redweik. She is not sure if these items such as airfare or hotel fees were left off intentionally or submitted on another expense statement that she has not seen (Tr. 628-30).

K. Testimony of George B. Smith

George Smith is a senior security representative at Shell (Tr. 643). He began working for Shell in January 2003 but had previously worked for an alliance group that Shell was a member of. Smith also worked for the FBI for 25 years as a supervisor and agent (Tr. 644). Smith was asked by Taylor to participate in the interview of Redweik and the preparation of her final report. She was concerned about lack of receipts and duplicate expenses.

Smith and Taylor met with Redweik for the interview which began by the parties introducing themselves. Taylor mentioned the irregularities she found and Redweik had the opportunity to explain each one (Tr. 645-6). Redweik had no explanation for some of the questions regarding his expense statements. Taylor asked if he had documentation during the interview for the \$5,700 airline ticket. Redweik said he did not (Tr. 646).

L. Testimony of John Estes

John Estes is the Manager of Investigations for Shell (Tr. 657). He was a Regional Security Representative in Criminal Investigations in the eastern US from 1987 until he assumed his current position in 2001.

Kathy Phillips contacted Estes to ask him to begin an investigation due to Redweik's complaint filed with Ritz. Estes was to investigate the 12 specific allegations made by Redweik. Another team member would investigate the retaliation claims (Tr. 658-60). An investigative plan was developed and the first thing Estes did was request a meeting with Redweik. At that meeting, Redweik seemed upset that the group was investigating the allegations, not just the retaliation complaint (Tr. 661-2; 388). Estes had no involvement in the retaliation investigation.

In initial discussions, the team discussed Redweik's performance evaluation and his problems with expense issues. Redweik also mentioned expense issues in his complaint filed with Ritz (Tr. 664-5). With the aid of Bill Nail, an environmental engineer at Shell, Estes began interviewing employees and investigating the environmental complaints Redweik filed. Estes and Nail found that all the environmental issues were explainable and supported by witness testimony and that Shell was not at fault (Tr. 670-2). It was concluded that "management of NBD might not have placed adequate focus on HS&E matters in the early stages of the project and that that was partly due to inadequate focus of staffing" (Tr. 673). The last sentence of the report mentions a possible violation of Shell's Code of Conduct in regard to expense statements. Estes contact Internal Auditing and asked that they pull Redweik's expense statements from January 2000 to March of 2002 (Tr. 673-4). Internal Auditing could not find the receipts and documentation necessary to check the expense statements because only 8% of the receipts from that period were submitted (Tr. 675).

Estes decided to wait until the environmental investigation was completed before asking Redweik for all receipts in December of 2002. In his 27 years with Shell, Estes has never seen an experienced employee turn in so little documentation (Tr. 679-80). When notified of the request for receipts, Redweik grew angry, stating this was additional retaliation and asked that all future communication be in writing. Estes contacted Debra Taylor and assigned the task of auditing the expense statements to her (Tr. 681-2).

During the interviews regarding the environmental complaints, some of Redweik's coworkers stated that his interpretation of environmental regulations were too narrow and made the job more difficult (Tr. 690). It was also difficult to contact him. He was often unavailable to be reached by phone or e-mail.

Estes was unaware of any previous auditing of Redweik's expense statements prior to the audit performed by Internal Auditing (Tr. 692-3). Routine audits review a sampling of expense statements but for a more indepth audit, a manager or supervisor must request it. In this case, Estes requested the indepth audit because of the appraisal report and the mention of expense problems in the letter Redweik wrote to Ritz (Tr. 696-7). Estes is unsure of how the 24 month sampling period was chosen to review Redweik's expense statements.

Redweik maintains that Shell should have focused on the retaliation complaint instead of also investigating the environmental complaints made in his original letter (Tr. 703-4). Estes believes that those complaints had to be investigated and taken seriously because of Redweik's position with Shell (Tr. 704).

Estes acknowledged that there are other employees that have been investigated for submitting duplicate claims on expense statements but he is not aware anyone ever has not submitted receipts for over \$234,000 worth of expenses in a 26 month time period (Tr. 706-7). The first discussion with Redweik was held via conference call with Bill Nail. The purpose of this discussion was to clarify issues regarding specific allegations (Tr. 712-14). During the second meeting in December of 2002, Estes specifically asked Redweik to provide any and all receipts he may have for travel. Those receipts weren't received until around February 2003 (Tr. 719-21).

M. Testimony of Kathleen Phillips

Kathleen Phillips is an attorney with Shell (Tr. 726). She was assigned to investigate the complaint filed by Redweik. She met with Wooden and Ritz to discuss the letter and decide who else should participate in the investigation (Tr. 727). Once the team was in place, a decision was made to bifurcate the investigation. An allegation in Redweik's complaint mentioned his employee evaluation. The expense statement issue was discussed because it was part of his evaluation (Tr. 728-9). Estes was added to the team to handle this area of the investigation because it was part of his expertise. Phillips had no idea Redweik's expense statement review would find problems (Tr. 730-1).

Estes contacted Phillips and told her that the expense statement audit couldn't be completed because there were insufficient invoices and only 8% of the necessary receipts (Tr. 731). She told him to put this issue aside and complete the investigation of the environmental complaints. Redweik told Estes that he would submit the receipts so Phillips didn't see this as a major issue (Tr. 733-4). Phillips received the final reports from Estes and Taylor showing a possible code of conduct violation committed by Redweik in regards to his expense statements (Tr. 735). She distributed the report to the other team members.

With this information, the team decided that Redweik had committed a code of conduct violation with respect to expense statement policies and procedures (Tr. 737). The group decided that these violations constituted a terminable offence and recommended termination (Tr. 738).

Phillips never personally requested additional information or documentation to aid in the investigation. She is aware that Estes requested receipts for expenses claimed (Tr. 751-4). She does not believe that the explanations provided by Redweik were sufficient to account for his lack of documentation (Tr. 754). Phillips was aware of personal problems at home and that Redweik was under a lot of stress, but the NBD project was pressing and a lot of employees were working under pressure (Tr. 755). The spreadsheet of discrepancies compiled by Taylor was

given to Madro and Watkins for review. None of the items on the list had been approved by either of them (Tr. 756-7).

N. Testimony of Ronnie Wade Watkins

Watkins has been employed with Shell for approximately 27 years. He is currently the vice president of operations and U.S. resource development in the Shell unconventional resources organization (SUR) (Tr. 760). SUR was previously called new business development (NBD). Watkins is in charge of operations at the field test site in Colorado where Shell is testing unique methods of recovering oil and gas (Tr. 760-1).

Redweik began working at NBD in 2000. Shell was completing field tests and needed permits as well as environmental expertise (Tr. 761-2). Redweik was working for HS&E as well until 2001 when he was transferred to NBD full time. Initially, he reported to the project manager, Jeff Wahleithner, but friction developed between the two and Redweik began reporting directly to Watkins (Tr. 763-4). Watkins completed Redweik's performance evaluation in 2001. He commented that Redweik needed to delegate work more effectively to better manage his time to focus on important issues (Tr. 765).

Watkins wanted Redweik to spend more time in the main office in Houston for his input in the planning phase and implementation. Watkins also found Redweik's lack of attendance at team meetings to be an area that needed improvement (Tr. 766-7). The team was trying to look at the big picture of what the commercial project might look like and Redweik's input was vital. He was not participating and not completing job assignments on time. Watkins spoke to Redweik and he became a more active participant (Tr. 767-8).

The review Watkins completed also listed a problem with dissemination of information. Representatives from two different departments complained that Redweik was controlling all the information and they were unable to complete their projects on time. Redweik did not allow access to the information and even kept some files at home (Tr. 768). Watkins spoke to Redweik and he made the information accessible to the other departments.

Redweik did not properly document phone conversations. He spoke to regulators and made agreements but never wrote those agreements down (Tr. 769). Watkins felt uncomfortable with the lack of a paper trail. Although Redweik needed to make significant improvements in his performance, Watkins felt that Redweik had decided he wanted to be a member of the team and made some changes (Tr. 771-4). Watkins knew that Redweik's expense statements were large and poorly documented but he never believed that Redweik was committing expense account fraud or theft from Shell (Tr. 775-6). Gregg Monson replaced Redweik when he was fired at Shell. Watkins testified that Monson travels very little and handles most of his work with contacts in Colorado over the phone (Tr. 779).

Redweik began to hint to Watkins that he might request a transfer back to HS&E. He also stated that he would stay at NBD if his performance evaluation scores were raised which Watkins refused to do (Tr. 783-5). Redweik went on a 4-week vacation and when he returned, his transfer was in place. He spent the next 3 months cleaning up loose ends at NBD. Watkins

was never consulted in Redweik's termination and did not participate in the investigation (Tr. 785-6).

Watkins spoke with Redweik about taking his family on trips with him and made it clear he wanted to approve such trips in advance (Tr. 788). After that conversation, Watkins received a note midway through Redweik's next trip saying "Oh, by the way, I am driving back from Colorado with my family and you told me to let you know. So I'm letting you know" (Tr. 788-9).

O. Testimony of Tracy Boyd

Tracy Boyd works for SEPCO in New Orleans, Louisiana as the environment manager for HS&E (Tr. 830-1). He has been employed with Shell for over 23 years and most of that time he has supervised environmental compliance work. Redweik transferred to HS&E from NBD in early 2002 and Boyd was aware of difficulties Redweik was having at NBD (Tr. 831-2). Redweik approached Boyd with the request to transfer back to HS&E but, he wanted to wait until Watkins gave him his performance evaluation. After receiving a lower performance evaluation than expected, Redweik contacted Boyd again and Boyd passed the request to his supervisor, Jim Robinson (Tr. 833-5).

Jim Robinson was hesitant to bring Redweik back to HS&E because he heard about the issues Redweik was having at NBD. Boyd convinced him to allow Redweik to transfer back; Redweik knew and had worked with most of the team and had a high level of technical expertise (Tr. 836-7). Boyd decided it would be best to put expectations of Redweik in writing so there would be no misunderstanding of his job duties (Tr. 838-9).

In October of 2002, Boyd issued a written warning to Redweik. Redweik traveled to California to meet with another whistle blower and charged that trip to Shell NBD (Tr. 840-2). Watkins e-mailed Boyd when he noticed the \$2,000 charge from Redweik. Watkins contacted the legal department and human resources to determine if the trip to California was justified (Tr. 842-3). Boyd, Robinson and Ritz met with Redweik who stated that he felt if Shell had the authority to investigate his claims, he had the ability to work on his own behalf and charge those expenses to the company (Tr. 844). At the same time, Redweik had a calendar entry for a meeting with Wyoming state regulators while he was on vacation with his family in Florida (Tr. 844-5). Redweik explained that he put the information there to see if he was being watched by Shell (Tr. 845). The warning letter addressed these issues.

In the spring of 2003, Boyd was contacted by Taylor because Redweik wouldn't make himself available for interview in a timely manner (Tr. 849-50). Boyd did not think Redweik's work load was such that he couldn't handle a 2-hour interview earlier than a month later (Tr. 850).

After the written warning was issued, Redweik was required to get written approval for any business trips (Tr. 859-60). Watkins does not believe that the trip to California was a legitimate business expense and supported issuing the warning letter (Tr. 861-2).

P. Testimony of James Herbert Robinson

James Robinson is the HS&E manager and the assistant development manager for SEPCO (Tr. 871). He has been employed at Shell for 27 years and has been a manager since 1984. Robinson supported the request by Redweik to transfer back to HS&E. He was aware of issues Redweik had at NBD such as personal problems and conflicts with other employees (Tr. 872-3). He favored putting Redweik's job duties in writing to avoid misunderstandings and was looking forward to Redweik's return to HS&E (Tr. 873-4).

Robinson became aware of Redweik's trip to California when the expense was charged to NBD and Watkins brought it to their attention (Tr. 875). Robinson was unable to find anyone at Shell that was aware of any legitimate reason for Redweik's trip to California. Robinson met with Redweik who stated that this was a justifiable charge because he had a right to investigate if Shell did (Tr. 875-6). Robinson made the decision not to terminate Redweik and to issue a written warning.

The code of conduct investigation was concluded in April of 2003. Although Robinson was not involved in the investigation, he was made aware of the findings in a meeting with Ritz and Wooden (Tr. 880-2). He was told there were numerous discrepancies in expense statement filings and as a result, Redweik should be terminated (Tr. 882). Robinson did not have the authority to fire someone at Redweik's level, it had to be approved by the CEO of Shell but they did need Robinson's support.

Before Robinson would support termination, he requested to look at the investigative report and asked questions about the discrepancies (Tr. 883-4). He went through the report and came to the conclusion that Redweik should be terminated. "The company does not allow stealing and there were some just irrefutable examples where Mr. Redweik stole from the company. The most notable of which was a trip to Amsterdam which cost on the order of \$5,700 and the trip was never taken" (Tr. 885). Robinson found this decision difficult, he respected Redweik and had worked with him for years. He also felt bad about the termination because of personal problems Redweik was having at home. The CEO of SEPCO, Mr. Rosducci, approved the discharge (Tr. 886-7). Robinson and Ritz met with Redweik and Ritz notified him of his termination from Shell for gross expense statement violations (Tr. 888). Redweik was given the option of resigning and subsequently submitted a resignation letter.

Q. Testimony of Larry Wayne Wooden

Larry Wooden retired from Shell after working there for over 36 years (Tr. 898). The last position he held was Manager of Government and External Affairs and he served as the Ethics and Compliance Officer for SEPCO. As the Ethics and Compliance Officer, he was responsible for ensuring employees were familiar with the code of conduct and Shell's general business principles (Tr. 899).

Wooden was informed by Ritz of Redweik's code of conduct allegations on February 27, 2002. Wooden participated in the initial discussions of how to proceed with the investigation

and helped put together the team of investigators (Tr. 900). It was determined that someone with investigative experience was necessary so John Estes was added to the team as the lead investigator (Tr. 901). Both the complaint and Redweik's alleged retaliation were investigated and both were found to be unwarranted.

Redweik filed another retaliation complaint which was investigated and found to be without merit. Wooden received a copy of the investigation findings and contacted Madro and Watkins to check if either supervisor had approved any of the disputed expense statements (Tr. 905-6). Neither supervisor had done so. Wooden and the Steering Group decided unanimously to terminate Redweik's employment with Shell (Tr. 908). Wooden met with Robinson and informed him of the Steering Groups findings. Robinson read through the reports and came to the same conclusion (Tr. 909).

After the first meeting with Redweik at the beginning of the investigation, Wooden received a memo from Redweik stating his concern that Shell wasn't focusing enough attention on the retaliation complaint (Tr. 913). Redweik felt the HS&E issues had already been addresses and he didn't want those issues investigated. At the time of the investigation, there was no guidance document in place for investigations (Tr. 913-4). Wooden did not find it unusual that Bulla only interviewed Watkins and Redweik regarding the retaliation complaint and that no written report was filed (Tr. 915-6). Bulla's report was made verbally to Wooden and the Steering Team members.

R. Deposition Testimony of Karen Madro

Karen Madro is employed by Shell Canada, Limited in Calgary (Tr. 5). From 1998-2001, Madro was employed by SEPCO in HS&E and worked with Redweik. Redweik was transferred to HS&E from NBD to handle regulatory affairs after the previous employee in that position retired. He worked with outside agencies and organizations on industry regulations (Tr. 5-7).

When the Honeycomb Project at NBD received new funding, Redweik worked in a split capacity on that project as well (Tr. 8). In 2000, the Honeycomb Project became a significant part of Redweik's job responsibilities and at the beginning of 2001, Redweik was transferred back to NBD to work fulltime on the project for Wade Watkins (Tr. 8-10). Redweik found the work at NBD exciting and challenging and voiced a preference to work there (Tr. 12-13).

Madro had numerous conversations with Watkins regarding Redweik's work load during the transition to NBD. Redweik continued to handle a modest amount of regulatory work for HS&E which created a tremendous workload for one employee (Tr. 14-16). In 2001, Watkins decided to bring in another employee, James Thurman, to aid Redweik in regulatory work and permit requests (Tr. 16). Redweik was reluctant to allow Thurman to assume some of his job duties. Watkins and Madro spoke to Redweik many times about allowing Thurman to take an active role in regulations at HS&E (Tr. 17). Madro left HS&E shortly after Redweik's transfer.

Madro does not recall ever notifying Redweik that he could deviate from the written expense report policy at SEPCO (Tr. 18). Redweik came to HS&E as a senior employee with

much experience; Madro did not have day-to-day contact with him. He was out of town frequently and Shell policy does not require management approval of expense statements (Tr. 19-20). Statements were pulled randomly by Sally Patterson at HS&E each quarter to check if expenditures matched up to business expectations (Tr. 21). Patterson noted that Redweik had the largest expense statements but that seemed normal with the amount of travel he was required to do for NBD (Tr. 22).

Madro was informed by Karen Yost, administrative assistant, that Redweik had been charging permit fees to the department ProCard. Madro informed Redweik that the ProCard could not be used in this fashion and he would have to pay the permit fees in another manner (Tr. 22-3). During the time Madro worked with Redweik, she had no reason to believe that Redweik was abusing the expense statement policy. She was aware of Redweik's personal problems and spoke with him about taking his family on business trips but left the decision up to him (Tr. 24-5). Although it is acceptable company policy to take family members on business trips, the cost cannot exceed the cost of the employee traveling alone (Tr. 26).

Madro allowed Redweik to work flexible hours and from home if necessary to continue to be productive. She was concerned about the stress of his work load as well as personal problems (Tr. 31-2). She was very clear however, that everything she spoke with Redweik about was within company policy. She never told Redweik that he was excused from complying with SEPCO expense statement policies (Tr. 32-3). Madro was unaware of any expenses filed inappropriately or statements filed for trips Redweik had not taken (Tr. 34-5).

Madro never sensed any animosity in her conversations with Watkins toward Redweik (Tr. 46). Watkins seemed concerned about Redweik's heavy workload and wanted to take the necessary steps to lighten that load (Tr. 46-7).

S. Deposition Testimony of Mark Wojcik

Mark Wojcik works for Shell Energy Resources Company as the regional director of human resources for North and South America. He joined Shell in 2000 at the vice president of human resources for SEPCO and has worked in human resources for 25 years (Tr. 5-7). Phil Ritz, the HR location manager for Wood Creek, reported to Wojcik. Ritz died in the fall of 2003.

Wojcik recalls Ritz mentioned Redweik in a conversation they had regarding his concern about the level of stress at Wood Creek (Tr. 8). Wojcik was a new employee at SEPCO and usually referred employees who were dealing with stress to an employee assistance program which SEPCO did not have (Tr. 8-9). Ritz stated he would speak with Redweik and advise him about benefits related to work/life balance and stress available to employees through SEPCO (Tr. 10). Wojcik never got the impression that Ritz was biased against or had any improper motive toward Redweik.

Ritz told Wojcik about Redweik's trip to California and subsequent charge to Shell (Tr. 12). There was a discrepancy regarding which department would pay for this trip and Ritz later

found out the trip was unauthorized. Wojcik testified that Ritz's main concern was consistency of treatment, "He wanted to be sure that any level of discipline that was applied to this, based on the result of the investigation, would be consistent with our general practice, both in Wood Creek and in EP in general" (Tr. 13). Redweik received a written warning which Ritz agreed with (Tr. 14).

Wojcik was in Europe on business when the investigation into Redweik's expense statements was concluded. Ritz contacted Wojcik and informed him that there were enough serious issues found in the expense statements to warrant discussion about further disciplinary action (Tr. 15-17). Since Wojcik was out of town at the time, he did not participate in the disciplinary meeting.

When Wojcik returned from his business trip, he again spoke with Ritz. It was determined by the Steering Group that Redweik would be terminated and the matter would be documented by a business control incident form (Tr. 18-19). Wojcik felt the decision was justified because of the variety of the misuse of the expense statement process (Tr. 20).

Phil Ritz was an invaluable employee who was levelheaded, caring, concerned about employees, and easily approachable. Wojcik trusted him to act in the best interest of Shell employees and always in a professional manner (Tr. 23-4).

FINDINGS OF FACT

Based upon the hearing testimony, supporting evidence and briefs of the parties, I make the following findings of fact:

1. Complainant began working for Respondent in 1981 as an environmental engineer. His duties included identification of possible non-compliance with environmental legal requirements. (Tr. 14; 351-2).
2. Beginning in 1998, Complainant reported to Karen Madro, the manager of the Health, Safety and Environmental Division. (HSE). (Tr. 353; RX 43 p.5). Complainant had a heavy workload while in HSE. During this period Complainant also had serious family issues and concerns relating to his wife and daughter. Complainant was given considerable leeway in addressing these concerns. Madro told Complainant to "do what you need to do to get the job done." Madro's intent was to give Complainant flexible work hours and to permit him to work from home. Complainant was never told that he did not need to follow Respondent's policies and practices. (CX 104). While Complainant worked for HSE, Madro had requested Sally Patterson keep close watch of Complainant's expenses to be sure they were staying within budget. (Tr. 411). Although Patterson remembers Madro allowing Redweik to take his family on trips, she does not recall being told he could charge family expenses on his expense report. (Tr. 429-31).
3. By 2000, Complainant was providing environmental expertise to the New Business Development group (NBD) and he was transferred to NBD in early 2001. Complainant reported to Wade Watkins, the manager of NBD. (Tr. 353, 762). Prior to the transfer,

Madro had suggested that Watkins look at Complainant's expenses as they seemed high. While Watkins suspected sloppiness on Complainant's part, he accepted Complainant's explanations at face value. (Tr. 776-79).

4. During the period from January 2001 to April 2001, while working in NBD, Complainant notified state regulators and Shell concerning contamination of the groundwater at the Colorado site. This was part of Complainant's duties as an environmental engineer. As a result, the project was shut down for almost a year. (Tr. 77).
5. Complainant received his annual performance evaluation (EPMR) on January 10, 2002. Watkins assigned Complainant a slightly below average rating. The EPMR identified several areas where Complainant needed improvement including budgeting of time, need for delegation of work and that his excessive travel and other absences had limited his availability for team meetings. The EPMR also noted that Complainant needed to comply with company procedures concerning expense account documentation. The EPMR also lauded Complainant on several aspects of his performance. (Tr. 765-776; RX2).
6. Complainant did not suffer any disciplinary action based on his rating and received a salary increase and bonus as recommended by Watkins. (Tr. 365).
7. On February 27, 2002, Complainant filed a complaint under Shell's code of conduct. The complaint alleged he was being retaliated against for raising environmental compliance issues with NBD. Complainant listed twelve areas of alleged non-compliance with environmental regulations. Complainant also alleged Watkins had attacked his integrity and damaged his reputation based on the comments in the EPMR. (Tr. 357; RX 1).
8. Member of Shell's ethics and legal departments appointed John Estes to investigate the environmental concerns. Steve Bulla was assigned to investigate the retaliation portion of the complaint. (Tr. 494-96, 660).
9. Following his investigation, Bulla concluded there had been no retaliation and that the EPMR and related rating were based on performance. (Tr. 496- 503).
10. Estes conducted an extensive investigation concerning the alleged non-compliance issues. The final report concluded that NBD management may not have focus adequately on HSE matters but that the incidents cited in the complaint were not intentional and, as Complainant acknowledged, had been properly resolved by management once known. (Tr. 658-673; RX 28).
11. In late 2001, Complainant had requested a transfer back to HSE. While Watkins supported the requested transfer, he wanted Complainant to remain in NBD. (Tr. 834-36; RX 32). Both Tracy Boyd, the environmental manager for HSE, and Jim Robinson, the new HSE manager, were supportive of the move. Because of issues Complainant had in NBD, Complainant was required to sign a memo concerning his job scope and expectations. On March 16, 2002, Complainant transferred back to HSE. (Tr. 838; RX 8).
12. In August 2002, while the Code of Conduct investigation was still in progress, Complainant traveled to California to talk to an individual who he believed had experienced similar problems 18 years earlier. Complainant charged his hotel, airfare and rental car expenses to Shell. When questions were raised as to which business unit should be charged for this trip, Complainant admitted that no one had authorized him to take this trip, but took the position that he could expend company funds to conduct his own

investigation. Complainant also made an entry into his electronic calendar in a deliberate attempt to mislead other employees, including his supervisor, regarding his whereabouts. Consideration was given to discharging Complainant for these offenses, but Robinson and Boyd took into account that Complainant might not have realized that it was not appropriate to charge Shell for these personal expenses. Complainant was given a written warning. (Tr. 375-846; RX 10).

13. Complainant filed a second Code of Conduct complaint concerning the written warning. Bulla found the allegation that the written warning was retaliatory was without merit. (Tr. 502-3).
14. Because Complainant accused Watkins of attempting to intimidate and retaliate against him by mentioning expense statement problems, Estes requested a routine audit of Complainant expense statements. Internal Audit reported that an audit of Complainant's expenses was not possible because he had submitted receipts to support his expense statements in only five of 58 instances.
15. Debra Taylor, an investigator in Shell's Security Department, was assigned to review Complainant's expense statements and receipts. Taylor found and Redweik acknowledged that he had submitted expense statements for airfare when he did not use the tickets and the cost had been refunded to him, that he had charged family vacation and travel expenses to the company and he had submitted duplicate requests for reimbursement of the same airfare on multiple occasions. Redweik's only explanation was oversight and his heavy workload. Redweik never admitted an intent to defraud the company.
16. The expense statement violations constitute a serious violation of Shell's code of conduct. The oversight team reached a unanimous decision that Redweik was guilty of serious code of conduct offenses with respect to his expense statements and these offenses warranted termination of employment.
17. Shell has a zero tolerance policy regarding theft or dishonesty. In 2003, Shell experienced 28 cases of employee theft or fraud and 27 of those employees were terminated. The one employee that was not terminated suffered from a medical condition, had gone on leave of absence and the amount involved was not large.
18. The team recommended to Robinson that Redweik's employment be terminated. Robinson did not take the recommendation lightly and reviewed Taylor's work product himself. Although Redweik was a respected friend and co-worker, Robinson had no doubt that Redweik was guilty of fraud and theft. Given Shell's no tolerance policy with regard to dishonesty and theft, in Robinson's judgment the decision to terminate Redweik was unavoidable.
19. On May 29, 2003, Redweik was advised that he was being terminated for expense account violations. He was offered the opportunity to resign and submitted a resignation letter.
20. No one in Shell management provided implicit and/or explicit approval to Redweik for his unconventional management of his expenses. Shell did not conduct a biased investigation of Complainant and Shell did not make materially false and misleading statements during this case.

LAW AND CONTENTIONS

Jurisdiction

A complainant can assert jurisdiction under all environmental whistleblower statutes in the same proceeding, if the complainant has participated in activities in furtherance of the objections of all the statutes. Jayko v. Ohio EPA, 1999-CAA-5 (ALJ Oct. 2, 2000) (citing Jenkins v. United States EPA, 92-CAA-6 (Sec’y May 18, 1994) and Minnard v. Nerco Delamar Co., 92-SWD-1 (Sec’y Jan. 25, 1994)).

The various Acts are similar in defining protected activity. The Federal Water Pollution Control Act (WPCA) is designed to “restore and maintain chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). Similar provisions appear in the SWDA, CERCLA and CAA. SWDA governs whistleblower actions against employers engaged in the treatment, storage, transportation, and disposal of hazardous waste. 42 U.S.C. § 6902(a). The CAA was enacted to create incentives and uniform regulation for pollution control of unregulated pollutants and unregulated sources of air pollution. 42 U.S.C. § 7401(b). The two main purposes of CERCLA are the prompt cleanup of hazardous waste sites and the imposition of the cleanup costs on the responsible party. While the WPCA would appear to be the most applicable environmental statute, under the facts of this case, the objectives of each of the four statutes could be furthered by Complainant’s activities.

For purposes of analysis, Complainant must fulfill essentially the same statutory requirements in order to succeed on his claim, regardless of which environmental whistleblower statute is applicable. Because the WPCA appears to be the most applicable statute, the following discussion will focus on the WPCA. However, the same analysis would apply to the other environmental statutes.

Timely Filing of Complaint

Under the WPCA, an employer may not fire or discriminate against any employee if the employee:

- 1) has filed, instituted, or caused to be filed or instituted, any proceeding covered under this chapter;
- 2) has testified or is about to testify in any proceeding resulting from the administration or enforcement of this chapter.

33 U.S.C. § 1367(a).

The WPCA provides in relevant part that “[a]ny employee . . . who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, *within thirty days after such alleged violation occurs*, apply to the Secretary of Labor for a review of such firing or alleged discrimination.” 33 U.S.C. § 1367(b) (emphasis

added). The Code of Federal Regulations also contains time limits applicable to such complaints, stating that “any complaint shall be filed within thirty days after the occurrence of the alleged violation.” 29 C.F.R. § 24.3(b)(1). The thirty-day period begins to run at the time the discriminatory act occurs, not when the employee feels the impact of the discrimination. Chardon v. Fernandez, 454 U.S. 6 (1981). The filing period commences when the employer makes the decision and communicates it or makes it apparent to the employee. Delaware State College v. Ricks, 449 U.S. 250 (1980). The thirty-day statute of limitations has been strictly enforced. However, the principle of equitable tolling applies, and the timeliness of a claim may also be preserved under a continuing violation theory. School District of Allentown v. Marshall, 657 F.2d 16 (3d Cir. 1981); Gore v. CDI Corp. & Carolina Power & Light Co., 91-ERA-14 (Sec’y July 8, 1992).

Complainant contended at the hearing that, in addition to his termination/resignation, his EPMR, the statement concerning job expectations and the written warning were retaliatory. Complainant filed his complaint with DOL within thirty days of his discharge and the complaint is timely as it relates to the discharge. However, the other alleged adverse actions occurred months before his discharge and, as such, his complaint is not timely as to any alleged adverse actions prior to his termination from employment. However, the Court will consider these other alleged adverse actions as relevant background evidence to determine Respondent’s later motivation in the termination of Complainant.

The Secretary of Labor has repeatedly articulated the legal framework under which parties litigate in retaliation cases. Under the burdens of persuasion and production in environmental “whistleblower” proceedings, the complainant must first present a prima facie case of retaliation by showing:

- 1) that the respondent is governed by the WPCA;
- 2) that the complainant engaged in protected activity as defined by the WPCA;
- 3) that the respondent had actual or constructive knowledge of the protected activity and took some adverse action against the complainant; and
- 4) that an inference is raised that the protected activity of the complainant was the likely reason for the adverse action.

See Hoffman v. Bossert, 94-CAA-4 at 3-4 (Sec’y Sept. 19, 1995); Mackal v. United States Dep’t of Labor, 171 F.3d 323, 327 (5th Cir. 1999); Bechtel Constr. Co. v. Secretary of Labor, 50 F.3d 926, 933 (11th Cir. 1995); Passaic Valley Sewerage Comm’rs v. United States Dep’t of Labor, 992 F.2d 474, 480-81 (3d Cir. 1993); Simon v. Simmons Foods, Inc., 49 F.3d 386, 389 (8th Cir. 1995).

The respondent may rebut the complainant’s prima facie showing by producing evidence that the adverse action was motivated by legitimate, nondiscriminatory reasons. Lockert v. United States Dep’t of Labor, 867 F.2d 513 (9th Cir. 1989). The complainant may counter the

respondent's evidence by proving that the legitimate reason proffered by the respondent is a pretext. See Yule v. Burns Int'l Security Serv., 93-ERA-12 at 7-8 (Sec'y May 24, 1994). In any event, the complainant bears the burden of proving by a preponderance of the evidence that he was retaliated against in violation of the law. St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993); Darty v. Zack Co., 82-ERA-2 at 5-9 (Sec'y Apr. 25, 1983) (citing Texas Dep't of Comm. Affairs v. Burdine, 450 U.S. 248 (1981)).

Respondent is Governed by the WPCA;

There appears to be no issue, and the Court finds, that Respondent is governed by the WPCA.

Protected Activity:

The Court finds Complainant engaged in protected activity in January/April 2001 when he notified state regulators and Shell concerning contamination of the groundwater at the Colorado site. Complainant also engaged in protected activity in February 2002 when he filed a complaint under Shell's Code of Conduct. While Respondent asserts these internal complaints are not protected activity per Brown & Root v. Donovan, 747 F.2d 1029 (5th Cir. 1984), the Secretary has held that internal complaints are covered under the environmental statutes, even in the Fifth Circuit. Hermanson v. Knudsen Corp., 94-CER-2 (ARB June 28, 1006) ("the only current exception to the rule is for cases filed in the Fifth Circuit under the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C. § 5851 (1988), prior to October 24, 1992.")

Knowledge of the Protected Activity and Adverse Action Against Complainant

There appears to be no issue, and the Court finds, that Respondent was aware of Complainant's protected activities and that Respondent took an adverse action against Complainant when he was terminated/resigned in May 2003.

Was There a Legitimate, Non-retaliatory Reason for Complainant's Termination?

Respondent asserts Complainant's employment was terminated because he engaged in expense reporting practices which amounted to fraud and theft. Complainant admits he charged the company for plane tickets he did not use and for which he received refunds. This amounted to several thousands of dollars. The Court did not find credible Complainant's testimony concerning undocumented efforts to gradually offset the amounts he had improperly received.

Complainant also admitted that he charged the company for family travel expenses. This practice was not authorized by his managers and violated the express terms of the expense policy. While Complainant asserts he had authority from Madro to "do what you need to do to

get the job done”, the Court must seriously question whether Complainant believed this authority included charging family travel expenses to the company especially in light of his use of multiple vouchers for the same trip, use of his personal credit card and the fact that he did not let his managers know he was charging family expenses to the company.

However, the Court is not required to reach a conclusion as to whether Complainant was guilty of fraud. The investigators, the members of the team overseeing the investigation and Robinson all came to the conclusion that Complainant had engaged in theft and fraud. They concluded Complainant had stolen thousands of dollars from the company. There was certainly overwhelming evidence to support that conclusion. Given Shell’s zero tolerance policy, Complainant’s termination from employment was inevitable. The overwhelming weight of the evidence shows Respondent had a legitimate, non-retaliatory reason for terminating Complainant.

Is the reason proffered by Respondent pretextual?

The Court would first note that Redweik was an environmental engineer. Shell was paying Redweik to identify the type of the environmental concerns he raised in his code of conduct complaint. The target of Redweik’s code of conduct complaint was his NBD supervisor, Wade Watkins. Redweik’s DOL complaint and his testimony at trial focused on Watkins damaging his reputation and integrity in the EMPR. However, Watkins played no role in the investigation of Redweik’s expense statements and was not involved in the decision to terminate Redweik.

The Court was impressed by the manner in which the oversight team approached Redweik’s code of conduct complaint. There is no evidence that any member of investigating team harbored any bias against Redweik. Redweik’s assertion that the company conducted a “flawed investigation” is unfounded. The Court finds just the opposite, the team conducted a very thorough investigation of those matters raised in Redweik’s code of conduct complaint. There is no evidence that the oversight team harbored any retaliatory motive against Redweik.

Furthermore, the decision-maker did not blindly follow the recommendation of the oversight team. Robinson reviewed Taylor’s report and reached his own conclusion that Redweik’s expense policy violations amounted to fraud and theft. Given the seriousness of the violations and Shell’s zero tolerance policy, Robinson reached the decision that termination was appropriate. There is no basis for finding that either the oversight team or Robinson arrived at their decisions based on an unlawful retaliatory motive.

Accordingly, I find that the preponderance of the evidence establishes that Respondent terminated Complainant for reasons unrelated to any activities protected under the WPCA, CAA, CERCLA or SWDA.

RECOMMENDED DECISION AND ORDER

It is the recommendation of the Court to the Secretary of Labor:

That the complaint of Robert J. Redweik be **DENIED**.

A

LARRY W. PRICE
Administrative Law Judge

LWP/lpr
Newport News, Virginia

NOTICE: This Recommended Decision and 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, NW, Washington, DC 20210. Such a petition for review must be received by the Administrative Review Board within ten business days of the date of this Recommended Decision and 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.