

U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210



Reply to the attention of:

MAY 20 2013

Sherry Talbert
4845 S. Forrest View
Chicago, Illinois 60615

Re: Keystone Calumet/Talbert/5-1260-12-026

Dear Ms. Talbert:

This is in response to your appeal of the decision to dismiss your complaint against Keystone Calumet filed on January 30, 2013. We have completed a comprehensive review of the entire investigative case file and have determined that there is insufficient evidence to indicate that Keystone Calumet violated Section 11(c) of the Occupational Safety and Health Act of 1970.

The preponderance of the evidence failed to support that you were terminated because of your engagement in protected activity.

Please note that this is the final determination of the Secretary of Labor; your case is now closed.

Sincerely,

Laura L. Seeman
Division Chief, Field Operations
Directorate of Whistleblower Protection Programs

cc: Regional Office
Respondent

U.S. Department of Labor

Occupational Safety and Health Administration
230 South Dearborn Street Room 3244
Chicago, Illinois 60604
(312) 353-2220



JAN 15 2013

Certified # 7012 1640 0000 3787 1706

J. Christopher Hesse
Hesse & Martone
1650 Des Peres Road, Suite 200
Saint Louis, MO 63131

Re: Keystone Calumet/Sherry Talbert/5-1260-12-026

Dear Mr. Hesse:

Attached are the Secretary's Findings for the above referenced complaint. These findings were also sent to Complainant, Sherry Talbert.

The complaint in the above captioned matter has been dismissed by this office. However, the Complainant is afforded the opportunity to file an appeal of this dismissal with the U.S. Department of Labor-OSHA, in Washington, D.C., within 15 days of receipt of the findings. In the event that no appeal action is taken by the Complainant, this case will be considered closed.

If at any time you have any questions or require any information regarding employee rights and employer responsibilities under Section 11(c) of the Occupational Safety and Health Act, please feel free to contact this office by mail or telephone.

Sincerely,

A handwritten signature in black ink, appearing to read "R. J. Kus", is written over a large, faint, circular watermark or stamp.

Robert J. Kus
Regional Supervisory Investigator
Whistleblower Protection Program

Enc: Secretary's Findings

U.S. Department of Labor

Occupational Safety and Health Administration
230 South Dearborn Street Room 3244
Chicago, Illinois 60604
(312) 353-2220



JAN 15 2013

Certified # 7012 1640 0000 3787 1690

Sherry Talbert
4845 S. Forrest View
Chicago, IL 60615

Re: Keystone Calumet/Sherry Talbert/5-1260-12-026

Dear Mrs. Talbert:

This is to advise you that we have completed our investigation of the above-referenced complaint filed by you (Complainant) against Raani Corporation (Respondent) on February 6, 2012, under Section 11(c)(1) of the Occupational Safety and Health Act, 29 USC §660(c) (the Act). In brief, you alleged that Respondent terminated your employment in reprisal for being suspected of contacting OSHA and filing a complaint against Respondent.

Following an investigation by a duly authorized investigator, the Secretary of Labor, acting through her agent, the Assistant Regional Administrator of the Occupational Safety and Health Administration (OSHA), Region V, issues the following findings.

Secretary's Findings

Respondent, Keystone Calumet, is a person within the meaning of 29 U.S.C. §660(c). Respondent primarily engages in the manufacturing, processing, and shipping steel and derivative products. Respondent transports employees and equipment over interstate highways and routinely uses supplies and equipment from sources outside the State of Illinois. Respondent engages in a business that affects interstate commerce and is an employer covered within the meaning of the Act.

Complainant worked for Respondent as Storeroom and Information Systems Analyst. Complainant was an employee of an employer covered under the Act. Complainant is an employee covered under 29 USC §660(c).

Complainant, Sherry Talbert, was terminated on January 26, 2012. On February 6, 2012, Complainant filed a complaint with the Secretary of Labor alleging that Respondent retaliated against her in violation of Section 11(c) of the OSH Act. As this complaint was filed within 30 days of the alleged adverse action, it is deemed timely.

Complainant alleged that Respondent denied her a promotion and ultimately terminated her employment in reprisal for being suspected of contacting OSHA and filing a complaint against Respondent. However, Complainant's allegation is not substantiated by the investigation.

The evidence established that Complainant engaged in protected activity on two occasions during the events relevant to the instant complaint. On September 28, 2011, Complainant engaged in protected activity when she sent an email to Respondent President Lawrence Leonard raising concerns about the condition of the bathrooms near her workstation. On October 4, 2011, Complainant engaged in a second instance of protected activity when she contacted OSHA and filed a complaint alleging various safety and health-related hazards at Respondent's facility. As a result, the investigation established that the element of protected activity is present in this matter.

Complainant alleged that Respondent had knowledge that she was the individual who had filed the October 4, 2011 complaint because she had raised issues about items identical to the items addressed in the OSHA complaint. Respondent denied suspecting Complainant of filing the OSHA complaint, with Respondent President Lawrence Leonard ("Mr. Leonard") stating that that he "had no reason to believe" Complainant had filed the complaint. As support, Respondent stated that the complaint concerned the restroom "in the mill area" and pointed out that Complainant's work station in the storeroom is not considered to be part of the "mill area." However, the evidence shows that Complainant sent Mr. Leonard an email on September 28, 2011 about the bathroom near her storeroom office, and referred to the area as "the mill area." As a result, the evidence shows that Respondent management either suspected or should have suspected Complainant of filing the October 4, 2011 OSHA complaint. Thus, the investigation established that the element of Respondent knowledge is present in this matter.

Complainant alleged that she suffered an adverse employment action in the weeks following October 4, 2011 when Respondent management subjected her to workplace harassment as a result of Respondent management suspecting her of filing the complaint with OSHA. However, the evidence cannot show that Respondent's treatment of Complainant was severe and pervasive, nor can the evidence show that the treatment materially affected the terms and conditions of Complainant's employment. As a result, the evidence cannot show Complainant to have suffered an adverse employment action by being subjected to workplace harassment.

Complainant alleged that she suffered an adverse action on January 13, 2011 when she was denied a promotion into her former supervisor's position of Purchasing Manager. However, the available evidence shows that Respondent's decision to not promote Complainant to Purchasing Manager is more likely connected to issues related to both Respondent's concerns about Complainant's job performance and Respondent's decision to distribute the duties of the Purchasing Manager to existing managers and eliminate the position altogether. As a result, the evidence cannot show Complainant to have suffered an adverse action on January 13, 2011. However, the evidence did show that Complainant suffered an adverse employment action on January 26, 2012 when Respondent terminated her employment. As a result, the investigation established that the element of adverse action is present in this matter.

A period of one-hundred fourteen (114) days separates Complainant's protected activity on October 4, 2011 and her adverse action on January 26, 2012. As a result, the evidence cannot show a close temporal proximity between Complainant's protected activity and adverse action.

The evidence shows that Mr. Leonard was generally unresponsive to employee concerns regarding problems at Respondent's facility. In addition, the evidence shows that Mr. Leonard publicly exhibited dissatisfaction with the fact that an employee contacted OSHA and filed a complaint. Finally, Mr. Leonard himself stated that he viewed the OSHA complaint as "an embarrassment." Thus, the investigation established that the element of animus is present in this matter.

The available evidence cannot show that employees at Respondent who engaged in protected activity identical to that of Complainant were likely to suffer discipline as a result. The evidence shows that another employee contacted OSHA and filed a safety complaint following the injury of a co-worker in the period following Complainant's termination, the employee received no discipline subsequent to filing the complaint. In addition, the evidence demonstrates that multiple Respondent employees engage in the protected activity of raising safety concerns to management without receiving discipline subsequent to raising their concerns. The available evidence cannot show that Respondent treated its employees differently based upon whether or not the employee engaged in protected activity. Thus, the investigation was unable to establish the element of disparate treatment in this matter. As a result, the investigation was unable to establish a nexus between Complainant's protected activity and her adverse employment action.

Respondent alleged that Complainant was terminated as a result of poor job performance and as a result of Complainant writing inventory items off of Respondent's property book on two occasions without notifying Respondent management. Complainant alleged that her workplace became hostile and her supervisor harassed her following the OSHA complaint by closely scrutinizing her and treating her poorly. Complainant further alleged that this was done in an effort to remove her in retaliation for suspecting her of filing the complaint with OSHA on October 4, 2011. However, the available evidence cannot support Complainant's allegation. The evidence shows that Respondent management exhibited public dissatisfaction with the OSHA complaint, and likely believed that Complainant was the individual who had caused the situation. However, Complainant received no discipline subsequent to the OSHA complaint. In addition, the evidence cannot show that Respondent's treatment of Complainant was severe and pervasive, nor can the evidence show that the treatment materially affected the terms and conditions of Complainant's employment. The evidence also shows that Mr. Leonard increased his and his subordinate managers' supervision of Complainant, along with instructing her to move her primary workplace from the front office to the storeroom. However, Mr. Leonard's increased supervision of Complainant was initiated in early September 2011 when Complainant initially reported to Mr. Leonard that she had not been performing routine cycle counts of the storeroom inventory, which was about one month prior to Complainant's protected activity.

Respondent further alleged that Complainant was terminated for writing items off of Respondent's inventory property book on multiple occasions without notifying or seeking approval from Respondent management. The evidence shows that Complainant did write items off Respondent's property book both in November 2011 and in the week following December 15, 2011. Complainant stated that Respondent management knew about the items because she had reported them as missing on her daily reports to her supervisor. However, Complainant affirmed that she did not notify or seek approval from management prior to actually writing the items off of Respondent's property book. Complainant also affirmed that she wrote the items off Respondent's property book in the week following her meeting with Mr. Leonard in which

Complainant was instructed to notify management prior to any such write-offs. As a result, the available evidence indicates that Respondent's defense is believable and is not a pretext for retaliation.

A preponderance of the evidence supports Respondent's assertion that Complainant's termination was more likely than not connected to Complainant's performance of her duties in the storeroom and Complainant's failure to notify management prior to writing significant amounts of inventory off Respondent's property book. Consequently, this complaint is dismissed.

This case will be closed unless the Complainant files an appeal by sending a letter to:

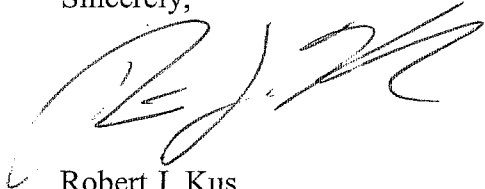
Office of the Whistleblower Protection Program
U.S. Dept. of Labor, OSHA
200 Constitution Avenue, NW, Rm N-3610
Washington, DC 20210

With a Copy to:

Mary Ann Howe, CFE
Assistant Regional Administrator
U.S. Department of Labor-OSHA
365 Smoke Tree Plaza
North Aurora, Illinois 60542

Your appeal should explain with specificity the reason for the appeal. To be considered, an appeal must be postmarked within 15 days of receipt of this letter. If this finding is appealed, the Director of Enforcement Programs will review the case file to determine whether the investigation dealt adequately with all factual issues and the investigation was conducted fairly and in accordance with applicable laws. The outcome of an appeal is either the return of the case to the investigator for further investigation or denial of the appeal, after which the case is closed.

Sincerely,



Robert J. Kus
Regional Supervisory Investigator
Whistleblower Protection Program

cc: Respondent