



In the Matter of:

ANDREA L. BROWN,

ARB CASE NO. 10-050

COMPLAINANT,

ALJ CASE NO. 2008-SOX-049

v.

DATE: February 28, 2011

LOCKHEED MARTIN CORP.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Diane S. King, Esq., *King & Greisen, LLP*, Denver, Colorado

For the Respondent:

Matthew J. Rita, Esq., *Holme Roberts & Owen LLP*, Denver, Colorado

Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*, Luis A. Corchado, *Administrative Appeals Judge*, and Joanne Royce, *Administrative Appeals Judge*.

FINAL DECISION AND ORDER

On January 25, 2008, Andrea L. Brown filed a complaint with the United States Department of Labor under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 (SOX). 18 U.S.C.A. § 1514A (Thomson/West Supp. 2010); *see also* 29 C.F.R. Part 1980 (2010). She alleged that Lockheed Martin Corporation violated the SOX's employee protection provision when it constructively discharged her because she made protected complaints. After a hearing, an Administrative Law Judge (ALJ) issued a decision finding that Brown had engaged in protected activity and that her constructive discharge was causally related to the protected activity. The ALJ recommended reinstating Brown and awarding her damages and directed Brown to submit an application for attorney fees and costs. Lockheed timely appealed the ALJ's decisions. We affirm.

BACKGROUND

We have carefully reviewed the record and find that it supports the ALJ's recitation of the facts. Recommended Decision and Order (R. D. & O.) at 3-36. Therefore, we adopt the ALJ's findings of fact and summarize the facts of the case.¹

Brown worked as Communications Director for Lockheed Martin Corporation in Houston, Texas beginning in June 2000. R. D. & O. at 3. She reported to the Vice President of Communications, Wendy Owen, as well as to Ron Meter in the business unit. R. D. & O. at 3; Tr. at 229. In 2003, she became the Director of Communications for Lockheed in Colorado Springs. *Id.*; Tr. at 389; RX 43. Brown had a good relationship with Owen at this time. *Id.* As Director of Communications, Brown reported to Owen and Ken Asbury, the president of Lockheed Martin Technical Operations. R. D. & O. at 3. Brown became a Level-5 communicator with an "L-code," indicating that she had a leadership position with supervisory responsibility over others. *Id.* Brown then became Asbury's spokesperson, a position with a much higher-profile than her position in Houston. *Id.* For the calendar years 2003, 2004, and 2005, Asbury gave Brown the highest or second highest performance rating in a scale of five performance rating ("exceptional contributor" or "high contributor"). *Id.*; HX 38. For the calendar years 2006 and 2007, after she reported ethics concerns, Asbury and then Judy Gan gave Brown a lower performance rating ("successful contributor"). HX 38.

In approximately May 2006, Brown had difficulty getting responses on work-related matters from Owen. R. D. & O. at 4. Brown discussed this difficulty with Tina Colditz, a communicator who reported directly to Owen, who also ran a Pen Pal program between Lockheed employees and U.S. soldiers in Iraq. R. D. & O. at 4. Colditz told Brown that Owen had developed sexual relationships with several soldiers in the Pen Pal program, purchased a laptop computer for one soldier, sent inappropriate e-mails and items to soldiers in Iraq, and had traveled to welcome-home ceremonies to visit soldiers on the pretext of business when she actually took soldiers in limousines to expensive hotels for intimate relations rather than working. R. D. & O. at 4. Colditz told Brown that she was concerned that Owen was expending company funds for these activities. R. D. & O. at 4. Brown understood that most expenses employees incurred were passed on to the customer, presumably the government in this case. R. D. & O. at 4. Brown knew that Lockheed's standard business practice was to bill its costs to its customers. R. D. & O. at 43. Colditz told Brown that she had personally witnessed these activities or that Owen had told her about them. R. D. & O. at 4. On one occasion, Brown called Owen about an important media inquiry, and Owen told her that she was with one of her troops.

¹ The ALJ's opinion did not include a section specifically identifying the findings of fact. The opinion identified the testimony of the witnesses, occasionally making a fact-finding within the summaries. However, the ALJ clearly accepted Brown's testimony as credible, which means all testimony to the contrary is necessarily rejected. See R. D. & O. at 3-10, 42-43. Brown's testimony provides more than enough substantial evidence to support the ALJ's findings of fact.

R. D. & O. at 4. Based on what she heard, Brown believed that Owen had been interrupted in a sexual encounter. R. D. & O. at 4.

After learning this information, Brown was concerned that Owen's actions were fraudulent and illegal with respect to using company funds for a laptop, hotel, limousine, and travel expenses that had been passed on to the customer. R. D. & O. at 4. She was also concerned that there could be media exposure which could lead to government audits and affect future contracts and the company's shares. R. D. & O. at 4. Brown told Asbury about her concerns, and he spoke to Owen; this had apparently little effect. R. D. & O. at 4-5.

Brown spoke to Jan Moncallo, the Vice President of Human Resources, about Owen's behavior. R. D. & O. at 5. Brown told Moncallo that she thought that Owen's actions were fraudulent and illegal. R. D. & O. at 5. Moncallo told Brown that she would submit an anonymous complaint about Owen, and Brown agreed. R. D. & O. at 5. Moncallo told Brown that no one would know her identity and that there would be no retaliation. R. D. & O. at 5.

On May 25, 2006, Moncallo sent an e-mail based on her discussion with Brown to Jean Pleasant, the office Ethics Director, for an investigation. The e-mail stated that there were:

allegations regarding Wendy Owen, in her role as Communications Vice President, specifically identified as improprieties, violations of corporate and ITS policies relative to:

misuse of company funds, misuse of company time, violating the Project 900 and 0507 Pen Pal Agreements, tarnishing [Lockheed's] image when it is her job to improve it.

The allegations include the following actions by Wendy:

- Purchasing a laptop with company funds for one of Wendy's numerous Project 900 and 0507 Pen Pals
- Using company funds to rent limos to transport Pen Pals
- Using company funds for lodging liaisons with Pen Pals
- Using company funds to purchase thousands of giveaway items so that her Pen Pal could win an award
- Communicating in activity reports and with staff that she is traveling to meet with Project 900 and 0507 Generals when instead she is meeting with Pen Pals

- Not responding to calls from staff during paid working hours because she is in non-business related meetings with Pen Pals
- Having affairs with multiple Pen Pals in violation of Project 900 and 0507 agreements,
- Sending pornographic material to Pen Pals in Iraq
- Using her position to influence her staff and have them “cover” for her causing a fear of retribution and retaliation
- Tarnishing [Lockheed’s] image in the army community as some of the Army Generals associated with Project 900 and 0507 are aware of some of these incidents

In the memorandum, Moncallo listed Andrea Brown as one of six people who should have some direct or indirect knowledge of the allegations. Hearing Exhibit (HX) 4.

Lockheed investigated Owen’s behavior from May 2006 to August 2006. R. D. & O. at 24-25; HX 9. In approximately May 2006, within a few days of Brown’s anonymous complaint, the Pen Pal program was discontinued, and Owen later changed positions but remained a vice president. R. D. & O. at 5-6. On August 21, 2006, Jean Pleasant prepared an investigative report on the matter. R. D. & O. at 24-25; HX 9.

Owen attempted to find out who had reported her and apparently believed it was Colditz because she began treating Colditz unfairly. R. D. & O. at 6. Eventually Brown told Asbury and Colditz that she had made the complaint. R. D. & O. at 6. On or about December 19, 2006, Owen called Brown to try to find out who had reported her. R. D. & O. at 6; Tr. at 378. Brown testified that Owen told her that she had lost her annual bonus due to the complaint. Tr. at 262. Brown told Owen that she had told Moncallo “a few things” but that she was not sure that her comments had resulted in the complaint. R. D. & O. at 6; Tr. at 263. Brown reported Owen’s telephone call and inquiry to Asbury and Moncallo. R. D. & O. at 6, 13.

On February 22, 2007, Lockheed made an announcement to all Lockheed employees about a corporate-structure reorganization. HX 57. On March 1, 2007, the Communications Department announced to all of the Information Systems and Global Services personnel that further reorganizations would be made. HX 57. After the reorganization, Brown’s situation progressively worsened. Brown began to report to Judy Gan, the Senior Vice President of Communication. R. D. & O. at 6. Owen became Gan’s assistant, but retained her vice president title. R. D. & O. at 6. Gan’s attitude to Brown was negative from their first meeting. R. D. & O. at 6. Lockheed also began the process of creating a new job position that would take over some of communication work in Colorado Springs and a job announcement was ultimately posted in June 2007.

On June 12, 2007, Owen called Brown and told her that Brown’s job had been posted on the internet because she was being replaced and that she should get her resume together. R. D. & O. at 7. Shaken by Owen’s phone call, Brown told Asbury and Gan

about this communication in an e-mail. R. D. & O. at 7; HX 13. Brown decided to apply for the posted position and Gan lambasted her for doing so – Gan told her that she was not qualified for the position. R. D. & O. at 7; HX 15. Brown told Moncallo about Gan’s reaction, and Moncallo suggested that Brown file an ethics complaint against Gan. R. D. & O. at 7. Brown refused to do so because she felt that her treatment was the result of her first ethics complaint. R. D. & O. at 7. Brown also notified Asbury of the conversation with Gan. R. D. & O. at 7.

In September 2007, Lockheed hired David Jewell as the new Director of Communications. R. D. & O. at 7; Jewell Depo. at 29-34. Owen had a good relationship with Jewell prior to his hiring and Owen, who was on the selection committee, told him to apply for the position. R. D. & O. at 7, 47. Jewell sought Owen’s advice regarding his position and his employees. R. D. & O. at 47. Owen told Jewell that Brown had received less than perfect evaluations in the past. R. D. & O. at 47.

After Jewell was hired, Brown was asked to vacate her office and work from home or use the visitor’s office (which was also a storage room). R. D. & O. at 8, 14, 47. Jewell took Brown’s former title, leaving her no title and took her responsibility over four employees she had previously supervised. R. D. & O. at 8, 14, 47; Jewell Depo. at 42. Additionally, Gan told Brown that she could not attend the annual communications conference that she had always attended previously despite the fact that she was one of a number of Comet Award winners to be honored at the conference. R. D. & O. at 8, 47. Also during this time, despite repeated requests as to the nature of her position with Lockheed, no one would tell her whether she would have a job or be laid off. R. D. & O. at 8-9, 14, 47.

On January 3, 2008, Jewell told Brown that she had to come into the office to work. R. D. & O. at 9, 47. When she arrived, someone else was working in the visitor’s office so Brown had nowhere to go. R. D. & O. at 9, 47. When she asked Jewell what she should do, he told her that he was looking for a cubicle for her. R. D. & O. at 9, 47. When she protested that she was entitled to an office because she was in a leadership position (L-Code), Jewell told her that he was in the process of removing her from her leadership position (L-Code); consequently, she would only be entitled to a cubicle. R. D. & O. at 9, 47. Brown broke down crying and left the office. R. D. & O. at 9, 47. She went on medical leave at this time. R. D. & O. at 14, 47. Brown had an emotional breakdown and sank into a very deep depression. R. D. & O. at 9.

Brown filed a complaint with the Occupational Safety and Health Administration (OSHA) on January 25, 2008, and subsequently filed a supplement to her complaint alleging that she had been constructively discharged. R. D. & O. at 2. Brown gave notice of her forced termination to Lockheed on February 4, 2008. R. D. & O. at 9.

In her complaint Brown alleged that Lockheed constructively discharged her because she made an ethics complaint about Owen. HX 41. The complaint states that Owen engaged in misconduct related to the Pen Pal program by establishing sexual relationships with approximately ten soldiers in violation of company policy, sent x-

rated/pornographic materials to troops overseas, planned and took several trips to rendezvous with soldiers in various U.S. cities to engage in sexual relations purportedly on company business, and charged the expenses related to her sexual excursions to the United States government and Lockheed. HX 41.

OSHA denied Brown's complaint on May 27, 2008. On June 26, 2008, Brown requested a hearing before the Office of Administrative Law Judges. After a two-day hearing, the ALJ issued his recommended decision that Brown be reinstated and awarded compensatory damages on January 15, 2010.

Specifically, the ALJ found that Brown's complaint was protected because she definitively and specifically communicated to Moncallo her reasonable belief that Owen had engaged in fraudulent conduct. The ALJ found that Brown satisfied the reasonable belief prong under mail and wire fraud theories because Owen mailed letters to solicit prospective paramours, Owen's presumed billing occurred by mail or wire of items to the U.S. government as part of the Pen Pal program, and Owen sent sex toys to a soldier in Iraq as part of the Pen Pal program; the ALJ considered these actions to be fraud or a scheme to defraud.

The ALJ found that there was adverse action because Owen exerted influence over Gan and Jewell, who created an abusive and materially adverse work environment such that Brown's resignation was a reasonable response to the actions taken against her. R. D. & O. at 48. The materially adverse employment actions included: (1) hiring Jewell as the new Director of Communications; (2) Gan's objecting to Brown's attempt to apply for the position filled by Jewell; (3) taking Brown's office space and refusing to give her new office space; (4) offering Brown only a visitor's office/supply room which was only sometimes available; (5) removing Brown's leadership position (L-Code); (6) giving Brown's parking space to Jewell; (7) not permitting Brown to attend a ceremony where she was to receive an award; and (8) keeping Brown persistently uncertain about her job status. The ALJ found that a reasonable person would have seen resignation as the only option under these circumstances.

The ALJ found causation between the protected activity and adverse action because he found that Owen clearly poisoned Gan's and Jewell's opinions regarding Brown's qualifications and quality of work. Both Gan and Jewell relied on Owen in making evaluations of Brown. The ALJ found that Brown told Moncallo and Asbury that Owen knew about Brown's involvement in the ethics complaint and also that Owen was involved in the process of filling her job position, but Lockheed failed to remove Owen from the process. The ALJ found that Lockheed should have taken steps to see that Owen could not retaliate against Brown and, therefore, Lockheed managers were complicit in allowing the retaliation. R. D. & O. at 49.

The ALJ awarded reinstatement and compensatory damages of \$75,000.00. R. D. & O. at 55. He found Brown's testimony regarding this to be credible. Lockheed filed a timely appeal on January 29, 2010.

ISSUE

The issue we consider on appeal is whether substantial evidence supports the ALJ's findings that Brown was constructively discharged because she engaged in protected activity, and whether the ALJ's legal conclusions are correct.

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated her authority and responsibility to the Administrative Review Board to decide appeals and issue final agency decisions in cases filed under the Sarbanes-Oxley Act. Secretary's Order No. 1-2010 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 75 Fed. Reg. 3924 (Jan. 15, 2010).

In cases arising under the Sarbanes-Oxley Act, we review the ALJ's factual determinations under the substantial evidence standard. 20 C.F.R. § 1980.110(c). Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477 (1951) (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)); *Henrich v. Ecolab, Inc.*, ARB No. 05-030, ALJ No. 2004-SOX-051, slip op. at 7 (ARB June 29, 2006).

However, the Board exercises de novo review with respect to the ALJ's legal conclusions. *Getman v. Southwest Sec., Inc.*, ARB No. 04-059, ALJ No. 2003-SOX-008, slip op. at 7 (ARB July 29, 2005).

DISCUSSION

Section 806 of the Sarbanes-Oxley Act prohibits covered employers from retaliating against employees for providing information or assisting in investigations related to listed categories of fraud or securities violations. This section provides:

(a) Whistleblower Protection For Employees Of Publicly Traded Companies.— No company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)), or any officer, employee, contractor, subcontractor, or agent of such company, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee—

(1) to provide information, cause information to be provided, or otherwise assist in an investigation

regarding any conduct which the employee reasonably believes constitutes a violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by—

- (A) a Federal regulatory or law enforcement agency;
- (B) any Member of Congress or any committee of Congress; or
- (C) a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or

(2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.

18 U.S.C.A. § 1514A.

To prevail on her SOX complaint, Brown must prove by a preponderance of the evidence that: (1) she engaged in protected activity or conduct (i.e., provided information to a covered employer); (2) the employer knew that she engaged in the protected activity; (3) she suffered an unfavorable personnel action; and (4) the protected activity was a contributing factor in the unfavorable action. *See* 18 U.S.C.A. § 1514A(b)(2)(C); 49 U.S.C.A. § 42121(b)(2)(B)(iii); *see also Harvey v. Home Depot U.S.A., Inc.*, ARB Nos. 04-114, -115; ALJ Nos. 2004-SOX-020, -036, slip op. at 9-10 (ARB June 2, 2006); *Getman*, ARB No. 04-059, slip op. at 8. If Brown succeeds in establishing that protected activity was a contributing factor in an unfavorable action against her, then the employer may avoid liability by demonstrating by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of her protected activity. *See* 49 U.S.C.A. § 42121(b)(2)(B)(iv).

1. Protected Activity

We agree with the ALJ's legal conclusion that Brown engaged in SOX-protected activity. SOX protects employees who report conduct that the employee reasonably believes constitutes a violation of the specified federal securities laws. *Welch v. Cardinal Bankshares Corp.*, ARB No. 05-064, ALJ No. 2003-SOX-015, slip op. at 10 (ARB May 31, 2007), *aff'd sub nom. Welch v. Chao*, 536 F.3d 269 (4th Cir. 2008). The "reasonable belief" standard requires Brown to prove both that she actually believed that Owen committed wire and/or mail fraud and that a person with her expertise and knowledge would have reasonably believed that as well. *Id.* (citing *Melendez v. Exxon Chems. Am.*, ARB No. 96-051, ALJ No. 1997-ERA-006, slip op. at 27-28 (ARB July 14, 2000)). Under Section 806(a)(1), once an employee proves that she reported conduct that she reasonably believed constituted mail or wire fraud, then she proved she was engaged in protected activity. Furthermore, Section 806(a)(1) does not require that the mail fraud or wire fraud pertain to a fraud against the shareholders. *Klopfenstein v. PCC Flow Techs. Holdings, Inc.*, ARB No. 04-149, ALJ No. 2004-SOX-011, slip op. at 17 (ARB May 31, 2006). *See also O'Mahony v. Accenture Ltd.*, 537 F. Supp. 2d 506, 517 (S.D.N.Y. 2008)(the district court analyzed SOX and concluded that the phrase "relating to fraud against shareholders" did not apply to all of the categories listed in Section 806); *Reyna v. Conagra Foods, Inc.*, 506 F. Supp. 2d 1363, 1382-83 (M.D. Ga., 2007)(stating the same). Applying these principles, we examine the information Brown provided to Lockheed.

The ALJ pointed to a number of Brown's activities in concluding that she engaged in protected activity. Brown met with Jan Moncallo and told her the concerns she had about Owen. Moncallo's e-mail based on this discussion lists concerns of several instances of misuse of company funds. The ALJ found that Brown grew alarmed that Owen made purchases with company funds that would ultimately be billed to the government. R. D. & O. at 43. The ALJ further found that Brown reasonably believed that Owen's actions were taken "in the furtherance of a 'scheme or artifice to defraud' because . . . she had been aware of Owen's alleged and undisputed systematic use of the Pen Pal Program to recruit new paramours." *Id.* The ALJ also found that Brown reasonably believed that Owen used company funds to provide gifts to paramours and that the costs were passed onto the government, given that Lockheed's standard business practice was to bill its costs to its customers. Brown's disclosures contributed to the initiation of an ethics complaint investigation against Owen. Based on the evidence of record, we agree with the ALJ that Brown reasonably believed that Owen engaged in mail and wire fraud.² Thus, we adopt the ALJ's finding that Brown engaged in protected activity. Because we affirm the ALJ's finding, that Brown engaged in protected activity

² For understandable reasons, the ALJ applied a high standard in determining whether Brown engaged in protected activity. Relying on *Platone v. United States DOL*, 548 F.3d 322 (4th Cir. 2008), the ALJ examined whether Brown's disclosures in 2006 "definitively and specifically" related to fraudulent conduct SOX. R. D. & O. at 42. It is unnecessary to address in this case whether this standard is appropriate because we believe that Brown met this high standard when she made disclosures about the Pen Pal fraud, the potential client billing, and the fraudulent use of company funds.

for reporting misconduct relating to mail fraud and wire fraud, we do not need to address his finding that Brown's disclosures failed to relate to a fraud against the shareholders.

2. Knowledge

Brown expressed her concern to Moncallo and Asbury, both high level officers in Lockheed, that Owen had engaged in fraudulent conduct. Through an e-mail to Pleasant, the Ethics Director, Moncallo reported Brown's disclosures of Owen's fraudulent conduct. An ethics investigation followed in 2006, resulting in Owen's loss of her annual bonus in 2006. After the investigation, Brown informed Owen that Brown had reported information that contributed to the 2006 investigation. Thus, the ALJ found that Lockheed had knowledge of Brown's protected activity. The ALJ also found that Owen poisoned the Gan's and Jewell's opinions because Owen knew about Brown's involvement in the complaint against her. Given the information known by many high level Lockheed officers, we affirm the ALJ's findings that Lockheed knew of Brown's protected activity.

3. Adverse Action

Lockheed, in its petition for review, appealed the ALJ's finding that Brown proved that she was constructively discharged. Petition for Review at 10-13. To prevail on a constructive discharge claim, "the complainant must prove that working conditions were so difficult or unpleasant that a reasonable person in the employee's shoes would have found continued employment intolerable and would have been compelled to resign." *Gattegno v. Prospect Energy Corp.*, ARB No. 06-118, ALJ No. 2006-SOX-008, slip op. at 21 (ARB May 29, 2008) (quoting *Hooker v. Westinghouse Savannah River, Co.*, ARB No. 03-036, ALJ No. 2001-ERA-016, slip op. at 7 (ARB Aug. 26, 2004)).

The ALJ found that the overall combination of actions that Lockheed took against Brown following her ethics complaint against Owen "created an abusive and 'materially adverse' work environment such that [Brown's] resignation was a reasonable response to the actions of her employer." R. D. & O. at 48. Substantial evidence in the record overwhelmingly supports this finding. Before Brown made the ethics complaint, she occupied her own office, possessed an L-Code, and received very high performance ratings. After the complaint, her job privileges and conditions changed dramatically. Her job position seemed to be in constant jeopardy of elimination. *Id.* Her performance ratings dropped. Jewell was hired in the Colorado Springs office to take over some of Brown's communication duties, and he ultimately took over her office space. *Id.* Brown faced visceral opposition from Gan when she applied for a promotional opportunity in the company. *Id.*; Tr. at 281-82. Lockheed did not provide Brown with new adequate office space, asked her to work from home, and then demanded that she work at the jobsite without any space then available. *Id.* Lockheed also removed her leadership position status, took her parking space, and gave it to her new supervisor. *Id.* Lockheed refused to allow Brown to attend a ceremony at which she was to receive an award, and continued to keep Brown uncertain as to her job status. *Id.* We agree with the ALJ that a

reasonable person in Brown's shoes would have found continued employment intolerable and would have been compelled to resign.

4. Causation

To establish a causal link between Brown's protected activity and the employer's adverse action, Brown needs to prove only that her protected activity motivated the employer's adverse actions. Brown need not establish that her protected activity was the primary motivating factor to establish causation. *Getman*, ARB No. 04-059, slip op. at 8.

There is substantial evidence in the record supporting the ALJ's finding that Brown's protected activity motivated Lockheed's adverse actions, including the constructive discharge. The evidence clearly demonstrates a cascade of unfavorable actions taken against Brown, beginning shortly after the investigation against Owen ended. The temporal proximity of the beginning of Brown's employment difficulties is significantly close to the Owen investigation. The investigation ended in late 2006. In late 2006, Owen made concerted efforts to find out who reported her fraudulent conduct, and eventually learned that Brown had reported information that sparked the investigation. In early 2007, Lockheed began a "reorganization" effort that translated into unfavorable employment actions against Brown shortly after the investigation concerning Owen, including the hiring of Jewell as the new communications manager at a higher leadership level, essentially displacing some of Brown's duties and causing her to lose her office. Owen was one of the decision-makers who decided to hire Jewell in a position over Brown. Owen poisoned Jewell and Gan against Brown. *Id.* at 48. We therefore concur with the ALJ's conclusion that Brown's protected activity was a contributing factor in her constructive discharge by Lockheed.

CONCLUSION

Brown established that she engaged in protected activity under the Act and that Lockheed constructively discharged her because of her protected activity. Accordingly, we adopt the ALJ's R. D. & O. and we **AFFIRM** the complaint.

SO ORDERED.

LUIS A. CORCHADO
Administrative Appeals Judge

PAUL M. IGASAKI
Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge