



Department of Energy

Washington, DC 20585

MAY 25 2010

Thad M. Guyer, Esq.
Stephani L. Ayers, Esq.
T.M. Guyer and Ayers & Friends, P.C.
116 Mistletoe Street
Medford, OR 97501

Re: OHA Case No. TBB-0080

Dear Mr. Guyer and Ms. Ayers:

This letter concerns the Complaint of Retaliation filed by Mr. Billy Joe Baptist with the Department of Energy under 10 C.F.R. Part 708, the DOE Contractor Employee (Whistleblower) Protection Program. On January 5, 2010, the Office of Hearings and Appeals (OHA) received your Petition for Secretarial Review of the Appeal Decision that we issued to Mr. Baptist on December 3, 2009. Under the Part 708 regulations, the Secretary will reverse or revise an appeal decision by the Director of OHA only in extraordinary circumstances. 10 C.F.R. § 708.35(d).

On May 7, 2009, an OHA Hearing Officer issued an Initial Agency Decision (the "IAD") in which he granted a Motion for Summary Judgment regarding Mr. Baptist's whistleblower complaint. In the IAD, the Hearing Officer first dismissed five of the six alleged retaliations because Mr. Baptist had failed to file his complaint within the 90-day deadline set forth in Part 708. With regard to the remaining alleged retaliation, *i.e.*, improper termination from his job, the Hearing Officer decided that his employer, CH2M-WG Idaho, LLC (CWI), had established that it would have terminated Mr. Baptist even if he had made no protected disclosures. The Hearing Officer therefore granted summary judgment to CWI regarding the sixth alleged act of retaliation, Mr. Baptist's termination, and then dismissed the complaint without a hearing. *See Billy Joe Baptist*, OHA Case Nos. TBZ-0080, TBH-0080 (2009).

Pursuant to 10 C.F.R. § 708.32, Mr. Baptist requested a review of the IAD by the OHA Director. On December 3, 2009, the OHA Director issued a decision concerning this appeal. *See Billy Joe Baptist*, OHA Case No. TBA-0080. In this decision, OHA determined that arguments raised by you on behalf of Mr. Baptist, challenging OHA's interpretation and application of the filing requirements and burdens of proof set forth in Part 708, were without merit and that the appeal should be denied.

The Department has reviewed your Petition for Secretarial Review.

With respect to the timeliness of the five claims rejected by OHA on this basis, Part 708 expressly requires that complaints be filed within 90 days of the date the employee "knew or reasonably should have known of the alleged retaliation." *See* 10 C.F.R.



§ 708.14. Here the complainant waited almost nine full months to file these five claims. While the Petition for Secretarial Review attempts to place blame for this failure on the Employee Concerns office, there is no indication that the petitioner was misled or in any way otherwise prevented by that office from timely filing his claims.

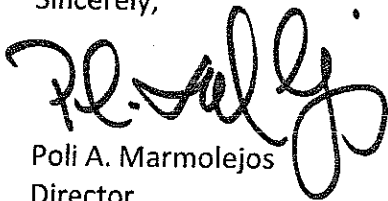
Concerning the sixth claim challenging the complainant's termination, OHA granted the contractor summary judgment. OHA found that the contractor employer had established by clear and convincing evidence that the complainant's termination was due to his failure to comply with the requirements for reinstatement following a year's absence on Inactive Employee Status, including the specific requirement that an employee in these circumstances obtain a medical release before returning to duty.

The underlying decisions are well supported. The petition fails to demonstrate any "extraordinary circumstances" warranting Secretarial intervention.

The Deputy Secretary of Energy has authorized me to send you this letter dismissing the petition for failure to demonstrate extraordinary circumstances. Accordingly, the Petition for Secretarial Review filed in Case No. TBB-0080 is hereby dismissed.

If you have any questions regarding this letter, please call Kent S. Woods at telephone number (202) 287-1454.

Sincerely,



Poli A. Marmolejos
Director
Office of Hearings and Appeals

cc: Jan Ogilvie
Employee Concerns Program Manager
Idaho Operations Office
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Idaho Falls, ID 83415