

July 16, 2007

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

*Appeal*

Name of Case: Sharon M. Fiorillo

Date of Filing: July 5, 2007

Case Number: TBU-0070

Sharon M. Fiorillo (the complainant), appeals the dismissal of her complaint of retaliation filed under 10 C.F.R. Part 708, the Department of Energy (DOE) Contractor Employee Protection Program. The complaint was filed on May 4, 2007. As explained below, the dismissal of the complaint should be sustained, and the appeal denied.

I. Background

The complainant was a secretary with a DOE contractor, Performance Results Corporation (PRC), located at the DOE's National Energy Technology Laboratory (NETL) in Pittsburgh, Pennsylvania. The complainant claims that on February 5, 2007, she disclosed an incident of workplace violence to an employee of the DOE's Inspector General, Office of Inspection and Special Inquiries, Northeast Region (DOE/IG). According to the complainant, the violent incident took place during a February 2 three-way telephone conversation that included a fellow employee, Holly Biddle, herself and their supervisor, who was attempting to mediate a misunderstanding between the complainant and Biddle. The complainant states that she said to Biddle, "Holly, you could have talked to me about this." According to the complainant, Biddle replied, "If I would have seen you, I would have spit in your face."

The complainant indicated to the DOE/IG that the supervisor thereafter did nothing to protect her from the threatening work environment created by this remark. The complainant believes that providing information about workplace violence to the DOE/IG constitutes a protected disclosure because she revealed a violation of law [the McNamara O'Hara Service Contract Act, Section 2(a)(3)]: the "potential safety danger to myself in having to work in a

hostile work environment." She also believes that she reported a substantial violation of the PRC Employee Handbook pertaining to a hostile work environment, and that the workplace violence she experienced violated OSHA, NIOSH and FBI policy statements on the issue of workplace violence. Further, she believes that the fact that her supervisor did nothing to protect her was evidence of gross mismanagement and abuse of authority.

She claims that in retaliation for the disclosure of this incident to the DOE/IG, she was terminated from her position at PRC on February 5, 2007, the very day of the disclosure.

In a letter of June 22, 2007, the Director of NETL dismissed the complaint. The NETL Director found that the complainant's disclosure did not fall within the purview of Part 708. Specifically, he stated that the complainant did not disclose information "concerning danger to public or worker health or safety, substantial violations of law, or gross mismanagement; for participation in congressional proceedings; or for refusal to participate in danger activities. Therefore, in accordance with 10 C.F.R. § 708.17(c)(2), your complaint must be dismissed."

Section 708.17(c)(2) in relevant part provides that:

Dismissal for lack of jurisdiction or other good cause is appropriate if:

. . .

(2) The facts, as alleged in your complaint, do not present issues for which relief can be granted under this regulation;

. . .

On July 5, 2007, the complainant filed an appeal of the dismissal by the NETL Director with the Office of Hearings and Appeals. 10 C.F.R. § 708.18.

## II. Analysis

In her appeal, the complainant claims that the dismissal was erroneous because: (i) NETL improperly minimized the seriousness of the violent situation she revealed; (ii) she was not provided with a copy of PRC's response to her complaint; (iii) PRC has not acted truthfully in connection with her claims for Pennsylvania unemployment compensation; and (iv) she does not believe a

sufficient review of her complaint has been performed, including the opportunity to show that PRC's accusations against her are "false and slanderous." Of these four objections, only the first has any relevance here. Accordingly, my attention here will be devoted solely to the issue of whether the complainant's report to the DOE/IG that a co-worker stated that if she had seen the complainant, she would have spit in the complainant's face is a disclosure of workplace violence entitled to protection under Part 708.

The answer is "no." This is a trivial, frivolous claim which merits summary dismissal. There was no workplace violence reported. The purported threat was hypothetical. It did not describe any future intent by Biddle. I find that no reasonable person would find herself in real fear of any meaningful danger, present or future, if she heard the statement at issue here, especially since it was made via telephone. Reporting this statement to the DOE/IG simply does not constitute reporting of workplace violence. Consequently, while I agree with the NETL Director that this complaint merits summary dismissal, I find that it falls more properly within the purview of Section 708.17(c)(4), which provides that a complaint may be dismissed if it "is frivolous or without merit on its face . . . ." The statement at issue here most assuredly meets that test.

Accordingly, the dismissal by the NETL Director was correct and the instant Part 708 appeal should be denied.

IT IS THEREFORE ORDERED THAT:

(1) The Appeal filed by Sharon Fiorello (Case No. TBU-0070) is hereby denied.

(2) This Decision shall become a Final Agency Decision unless a party files a Petition for Secretarial Review with the Office of Hearings and Appeals within 30 days after receiving this decision. 10 C.F.R. § 708.19.

Fred L. Brown  
Acting Director  
Office of Hearings and Appeals

Date: July 16, 2007