

United States Department of Energy

Ronny J. Escamilla v. Systems Engineering & Management Associates, Inc.;

Case No. **VWA-0012**

Final Decision and Order Issued by the Deputy Secretary of Energy

Issued April 18, 1997

This is an appeal by complainant Ronny J. Escamilla from the Initial Agency Decision by the Office of Hearings and Appeals ("OHA") finding that the complainant, a computer scientist formerly employed by Systems Engineering & Management, Inc. ("SEMA"), a subcontractor of EG&G Rocky Flats, Inc., the Department of Energy ("DOE") management and operating contractor at its Rocky Flats facility, had failed to establish by a preponderance of the evidence that his employment was terminated in retaliation for alleged disclosures of waste and mismanagement. OHA found further that, while the complainant's communication to SEMA management that he had filed a complaint pursuant to 10 C.F.R. Part 708 constituted a protected disclosure, SEMA had proven, by clear and convincing evidence, that it would have terminated complainant despite such disclosure.

On appeal, the complainant challenges OHA's determination that he failed to meet his burden of establishing that he made protected disclosures of waste and mismanagement, and that such disclosures contributed to his termination. Further, the complainant asserts that he made safety disclosures to SEMA that were not considered by the OHA Hearing Officer.

1. On appeal, OHA's factual determinations are to be overturned only if they are "clearly erroneous." See, e.g., [Oglesbee v. Westinghouse Hanford Company](#), 25 DOE ¶87,501, 89,001 (April 14, 1995); [O'Laughlin v. Boeing Petroleum Services, Inc.](#), 24 DOE ¶ 87,513, 89,064 (January 31, 1995). Measured against this standard, my review of the record shows no basis for overturning OHA's finding that the complainant's disagreements with SEMA management regarding the computer system did not rise to the level of protected disclosures of waste or mismanagement under Part 708. See [Mehta v. Universities Ass'n](#), 24 DOE ¶ 87,514 (1995). Further, the record clearly supports OHA's determination that SEMA met its burden of establishing, by clear and convincing evidence, that it would have terminated complainant's employment based upon poor performance irrespective of his filing of a Part 708 complaint.
2. With respect to the complainant's assertion that he made safety disclosures to SEMA management that were not considered by the OHA Hearing Officer, the record well supports the Hearing Officer's decision to discredit the complainant's testimony that he raised concerns regarding the safety of the computer system with SEMA management.

For the reasons set forth above, the Initial Agency Decision is hereby affirmed and adopted as the Final Agency Decision in this case.

Charles B. Curtis
Deputy Secretary
Issued: April 18, 1997