

Administrative Judge, and an opportunity for review of the Administrative Judge’s Initial Agency Decision by the OHA Director. *Id.* §§ 708.22, 708.25, 708.32. Pursuant to 10 C.F.R. § 708.15, “[a] complaint must be filed by the 90th day after the date the employee knew, or reasonably should have known, of the alleged retaliation.”

An employee who files a timely complaint has the burden of establishing by a preponderance of the evidence that he or she made a protected disclosure, as described under 10 C.F.R. § 708.5, and that the disclosure was a contributing factor in one or more alleged acts of retaliation against the employee by the contractor. *Id.* § 708.29. If the employee meets that burden, the burden shifts to the contractor to prove by clear and convincing evidence that it would have taken the same action without the employee’s disclosure. *Id.* If the complainant prevails, available relief includes reinstatement, transfer preference, back pay, reimbursement of the complainant’s reasonable costs and expenses, and such other relief as may be appropriate. *Id.* § 708.36(a).

II. Procedural History

In June 2020, Mr. Sharpe began working for UCOR’s predecessor in the newly created position of Electrical Safety Program Manager, and he remained in this position until his termination by UCOR in October 2022. On January 18, 2023, Mr. Sharpe filed a Complaint under the Part 708 regulations with DOE’s Oak Ridge Office of Environmental Management alleging that he was terminated following a protected disclosure. The Complaint alleged that Mr. Sharpe made a protected disclosure on August 3, 2022, via a Corrective Action Management System (CAMS) entry² in which he disclosed issues and corresponding safety concerns with the electrical configuration of Oak Ridge National Laboratory (ORNL) building 3517 (Building 3517). Exhibit (Ex.) 95 at 10.³ According to the Complaint, the CAMS entry reported that, among other issues, the electrical configuration at the building “had a fault return path (neutral) that was neither sized nor connected correctly between the building and powerlines . . .”; “the neutral . . . was bonded to the service conduit over paint”; and the neutral “was connected at the service drop conduit” instead of “the main breaker panel[,]” was not connected “in parallel,” and was undersized. *Id.* at 8–10. The Complaint also alleged that the above condition constituted a violation of applicable codes and regulations, and, further, that should an electrical equipment failure or fault occur, there would be a danger of electric shock to personnel in and around the building. *Id.* The Complaint alleged that Mr. Sharpe made additional protected disclosures regarding the same Building 3517 concerns during a September 2, 2022, meeting; during a September 21, 2022, phone call; and during an October 3, 2022, meeting. *Id.* at 11–12, 14. The Complaint stated that on August 4, 2022, Mr. Sharpe was assigned, via a corrective action assignment, the task of remediating the issues that he outlined in the CAMS entry. *Id.* at 10. He made an additional protected disclosure, the Complaint alleged, when he complained to his supervisors that the CAMS assignment “should have appropriately been assigned to Nuclear Operations or Central Engineering because those groups were responsible for . . . implementing such activities[,]” and “[UCOR’s] failure to assign the . . . CAMS action item to either of these Departments was also a serious safety concern because

² Throughout the record, the term CAMS is used by witnesses and counsel to refer both to the system as well as to the entries made into that system. Therefore, this Decision will do the same and refer to the entry as either CAMS or CAMS entry. Furthermore, while the date provided in the Complaint is August 4, 2022, the record, described below, establishes that Mr. Sharpe submitted the CAMS on August 3, 2022.

³ Mr. Sharpe’s exhibits are numbered while UCOR’s exhibits are lettered.

necessary remedial action would be delayed, further increasing the likelihood of injury or death upon equipment failure.” *Id.* at 10–11. In retaliation for his protected disclosures, the Complaint alleged, Mr. Sharpe received a formal written warning on September 22, 2022, and he was terminated on October 26, 2022. *Id.* at 14, 17–18. In his Complaint, Mr. Sharpe requested compensatory damages, expenses and fees, and any other appropriate remedies. *Id.* at 20.

The Complaint was referred to OHA on March 14, 2023, whereupon OHA assigned an investigator, who conducted an investigation and issued a Report of Investigation on May 11. On May 15, 2023, I was assigned Administrative Judge in this matter. On October 16, UCOR filed a Motion for Summary Judgment, to which Mr. Sharpe filed a response, and both parties submitted briefs and exhibits in support. After reviewing the briefs and supporting exhibits, I denied UCOR’s motion. Beginning on October 30, 2023, I held a four-day hearing on the Complaint. The parties submitted over 150 exhibits, and fourteen witnesses testified at the hearing. After considering the evidence and testimony before me, I conclude that Mr. Sharpe’s Complaint is denied.

III. Factual Background

UCOR is a DOE contractor responsible for providing environmental clean-up services at the Oak Ridge Reservation in Tennessee, which is home to the DOE-owned ORNL. Ex. 95 at 3–4. On or about June 15, 2020, Mr. Sharpe, a licensed Professional Engineer with an educational background in Engineering Science, was hired to come to ORNL as an engineering manager of electrical safety. Hearing Transcript, OHA Case No. WBH-23-0002 (Tr.) at 41. Mr. Sharpe arrived with over thirty years of experience and having previously worked for utilities all over the country. *Id.* at 40. His most immediate prior employment was working for another large government contractor before UCOR’s predecessor recruited him. *Id.* at 40–41.

As the electrical safety program manager, Mr. Sharpe was in charge of the electrical safety program (ESP). *Id.* at 41–42. He described the primary purpose of the ESP as ensuring “electrical code compliance with the National Electrical Code [(NEC)] . . . and . . . the Standard for Electrical Safety in the Workplace [(NFPA 70E)] . . .” *Id.* at 42. Under 10 C.F.R. § 851.23, contractors must comply with the NEC and NFPA 70E. 10 C.F.R. § 851.23(a)(13)–(14). Mr. Sharpe’s ESP team included a deputy, a field inspector, and a procurement assistant. Tr. at 41–42. In early 2022, Mr. Sharpe reported to Eric Abelquist and Thomas Morgan. *Id.* at 44. Mr. Abelquist was the manager of technical engineering and nuclear safety. *Id.* at 516. Mr. Morgan was the chief engineer. *Id.* at 327. Starting February 2022, Mr. Sharpe began reporting directly to Mr. Morgan. *Id.* at 44. Mr. Sharpe testified that he never received a formal performance evaluation while employed with UCOR or its predecessor. *Id.* at 43. However, he received a merit increase each January for the two years he worked for them.⁴ *Id.* at 43, 617. When UCOR took over the contract in 2022, it rehired Mr. Sharpe at an increased salary. *Id.* at 615. Mr. Sharpe was hired as an at-will employee. *Id.* at 677.

Larry Perkins is the DOE Director of Operational Oversight, and at the relevant period he was in charge of environmental management and operations, which included oversight of UCOR’s electrical safety. *Id.* at 45, 255. Mr. Perkins also carried the title of Authority Having Jurisdiction (AHJ) for fire and electrical for DOE. *Id.* at 256. AHJ is defined in the NEC as an entity or

⁴ There are no cost-of-living raises, only merit raises that are supposed to be based on performance. Tr. at 613–14.

individual responsible for ensuring compliance with the NEC. *Id.* at 43. As a DOE contractor, UCOR had the ability to submit an application to DOE for one of its employees to be designated UCOR’s electrical AHJ (EAHJ), and the EAHJ would have the delegated authority to make electrical rulings subject to being overruled by Mr. Perkins as the DOE AHJ. *Id.* at 43, 257. Mr. Perkins testified that several months after UCOR took over the contract, DOE sent a letter requesting that UCOR designate an EAHJ per its contract. *Id.* at 258. On January 12, 2022, Mr. Morgan asked Mr. Sharpe to be the EAHJ. *Id.* at 407. Mr. Morgan testified that he did not believe Mr. Sharpe began the application package that would need to be submitted by UCOR to DOE at this time. *Id.* He also testified that it was Mr. Sharpe’s responsibility to “prepare [the] application for EAHJ and follow through [] with the whole process” *Id.* at 382.

Mr. Sharpe testified that he met with Mr. Morgan one-on-one weekly for status update meetings. *Id.* at 156. Mr. Morgan testified that sometime near March 2022 he prepared to provide “coaching” feedback during a routine, weekly meeting with Mr. Sharpe. *Id.* at 414, 416–17 (testimony of Mr. Morgan stating that the meetings with Mr. Sharpe occurred “every week, every other week, something like that”). Sometime later, Mr. Morgan began inviting Mr. Abelquist, Mr. Morgan’s supervisor, to some of these meetings so that Mr. Abelquist’s presence would demonstrate to Mr. Sharpe that Mr. Sharpe’s performance needed to improve. *Id.* at 416. Mr. Morgan testified that one such meeting occurred in May 2022 during which Mr. Morgan suggested that Mr. Sharpe connect with UCOR’s “fire protection . . . authority having jurisdiction” to get an application template to work from in completing his EAHJ application. *Id.* at 417–18. Mr. Morgan kept notes from these meetings, and he stated they demonstrate that Mr. Sharpe was not progressing as expected on some projects. *Id.* at 419. For example, Mr. Morgan testified that Mr. Sharpe failed over the period of several meetings to produce a job posting for UCOR employee Rickey Wilson’s replacement.⁵ *Id.* at 420. Mr. Morgan also noted that he coached Mr. Sharpe on having a collaborative instead of an “us-versus-them” mentality around resolving issues. *Id.* at 421. Mr. Morgan testified that he would give Mr. Sharpe specific instruction on how to improve. *Id.* at 409. Mr. Morgan noted that Mr. Sharpe would often transition to talking about specific electrical design and compliance issues when faced with big picture organization questions. *Id.* at 410. Mr. Morgan testified that he was often unsure whether Mr. Sharpe “bought in” to the coaching or just agreed with the feedback to placate Mr. Morgan. *Id.* at 409, 422. Mr. Morgan testified that Mr. Sharpe was the worst manager out of the five he supervised. *Id.* at 405.

Mr. Abelquist testified that UCOR was having issues in the field with electricians and safety issues in late 2021. *Id.* at 556. He testified that UCOR knew in spring 2022 that DOE had concerns with UCOR’s ESP, and he and Mr. Morgan started meeting with Mr. Sharpe in the May-June time frame to improve ESP’s performance because they wanted Mr. Sharpe to lead a turnaround of the ESP and regain DOE’s trust in the program. *Id.*

Mr. Sharpe testified that he did not recall being coached during the weekly meetings with Mr. Morgan throughout 2022. *Id.* at 156. Mr. Sharpe also disagreed with Mr. Morgan’s meeting notes and testified Mr. Morgan never mentioned improving the performance of the electrical safety team at these meetings. *Id.* at 213–14. However, he recalled a meeting attended by Mr. Abelquist where

⁵ Mr. Morgan testified that in a July 18 meeting he noted that Mr. Sharpe had not made adequate progress on this Ricky Wilson replacement project, which had been outstanding since April 2022. *Tr.* at 421.

Mr. Abelquist asked whether he was “going to be a team player.” *Id.* at 215. Mr. Sharpe described the meeting as “bizarre,” but denied it gave any indication of performance issues. *Id.* at 215–16.

The record includes a June 8, 2022, text message from Mr. Morgan to Mr. Abelquist and others stating that Mr. Perkins had a negative opinion of the electrical safety at UCOR. Ex. 17 at 1; Tr. at 153–54. On June 14, 2022, Mr. Morgan sent an email entitled “Electrical Safety Program – Shifting the Focus” (Shifting Focus Email) and an attached draft document to Mr. Sharpe which provided performance criteria for the ESP and asked for review and comment. Ex. 18 at 1. The attached document began by identifying three problems: “[c]lient concerns about UCOR [ESP] persist[ing] for several years,” “[l]ack of engagement and alignment with craft,⁶ supervisors, and management,” and a “[r]ecent rash of issues that are related to electrical safety are cause for concern and an increase in management focus on electrical safety.” *Id.* at 2. The document also noted several facts from the perspective of Mr. Strom, including that UCOR could not prevent DOE from associating unrelated issues in the field with the ESP; field presence needed to increase; and the electrical workers and supervisors did not see ESP as a resource. *Id.* As for goals to address the problems, the document listed that they should “[f]irmly establish that UCOR owns electrical safety” to workers and executives through “influence, rather than policing”; “[e]stablish and maintain *constructive partnerships* with the goal of achieving mutually beneficial outcomes,” which meant, in part, that the “Client” should have “trust” in ECP leadership; and have “Best-in-Complex” ESP implementation. *Id.* (emphasis original). Finally, the document included metrics, which included “increasing field presence to a minimum of 1 site visit per week” and enhancing the Electrical Safety Committee by holding quarterly meetings (Electrical Safety Meetings) at the work site to promote front line worker attendance.⁷ *Id.* at 3.

Mr. Sharpe agreed that the Shifting Focus Email was in response to Mr. Perkins’s opinion that there was a downward trend in UCOR electrical safety. Tr. at 226. Mr. Sharpe also testified that Mr. Perkins held a negative view of ORNL electrical safety for at least a decade. *Id.* at 155; *see also id.* at 752, 754–755 (testimony of Mark Gibbs, who had been UCOR’s predecessor’s EAHJ starting in 2018 before working under Mr. Sharpe starting sometime in 2020). However, Mr. Sharpe disagreed with Mr. Perkins’s viewpoint regarding UCOR’s ESP. *Id.* at 170. Mr. Sharpe testified that he believed that the Shifting Focus Email was supposed to change the perception of safety rather than fix any actual safety issues. *Id.* at 227.

Mr. Abelquist described the Shifting Focus Email as a performance rubric for Mr. Sharpe. *Id.* at 567. Mr. Morgan stated that Mr. Sharpe did not have a strong enough presence in the field. *Id.* at 401. He testified that the ESP needed a strong presence so that other workers and programs would consider ESP’s equities during their own operations. *Id.* He testified that the Shifting Focus Email also documented the fact that other workers viewed ESP as a hindrance rather than a help. *Id.* at 397, 400. Mr. Morgan believed that Mr. Sharpe gave minimal effort to following the recommendations in the email. *Id.* at 404.

⁶ Craft refers to qualified electrical workers that come into contact with electrical components in the field as opposed to the ESP staff that provide inspection and oversight. Tr. at 396.

⁷ The purpose of these meetings is to share electrical incidents, information, lessons learned, safety issues and similar topics. Tr. at 906.

On July 21, 2022, Chris Grundt, a senior electrical engineer in UCOR's decommissioning and demolition group (D&D), sent an email to Mr. Sharpe and copied several other electrical engineers. *Id.* at 46–47, 954; Ex. 1 at 1. Some, but not all, of the electrical engineers worked in Mr. Sharpe's group. Tr. at 47–48. In the email, Mr. Grundt reported that UCOR Building 3517 had some issues at the “service drop,” or the point where the electricity enters the building, and identified damage at the weatherhead to the conductor insulation which made the facility “not-code compliant.” Ex. 1 at 1; Tr. at 49. Mr. Grundt also stated that the condition could lead, in the event of a ground fault, to the fault current attempting to “use the earth as a path back . . . to the transformer bank.” Ex. 1 at 1. Mr. Sharpe reviewed the email and believed that an included photograph also demonstrated a “potentially undersized jumper for the neutral on that building.” Tr. at 49. According to Mr. Sharpe, the email reported that “UT-Battelle^[8] had changed the power system, the transformers on the pole, to make it so that we needed a neutral where we didn't have a neutral before . . .” and that the conductor appeared to be undersized and the insulation had been damaged. *Id.*

Mr. Sharpe testified that he, Mr. Grundt, and two other engineers named Mark Gibbs and Arnold Gutmanis discussed the email and agreed that the code violations were obvious. *Id.* at 50–51. Mr. Gutmanis worked under Mr. Sharpe and, after that, held the position of EAHJ. *Id.* at 904–05. Mr. Sharpe testified that they all “knew right away that there were three different code violations.” *Id.* at 51. First, according to Mr. Sharpe, the neutral jumper was undersized, which meant that it would not carry the fault current that it was required to carry. *Id.* at 50. Second, the neutral did not go back to the breaker panel inside the panel. *Id.* Third, the “number 6 jumper” was connected using a pipe clamp to a conduit that was covered in paint, resulting in a poor connection. *Id.* at 50–51.

Mr. Sharpe testified that at the time he did not yet know the severity of the hazard presented by the identified code violations because he had not yet done an analysis in accordance with the Institute of Electrical and Electronics Engineers Standard 80 (IEEE Std. 80) to determine the “touch and step potential,” which is a condition during an electrical fault or short circuit that creates an electrocution hazard for anybody standing in the area. *Id.* at 51–52. He explained that if an electrical fault occurred, the electrical current “will go back through the ground to the source of the electricity,” and if the “fault return path” is not adequate, depending on the quantity of electricity, the amount could be lethal.⁹ *Id.* at 52. Mr. Sharpe also testified that, since the condition of Building 3517 was caused by UT-Battelle, UT-Battelle may have done work that similarly affected other buildings. *Id.* at 70. Mr. Sharpe sent an email on July 31, 2022, to several people including the above engineers, copying his supervisor Mr. Morgan, recommending that they hold a meeting to discuss the condition of Building 3517 and “whether there is a safety concern.” Ex. 30 at 99. Mr. Sharpe stated he never received a response to this email. Tr. at 55.

On August 2, 2022, Mr. Sharpe sent an email to a wider audience to communicate the electrical safety issues at Building 3517 and another building in close proximity that he discovered had a

⁸ UT-Battelle, a separate prime contractor at ORNL, is responsible for the power supplied to the various facilities. Tr. at 123, 195.

⁹ He also described that if the “number 6 wire . . . had a fault . . . [it] would, in fact, burn in two[,] . . . [becoming] a high-impedance fault, . . . [and] [i]t could turn . . . the conductors on the copper to molten metal and shoot that out . . . in the air. Anybody that could stand there or driving down the road even could be hit with molten copper.” Tr. at 124–25.

similar issue, Building 3571. *Id.* at 69–70; Ex. 1 at 4–6. He again noted that the condition presented a code violation and “significant safety concern.”¹⁰ Ex. 1 at 6. At the time, Building 3517 was an older building that was not operational and was being maintained until being turned over to D&D to be destroyed; Building 3571, on the other hand, was operational. Tr. at 71. Christian Strom was one of the recipients of Mr. Sharpe’s August 2 email. Ex. 1 at 6. Mr. Strom was the area project manager for UCOR’s Nuclear Operations and responsible for the personnel that performed the maintenance on UCOR facilities. Tr. at 686–88, 727. Both Building 3517 and 3571 fell under Mr. Strom’s area of management, he was the maintenance and operations manager, and he oversaw the safety personnel of those buildings. *Id.* at 687–88, 701. Mr. Sharpe testified that he included Mr. Strom and the other recipients because he believed that they could address the issues. *Id.* at 69.

On the morning of August 3, 2022, Mr. Strom emailed that he would be reaching out to UT-Battelle to address a path forward on the issues at both buildings. Ex. 30 at 53. Mr. Abelquist interpreted this to mean that Mr. Strom’s team was working to resolve the issue. Tr. at 535–56. Mr. Sharpe testified that he also believed Mr. Strom’s email indicated that Nuclear Operations would address the issue at Building 3517. *Id.* at 89.

On August 3, 2022, Mr. Sharpe also filed a CAMS to document the condition of Building 3517. *Id.* at 56. CAMS refers to a standardized database for employees to file noncompliance or safety issues for corrective action at nuclear facilities and nuclear utilities. *Id.* at 56–57. There is no dispute that problems identified in the CAMS are to be evaluated and then fixed. *See id.* at 57, 797–99. UCOR employees file several hundred CAMS each year. *Id.* at 440, 602, 605, 799. Once filed, the CAMS are evaluated by the Issues and Corrective Action Review Board that reviews and identifies significant corrective actions, gives the CAMS an initial status, and ensures they are being appropriately addressed by assigning them to a responsible manager. *Id.* at 797–99. On August 3, 2022, Joe Aylor, Deputy Chief Operating Officer, chaired the review board. *Id.* at 798.

Mr. Sharpe’s CAMS identified the issues discovered by Mr. Grundt and specifically stated that the conditions represented a code violation and, according to IEEE Std. 80, could present a step potential issue. Ex. 2 at 3; Tr. at 60. At the hearing, Mr. Sharpe testified to the code violations by referencing a picture he prepared of the “service drop” at Building 3517 which listed the code provision implicated by the condition that he had discussed with Mr. Gutmanis, Mr. Gibbs, and Mr. Grundt and referred to in his CAMS entry. Tr. at 67. That image identifies that (1) the “[g]rounded conductor (neutral) [is not the] same size as phase conductors or at least 1/10,” which violated NEC section 250.24(C)(2); (2) the ground clamp is over paint, which violated NEC section 250.12; and (3) that the grounded conductor or neutral “must be run with phase conductors to first disconnect” inside the building, and the present system requires four wires, instead of three, which violated NEC section 250.24(C). Ex. 106.

The CAMS entry was assigned to Mr. Sharpe to complete and included an original deadline of September 6, 2022, to submit an extent of condition evaluation, which is an evaluation to determine whether any other locations or facilities may be affected by the same issue. Ex. 2 at 3; Tr. at 61–

¹⁰ He also identified that all the “arc flash labels,” which informed electrical workers of the type of personal protective equipment they would need to wear, were invalid and said the labels “need to be removed as soon as possible.” Ex. 1 at 6; Tr. at 70. However, this was not alleged as a protected disclosure in the Complaint. *See* Ex. 95. Even if it had been, it would not alter my Decision.

62. A review of the original CAMS report indicates that it was provided a significance level of “adverse condition.”¹¹ Ex. 2 at 3.

In response to being assigned responsibility for the CAMS, Mr. Sharpe sent an email that same afternoon and complained that “assigning a corrective action item to the person who submitted it is inappropriate, as it creates a chilled work environment by appearing to punish those who identify and submit corrective action items.” Ex. 3 at 2. In the same email, Mr. Sharpe also noted that “[i]n a related industry, the NRC issues hefty fines for this very thing.” *Id.* Mr. Sharpe testified that at the time he sent the email, he believed that Mr. Morgan and Mr. Abelquist had been responsible for assigning the CAMS to him. Tr. at 84. Mr. Morgan responded by email, stating the “expectation is for leaders . . . to own issues . . . that fall within their discipline’s purview, whether or not they identified the issue Owning this CAMS issue is an opportunity for the [ESP] to be put on display as a valuable resource” and “increases the chances that it is resolved to our satisfaction as technical program owners.” Ex. 4 at 1. Finally, Mr. Morgan wrote, “I am struggling to understand how being assigned a CAMS for an issue that you identified creates a chilled work environment,” it “is not punitive in any way,” and it is “clearly within your expertise and job responsibilities to resolve.” *Id.* In response, Mr. Sharpe accepted responsibility for the CAMS, but complained that the assignment would be extremely challenging because the “issue will be resolved by electrical design engineers . . . [like] D&D Engineering or Nuclear Operations Engineering” and those groups “ultimately have to fix this” because he “cannot set their priorities, scope, or schedule.” Ex. 3 at 1; Tr. at 85.

Nobody disputed that Mr. Strom was responsible for the craft workers who would actually do the repair work on Building 3517. *Id.* at 335. At the hearing, Mr. Sharpe testified that if he had the ability to fix the issue, he would not have filed a CAMS. *Id.* at 82–83. He testified that he had “no power whatsoever” to address the issue. *Id.* at 83. As he put it, giving him the “huge burden to document and force the people somehow to get this fixed” was “not helpful on getting the condition repaired.” *Id.* at 84.

The day after receiving the email alleging a chilled work environment, Mr. Morgan reached out to UCOR Human Resources (HR) about Mr. Sharpe’s allegation and other performance issues.¹² *Id.* at 333; Ex. 4 at 1. Mr. Morgan also reached out to UCOR’s legal department regarding the chilled work environment allegation. Tr. at 333. This was the first time that Mr. Morgan had ever contacted HR in reference to Mr. Sharpe. *Id.* Mr. Morgan believed that Mr. Sharpe was struggling to take responsibility for the CAMS issue. *Id.* at 444. Mr. Abelquist stated they were “extremely surprised and disappointed that [Mr. Sharpe] would allege such a condition existed at UCOR.” *Id.* at 525. Mary Douglass of HR testified that she recalled that the initial outreach from Mr. Morgan stemmed from concerns about Mr. Sharpe’s interactions with the “DOE Customer” and Mr. Sharpe’s lack of leadership as the ESP leader in addition to being upset over Mr. Sharpe’s reaction to the CAMS assignment. *Id.* at 619–20. Mr. Morgan also met with Mr. Abelquist, and they discussed that

¹¹ Although the significance level is chosen by the screening team, and not the submitter, there is a process for the submitter to request a change of the significance level. Tr. at 436, 521.

¹² Mr. Morgan noted that Mr. Sharpe had claimed that being assigned a CAMS constituted a chilled work environment back in February 2022, however, no additional context was given for this instance, including whether Mr. Sharpe was complaining about an assignment to himself or another person. Ex. PPPP at 6.

coaching had not been working and that Mr. Sharpe's response to the CAMS and "lack of ownership" was "the antithesis of a leader." *Id.* at 424. Mr. Abelquist testified that the "chilled work environment" response from Mr. Sharpe, coming after they had discussions with him about improving leadership, indicated a failure to take on a leadership role. *Id.* at 608.

Regarding the workplace perception of filing a CAMS, Mr. Gutmanis testified that he had filed about six CAMS in his career and never felt penalized for doing so. *Id.* at 912–13. Mr. Grundt similarly testified that he never experienced criticism for identifying a safety issue. *Id.* at 963. Ricky Garcia, the project execution manager who ran the union craft, including electricians, testified that he had filed twenty or thirty CAMS over his seven-year career at the UCOR site. *Id.* at 887–888. He testified that he never felt negative consequences for filing a CAMS, and he had even assigned himself a CAMS. *Id.* at 888–89. Mr. Sharpe testified that he had filed eight to ten CAMS in the past, and he had been assigned responsibility for some of them. *Id.* at 198.¹³ He also testified that he never considered filing a CAMS an employment risk before because "he had the ability to effect the closure of the CAMS." *Id.* at 198. He testified that he had "probably mentioned" a chilled work environment at UCOR before regarding CAMS assignments, but he could not recall the details. *Id.* He later testified that he felt that Mr. Abelquist got "mad" each time he filed a CAMS. *Id.* at 216. He said that Mr. Abelquist's reference to being a "team player" during a previous meeting may have been a suggestion to not submit a CAMS. *Id.*

At the hearing, Mr. Abelquist acknowledged that Mr. Sharpe had to face the challenge of addressing the assigned CAMS by building rapport and influence with those who would work directly on the situation. *Id.* at 532–33; Ex. 3 at 1. Mr. Abelquist similarly testified that Mr. Sharpe was expected to be able to wield leadership and influence to oversee an issue in his subject area. Tr. at 530.

A few days after submitting the CAMS, Mr. Sharpe received information from UT-Battelle that led him to believe the fault current was high enough that the configuration at Building 3517 was a "significant safety hazard" because if the right conditions occurred then there would be a lethal step potential. *Id.* at 75. Mr. Sharpe testified that if a fault occurred it would be dangerous to anybody in the adjacent parking lot near the Building 3517 "service drop." *Id.* at 76. He also testified that the workers who operated in Building 3571 would be near the unsafe area about once a week. *Id.* Mr. Sharpe testified that the likelihood of a fault occurring was very rare, but the condition of the conductor insulation at Building 3517 meant that a "good strong wind could cause a fault." *Id.*

Approximately two weeks after Mr. Sharpe filed the CAMS, Mr. Strom met with UT-Battelle, and they decided to wrap the service conductors with tape and replace the conductors on both buildings.¹⁴ *Id.* at 696–97, 730. However, Mr. Strom never issued a work order for Building 3517. *Id.* at 697. Mr. Strom testified that Mr. Sharpe never followed up for an update on whether Mr. Strom met with UT-Battelle. *Id.* at 734

¹³ Mr. Sharpe also testified that his group "got CAMS quite often," and it was not unusual for CAMS to be assigned to his team. Tr. at 83.

¹⁴ Mr. Sharpe testified that the attempted repair of the insulation was a band-aid type fix that did not completely remedy the problem. Tr. at 91.

On August 17, 2022, Mr. Morgan, Mr. Abelquist, and Ms. Douglass met to discuss Mr. Sharpe's performance. *Id.* at 445. Ms. Douglass did not believe that the CAMS being assigned to Mr. Sharpe created a chilled work environment. Ex. 30 at 29; Tr. at 527. Ms. Douglass testified that Mr. Morgan assured her that Mr. Sharpe had been verbally counseled regarding performance and leadership. Tr. at 622. Ms. Douglass recommended they issue a written warning. *Id.* at 445.

The record includes UCOR's Progressive Discipline Policy (Discipline Policy), which states the following:

- Prior to initiation of the formal progressive discipline process, supervisors/managers should contact a [HR] Representative (HR Rep) to discuss the employee performance or behavior to be addressed, determine the appropriate actions to address the issue, and ensure consistency in the implementation of progressive discipline throughout UCOR.
- Nothing in this policy is intended or should be construed to alter the Company's right to terminate employment at any time or for any reason
- The Company determines, at its discretion, the appropriate level of discipline from any of the levels below, based on the circumstances. All or none of the levels may be implemented prior to termination or suspension, depending on the severity of the infraction.

Ex. 70 at 1. The Discipline Policy lists, in detail, the four progressive steps: (1) informal verbal counseling or coaching session, (2) written warning, (3) final written warning or probationary warning, and (4) final action. *Id.* at 2–3.

The record contains evidence that Mr. Morgan had been documenting issues with Mr. Sharpe's performance. He noted leadership issues regarding the Electrical Safety Committee in that Mr. Sharpe would send out large meeting invitations but not follow up with supervisors to communicate the importance of attendance. Tr. at 428. Mr. Morgan stated that the result was that only a couple of craft workers attended. *Id.* While Mr. Morgan believed that this was not a good turnout and insufficient to establish a quorum, Mr. Sharpe seemed pleased with the turnout, representing a mismatch in performance perspectives. *Id.* at 428–29. Mr. Morgan also noted that Mr. Garcia reported that Mr. Sharpe appeared unexpectedly and disturbed a DOE assessment in the field on August 18, 2022, at a time when any disruption could have jeopardized their chance for success. *Id.* at 428–29, 891–92. Consequently, Mr. Garcia had to pull Mr. Sharpe aside because Mr. Sharpe was attempting to talk to the DOE assessor without wearing the proper protection equipment. *Id.* at 892. Mr. Garcia testified that he had no idea who Mr. Sharpe was at the time, and he was frustrated by the experience. *Id.* at 893.

Mr. Morgan also testified that he received reports that Mr. Sharpe sent unhelpful emails to another group regarding a "2651 location" and post-maintenance on a generator. *Id.* at 430–31. Mr. Morgan testified that he coached Mr. Sharpe on these latter issues and suggested phone communication instead of sending emails that could prompt a negative response. *Id.* at 431. Mr. Morgan also observed several meetings with Mr. Sharpe and Mr. Perkins that seemed contentious without any clear resolution to the issues. *Id.* at 434–35.

The record also contains examples of negative feedback from UCOR workers regarding Mr. Sharpe's performance. Mr. Wilson, an Electrical Field Representative, testified that he had occasional interactions with Mr. Sharpe, he did not see Mr. Sharpe in the field often, and he did not think that Mr. Sharpe was a good ESP manager. *Id.* at 869. Mr. Wilson said that the electricians in the field did not know Mr. Sharpe. *Id.* at 874. Mr. Wilson testified that it is important for the EAHJ to be in the field to build relationships so that the workers know who to contact for help. *Id.* at 877. However, Mr. Wilson confirmed that Mr. Sharpe did answer questions. *Id.* at 878. Mr. Wilson also clarified that Mr. Sharpe would go into the field if requested, but he did not go out into the field voluntarily. *Id.* at 878. He also testified that they never had an Electrical Safety Meeting quorum because of low participation due to the meeting not being announced widely enough but conceded that some of the failure was due to COVID. *Id.* at 870–871.¹⁵ By contrast, Mr. Wilson testified that he observes the current EAHJ, Mr. Gutmanis, in the field frequently. *Id.* at 871. Mr. Gutmanis confirmed that he was in the field a lot as EAHJ because he had limited resources and staff. *Id.* at 922. Mr. Gutmanis also testified that being in the field builds rapport with staff, and he gets to observe the installation work and answer questions. *Id.* at 922–23. Mr. Strom testified that the craft referred to Mr. Sharpe as “Jon not so Sharpe.” *Id.* at 710.

Mr. Morgan testified that, on August 30, Mr. Sharpe had still not determined a path forward on Building 3517. *Id.* at 431–32. Mr. Morgan testified that Mr. Sharpe should have used influence to resolve the problem. *Id.* at 432. On August 31, 2022, Mr. Sharpe sent an email to Mr. Morgan, Mr. Strom, Mr. Gibbs, and Mr. Grundt and stated that Mr. Perkins had asked about the Building 3517 issue and the path forward in the preceding week;¹⁶ Mr. Sharpe then proposed some potential solutions to address the condition of Building 3517 and indicated he would “set up a meeting late next week to discuss.” Ex. 6 at 2. Mr. Strom did not respond to his email.¹⁷ Tr. at 94; Ex. 5 at 1. Mr. Sharpe scheduled the meeting for September 20.¹⁸ Tr. 95–96. The meeting invitees included Mr. Abelquist, Mr. Morgan, Mr. Aylor, Mr. Strom, Mr. Grundt, Mr. Gibbs, and a few others. *Id.* at 96. Mr. Sharpe included an attachment to the email that described his understanding of the dangerous condition at Building 3517. *Id.* at 97–98.

Ahead of the September 20 meeting, Mr. Morgan sent a September 6 email to Ms. Douglass identifying three categories of Mr. Sharpe's performance issues: resistance to accepting responsibility, inability to obtain satisfactory results, and being unnecessarily and/or

¹⁵ Mr. Gutmanis described the Electrical Safety Meetings during COVID as less formal on a video conference platform and without written meeting notes. Tr. at 905–06. He testified that the attendance in 2022 fluctuated a lot, and many were not well-attended. *Id.* at 908.

¹⁶ Mr. Sharpe testified that during the month of August, he informed Mr. Perkins about Building 3517 during three meetings. Tr. at 86.

¹⁷ Mr. Sharpe testified that he called Mr. Strom several times and sent approximately four emails outlining the problem and how to fix the issue; he stated that Mr. Strom only replied to one email and never returned the calls. Tr. at 82. Mr. Strom did not recall any phone calls and asserted that the emails he received did not ask for “any action.” *Id.* at 702. Mr. Morgan testified that he did not assist Mr. Sharpe in getting Mr. Strom to respond to emails regarding Building 3517 because he believed that Mr. Sharpe should be able to work with other managers to resolve issues. *Id.* at 508.

¹⁸ Mr. Sharpe explained that it took a long time to find a time that the invitees could all be available to meet. Tr. at 96.

unprofessionally confrontational. *Id.* at 344; Ex. 53. The email included an attachment providing instances of conduct for each category. Ex. 53 at 2–4. For example, under resisting responsibility, the list included the 2651 location issue, with the added context that Mr. Sharpe provided “criticism and conflict” but “little help to resolve issues . . .” *Id.* at 2. Mr. Morgan also noted Mr. Sharpe’s failure to take action on the safety issue at Building 3517 beyond sending emails despite asserting it was a serious safety concern. *Id.* at 2–3. Regarding Mr. Sharpe’s inability to obtain results, the list included lack of progress on the EAHJ application and failure to improve Electrical Safety Meeting attendance. *Id.* at 3–4. Regarding being unprofessional and confrontational, Mr. Morgan noted that Mr. Sharpe had struggled to influence “Mr. Perkins on technical issues due to abrasiveness” on multiple occasions. *Id.* at 4.

At the September 20 meeting, Mr. Sharpe explained his view of the dangerous condition to the attendees before they all discussed mitigating measures. Tr. at 99. Mr. Sharpe testified that nobody disagreed with his analysis regarding the danger presented by the condition. *Id.* at 98. Mr. Sharpe recommended immediately roping off the parking lot near the building service drop. *Id.* at 100–01. Next, the group decided to cut power to Building 3517 and put it on temporary power. *Id.* at 101. Mr. Sharpe testified that he referred to the condition at Building 3517 as an “imminent danger.” *Id.* at 124. However, Mr. Aylor testified that there was confusion at the meeting regarding the potential for danger. *Id.* at 802.

Mr. Strom testified that he did not take action at Building 3517 before September 20 because he was waiting for Mr. Sharpe to set up the meetings to provide potential solutions. *Id.* at 711. Mr. Strom made clear that the decisions from the September 20 meeting were based on the direction from Mr. Sharpe and that he did not have any say in what actions to take. *Id.* at 714. However, Mr. Strom disagreed that roping off the parking lot would address the danger asserted by Mr. Sharpe. *Id.* at 714. Mr. Strom also disagreed with the fault condition and step potential described by Mr. Sharpe.¹⁹ *Id.* at 708. He instead thought that the step potential would only happen under specific circumstances, and, in the absence of a fault and the presence of an arc, the danger was not imminent. *Id.* at 708, 715–16. However, he accepted Mr. Sharpe’s statement of imminent danger at the September 20 meeting and implemented the actions agreed upon by the group. *Id.* at 707–708.

On September 21, Mr. Strom emailed Mr. Abelquist and others that they were going to cordon off the area and cut power to Building 3517 because of the fault potential and hazard associated with the fault. Ex. 8 at 1–2. On September 22, Building 3517 was disconnected from power. Tr. at 105. That same day, Mr. Sharpe received a call from Mr. Perkins. *Id.* Mr. Sharpe stated that Mr. Perkins was upset about the parking lot being roped off because Mr. Perkins did not agree that the condition presented a danger. *Id.* Mr. Sharpe testified that he attempted to explain the danger that would result from a fault, and he believed that Mr. Perkins did not understand.²⁰ *Id.* at 105, 108. Mr. Sharpe also testified that Mr. Perkins yelled at him during the call. Tr. at 217. Mr. Perkins testified that he asked Mr. Sharpe during the call if the condition was an “imminent danger,” which, according to Mr.

¹⁹ With admitted hyperbole, he described it as a one in a billion chance. Tr. at 708–09.

²⁰ Mr. Sharpe provided more detail regarding the discussion with Mr. Perkins in a September 22, 2022, email sent to Mr. Morgan and Mr. Abelquist. Ex. 30 at 105. Therein, Mr. Sharpe reported that he “attempted to explain how power will flow back to the pole if a short occurs and why, but [Mr. Perkins] did not fully understand that power, on a grounded system, will always flow back to the neutral ‘zero’ bushing on the transformers.” *Id.*

Perkins, meant “likely to cause immediate death or serious injury.” *Id.* at 268. He said that Mr. Sharpe responded with “yes.” *Id.* Mr. Perkins then told Mr. Sharpe to deenergize the power, remove the people, make a safe configuration, and provide an extent of condition. *Id.* at 268–69. Mr. Perkins denied that he yelled. *Id.* at 298.

Later in the day on September 22, Mr. Sharpe was called to attend a meeting with Mr. Abelquist, Mr. Morgan, and Ms. Douglass from HR, and they delivered Mr. Sharpe a letter of reprimand. *Id.* at 109; Ex. 12. That letter, entitled “Written Warning Discipline – Failure to Meet Job Performance Expectations” (Written Warning), stated the following:

After numerous documented discussions regarding your job performance, you have made minimal effort to take the necessary actions to change your behavior, specifically in the following performance areas:

- Resistance to accepting responsibility for tasks clearly within the scope of your assigned position.
- Inability to attain desired satisfactory results for assigned tasks.
- Demonstrated unnecessary and/or unprofessional confrontational behavior toward supervision as well as among co-workers and customers.
- Failure to develop a professional relationship and obtain alignment with the DOE customer.

UCOR considers your behavior in the aforementioned performance areas to be serious misconduct, not commensurate to the level of performance expected from a senior employee in our company, and it will not be tolerated.

You must take the necessary steps to address and correct your behavior immediately. Any further infractions of this type or any other will result in additional disciplinary actions up to and including termination of your employment at UCOR.

Ex. 12 at 1. The Written Warning was drafted from the email Mr. Morgan provided to Ms. Douglass which outlined the identified performance issues. Tr. at 359, 623. According to Mr. Abelquist, the Written Warning was meant to communicate to Mr. Sharpe that they were not seeing improvements and he was not meeting the expectations of his job. *Id.* at 556. Mr. Abelquist testified that Mr. Perkins had been expressing concerns about the ESP during regular monthly meetings. *Id.* at 558.

Mr. Sharpe stated they told him during the meeting that he received the Written Warning because of his phone call with Mr. Perkins on September 22. *Id.* at 110, 148. Mr. Morgan testified that Mr. Sharpe disagreed with the Written Warning, and they discussed Mr. Sharpe’s frustration with Mr. Perkins. *Id.* at 468. Mr. Morgan recalled Mr. Sharpe stating he could not work with Mr. Perkins. *Id.* Mr. Morgan testified that Mr. Sharpe’s statement was cause for concern because Mr. Perkins is UCOR’s main customer and had approval authority over electrical safety. *Id.* Ms. Douglass recalled Mr. Abelquist discussing expectations with Mr. Sharpe such as getting out in the field more and talking to electricians. *Id.* at 642. Ms. Douglass recalled that Mr. Sharpe responded by asking if he was supposed to be a cheerleader, to which Mr. Abelquist stated that he wanted Mr. Sharpe to

instead be a leader. *Id.* She testified that Mr. Sharpe called Mr. Perkins an idiot.²¹ *Id.* at 656. Mr. Sharpe recalled that he was told that, given his position, he had to make Mr. Perkins like him since Mr. Perkins had a poor opinion of the ESP. *Id.* at 110.

At the hearing, Mr. Sharpe testified that he did not have any control over whether Mr. Perkins liked him. *Id.* He also believed that he would necessarily have an adversarial relationship with Mr. Perkins because Mr. Perkins was in an oversight role. *Id.* at 111. Mr. Sharpe also denied stating he could not work with Mr. Perkins and testified that he “got along with [Mr. Perkins] okay.” *Id.* at 45, 111. Mr. Sharpe believed that the “resistance to accepting responsibility” noted in the Written Warning referred to his chilled work environment email. *Id.* at 112. He believed the “inability to attain desired satisfactory results . . .” referred to his efforts at getting approved for EAHJ. *Id.* at 113. He testified that he never received an explanation for what the “unnecessary or unprofessional confrontations” referred to, but he believed that the “failure to develop a professional relationship” and alignment with DOE customer referred to Mr. Perkins. *Id.* Mr. Sharpe testified that he continued to work with Mr. Perkins after the Written Warning, but he did not know how to address the unexplained unnecessary or unprofessional confrontation issues. *Id.* at 114.

On October 3, 2022, Mr. Sharpe attended a meeting requested by Mr. Perkins to discuss UCOR’s decision to disconnect the power to Building 3517. *Id.* at 115. Mr. Abelquist, Mr. Morgan, Mr. Gutmanis, Mr. Gibbs, Mr. Strom, and Mr. Aylor also participated. *Id.* at 119. By this time, the conditions at Building 3571 had been repaired. *Id.* at 31; Ex. 31. Mr. Sharpe prepared to present the same information he provided at the September 20, 2022, meeting to Mr. Perkins. Tr. at 116. Mr. Sharpe stated that the condition at Building 3517 was an “imminent danger” because of the step potential calculation for a fault. *Id.* at 121. According to Mr. Sharpe, Mr. Perkins asked, “help me out of this corner you’ve backed me into,” and stated, “I don’t think the issue is real.” *Id.* at 119. In response to Mr. Perkins’s statements, Mr. Aylor did a “face palm.” *Id.* at 120. Mr. Sharpe testified that he did not debate the issue because he knew there was no point in arguing, and he did not want to get Mr. Perkins “mad” like during their September 22, 2022, phone call. *Id.* at 119. According to Mr. Sharpe, Mr. Strom “chimed in just to basically agree with whatever Larry Perkins said.” *Id.* at 120.

At the October 3, 2022, meeting, Mr. Perkins asked for an extent of condition evaluation, and Mr. Sharpe did not provide any documentation regarding his efforts to look at other buildings that had a similar system to Building 3517.²² *Id.* at 122; *see also id.* at 805 (testimony of Mr. Aylor that Mr. Perkins asked for documentation). Mr. Gibbs said the meeting was really about the term “imminent danger.” *Id.* at 762. According to Mr. Gibbs, Mr. Perkins explained that characterizing something as imminent danger “triggers a lot of things,” including becoming “reportable” or otherwise escalating the issue and making it “tough on DOE.” *Id.* at 764–65, 782. Mr. Perkins testified that an imminent danger requires immediate action to correct the issue. *Id.* at 292. Mr. Gutmanis testified that calling the issue “imminent danger” was “going out on a limb.” *Id.* at 917. Mr. Gibbs

²¹ The record includes Ms. Douglass’s handwritten notes from the meeting with Mr. Sharpe; they do not include reference to the “idiot” statement. Tr. at 567; Ex. 79. Nobody else, including Mr. Sharpe, was asked to confirm or deny the idiot statement.

²² Mr. Sharpe testified that he had determined there were about ten or twelve buildings that needed to be reviewed at this time. Tr. at 122.

said that Mr. Gutmanis and Mr. Perkins ended up discussing reducing the condition to “hazard” and explained that the power was disconnected out of “an abundance of caution.” *Id.* at 763. Mr. Morgan recalled the meeting being contentious. *Id.* at 364. Mr. Morgan observed that Mr. Sharpe was not able to successfully communicate his perspective to Mr. Perkins. *Id.* at 471–72. Mr. Morgan testified that Mr. Perkins seemed “frustrated” by the fact that the condition was being referred to as “imminent danger” but had not been addressed until September. *Id.* at 470–71. Mr. Morgan agreed with Mr. Perkins that using the term imminent danger required immediate action to resolve the issue. *Id.* Mr. Morgan stated that Mr. Sharpe could have entered a work order with the craft to have the power in Building 3517 turned off.²³ *Id.* at 441. Mr. Strom thought the meeting went poorly and stated that he told Mr. Morgan and Mr. Aylor the same. *Id.* at 731. He thought that Mr. Sharpe was responding in a confrontational manner to Mr. Perkins questioning the basis of declaring an imminent danger; as Mr. Strom described it, Mr. Perkins repeatedly asked for an analysis and explanation and Mr. Sharpe “continued to get more confrontational . . .” *Id.*

Mr. Gutmanis testified that Mr. Perkins was “drilling down pretty hard” on the extent of condition at the October 3 meeting. *Id.* at 916. According to Mr. Gutmanis, Mr. Perkins expressed that a high-level situation requires immediate action to ensure that they are “looking everywhere” and not just looking at buildings in close proximity. *Id.* Mr. Aylor testified that Mr. Sharpe did not have the extent of condition information for Mr. Perkins, which was embarrassing because Mr. Aylor had asked for similar information at the September 20 meeting. *Id.* at 805.²⁴ Mr. Morgan said he was also embarrassed that UCOR failed to have the extent of condition information because the condition had been originally identified in July. *Id.* at 473. However, Mr. Morgan confirmed that the CAMS due date for the extent of condition was not until December 2022. *Id.* at 490. Mr. Morgan also testified that Mr. Sharpe notified him on September 26 that he had been working on the extent of condition. *Id.* at 368–69. And Mr. Gibbs confirmed that he had worked with Mr. Sharpe on the extent of condition by examining buildings owned by UCOR. *Id.* at 781. Mr. Sharpe testified that he did not have paperwork at the meeting because the extent of condition was not on the meeting agenda.²⁵ *Id.* at 122.

Several of the meeting participants testified that they did not agree that the condition at Building 3517 presented an imminent danger. Mr. Gutmanis testified that he did not believe that the CAMS described an imminent threat or an impending danger that required immediate action.²⁶ *Id.* at 962.

²³ Mr. Morgan believed that Mr. Sharpe did not do this at the time but that Mr. Sharpe should have given his position. Tr. at 441.

²⁴ Mr. Aylor testified that he had a low view of Mr. Sharpe’s performance based on his observations during the October 3 meeting and his handling of the generator grounding issue, described in more detail below. Tr. at 809.

²⁵ The record includes an email documenting the work that Mr. Sharpe had done to identify other facilities that may have the same condition. Tr. at 122. An October 5, 2022, internal UCOR email drafted by Mr. Sharpe, entitled “Inadequate Neutral Extent of Condition – Supporting Documentation,” was viewed by Mr. Perkins during the hearing, and he testified that it “failed to meet an extent of condition report that [he] would expect to see.” *Id.* at 293–94; Ex. 12. Mr. Perkins testified that an extent of condition requires checking facilities across the site and providing a document outlining the extent of conditions and how they have been addressed. Tr. at 288.

²⁶ Mr. Morgan believed that Mr. Sharpe identified a substantial danger to the safety of employees; however, he testified that he does not have a background in electrical engineering, and he relies upon the expertise of others like Mr. Sharpe.

He also testified that he did not believe the code violations increased the likelihood of a fault. *Id.* at 927–28. Mr. Grundt, who initially reported the condition of Building 3517, also did not think the condition constituted an imminent danger. *Id.* at 958. Mr. Grundt added that if he thought the issue was an imminent danger he would have immediately contacted UT-Battelle to have the power cut. *Id.* at 964. Mr. Gibbs testified that after the October 3 meeting and learning the definition of “imminent danger” as “something[] nearby, close by, close to happening,” he believed Building 3517 did not meet that definition.²⁷ *Id.* at 791. Mr. Gibbs further testified that Mr. Sharpe did not display the urgency in communication that he would expect if the condition was an imminent danger to life or health. *Id.* at 808.

On October 18, 2022, UCOR received a letter from the DOE that requested a Corrective Action Plan (October 18 Letter). Ex. 19. The letter included four bullet points that identified “[r]ecent examples of failures in the UCOR [ESP],” which included (1) that a scaffolding had been erected near an energized power line near a UCOR building which placed workers within ten feet of the line, (2) Mercury Vapor Mapping Equipment for the Savannah River Research Project was not inspected by the EAHJ prior to installation and operation as required by UCOR procedure PPD-EH-2009, (3) the DOE EAHJ had identified a number of electrical grounding issues during inspections, including that UCOR generators were inadequately grounded at UCOR projects at different sites (ORNL, Y-12 National Security Complex, East Tennessee Technology Park), and (4) UCOR had not submitted in writing the names and qualifications of the designated UCOR EAHJ and designated Deputy EAHJ. *Id.* at 1. According to Mr. Perkins, these issues would be UCOR ESP’s responsibility to remedy. Tr. at 304.

Under Mr. Gibbs’s tenure as EAHJ in 2018, UCOR’s predecessor received a letter similar to the October 18 Letter. *Id.* at 770. As a result, Mr. Perkins withdrew a lot of Mr. Gibb’s delegated EAHJ authority. *Id.* Also, Mr. Gibbs’s manager, the analog to Mr. Abelquist, decided that Mr. Gibbs was not competent, and UCOR hired Mr. Sharpe as the ESP manager instead of keeping Mr. Gibbs in the EAHJ position. *Id.* Mr. Gibbs testified that the DOE letters are used by Mr. Perkins to “take back control” in order to ensure that things are being done the way he wants them to be done on site. *Id.* at 771. Mr. Gibbs testified that none of the issues in the October 18 Letter were Mr. Sharpe’s fault. *Id.* at 780. He also testified that the issues identified in the letter during his tenure were not the fault of the ESP. *Id.* at 769–70.

There is significant information in the record regarding UCOR’s and Mr. Sharpe’s view of the issues identified in the October 18 Letter. Regarding the scaffolding, Mr. Sharpe testified that his team was not involved in creating the circumstances listed in the letter. *Id.* at 128. Rather, the responsible D&D workers did not follow procedures to contact ESP before erecting the

Tr. at 394–96. Mr. Abelquist agreed it was a safety concern, but he was not sure whether it was imminent or unlikely. *Id.* at 540.

²⁷ Mr. Gibbs testified that his mind was changed based on the meeting discussion regarding Mr. Sharpe’s characterization of the danger. Tr. at 794.

scaffolding.²⁸ *Id.* Mr. Morgan testified that strengthening the ESP would lead to workers thinking about electrical safety “even if it doesn’t appear that the task is electrical.” *Id.* at 401.

As for the Mercury Vapor Mapping Equipment being installed without ESP inspection, Mr. Sharpe testified that it was Savannah River’s (SR) equipment and they had represented the equipment as being pre-approved; but, in reality, SR brought and installed additional equipment that was not pre-approved and not inspected by the ESP, and this was discovered by Mr. Perkins.²⁹ *Id.* at 131–35. The record demonstrates that Mr. Sharpe had been addressing the noncompliant SR equipment, which is documented by his September 8, 2022, email to Mr. Perkins regarding the status of the issue.³⁰ Ex. 37 at 1–2. However, Mr. Morgan believed that the information contained in the September 8 responses was unsatisfactory. Tr. at 460–62. Mr. Abelquist testified that the SR equipment issue was embarrassing because it made UCOR look like it was not aware of equipment being brought on the site. *Id.* at 587.

Regarding the grounding generators, Mr. Sharpe testified that the issues identified by Mr. Perkins were not code or UCOR procedure violations but rather a “Technical Direction,” which is a direction to do things a certain way even though other options are acceptable under the applicable code or procedures.³¹ *Id.* at 137–38. Mr. Morgan, however, believed that the generator grounding issue resulted from workers not following UCOR’s procedure, and he disagreed it required a technical direction. *Id.* at 373. Mr. Morgan testified that Mr. Sharpe, as the ESP manager, knew about Mr. Perkins’s disagreement with UCOR’s process and failed to meet the expectations of Mr. Perkins, the client, regarding safety code compliance. *Id.* at 374. Mr. Abelquist recalled that Mr. Sharpe had disagreed with Mr. Perkins during meetings on this same generator grounding issue: Mr. Perkins would state that the generators were not installed according to UCOR procedure and question why, and, in response, Mr. Sharpe would dispute that the generators were improperly grounded and assert they were consistent with code. *Id.* at 579. Mr. Abelquist viewed the generator grounding issue as a failure because Mr. Sharpe needed to be in the field making connections and mentoring and coaching so people know about the ESP. *Id.* at 580.

²⁸ Mr. Gutmanis did assist in putting together the Corrective Action Plan in July 2022 that would be the responsibility of D&D. Tr. at 128–29.

²⁹ Mr. Gibbs testified that UCOR’s predecessor allowed the equipment to be installed on site by its workers despite Mr. Gibbs’s guidance as EAHJ that SR needed to do the work themselves because it was SR equipment and SR had its own procedures as a prime contractor. Tr. at 774–75. Mr. Gibbs also testified that at a meeting with Mr. Perkins when Mr. Sharpe was present as the ESP manager, Mr. Perkins laughed and told Mr. Sharpe that the SR equipment is UCOR’s responsibility since UCOR had agreed to install it. *Id.* at 775.

³⁰ The email chain also indicates that Mr. Abelquist asked Mr. Sharpe to reach out to Mr. Perkins to provide information on whether the SR equipment was approved by the ES program. Ex. 37 at 2.

³¹ On October 18, Mr. Sharpe began examining the generators referenced in the October 18 Letter and reported that they were installed according to “code” but not according to Mr. Perkins’s expectation. Ex. 36 at 23–24. Mr. Sharpe asked Mr. Abelquist if they should wait for Mr. Perkins to provide a technical direction before they implemented his expectations in the ESP. *Id.* Mr. Abelquist responded that they should begin drafting the changes to the ESP based on the expected technical direction from Mr. Perkins. Ex. 36 at 22. UCOR eventually addressed the issue by issuing a November 2022 Standing Order that updated the guidance on grounding mobile equipment. Ex. 22 at 8–9.

Lastly, regarding the EAHJ application, Mr. Sharpe testified that he was instructed to submit a truncated version to fast-track its approval. *Id.* at 144. However, it had been rejected outright by Mr. Perkins. *Id.* at 145. Mr. Perkins also agreed to do an informal review of a EAHJ package prior to formally receiving it. *Id.* at 260. Mr. Sharpe submitted three or four applications, and Mr. Perkins rejected them with feedback. *Id.* at 261. Mr. Perkins testified that Mr. Sharpe stated he did not have time to answer all of the EAHJ application questions. *Id.* at 305. Mr. Morgan testified that it was Mr. Sharpe's idea to submit the truncated package, which he and Mr. Abelquist supported, and Mr. Morgan later realized that Mr. Perkins would not accept the package. *Id.* at 382, 384. Mr. Abelquist testified that the back and forth attempts to get the truncated EAHJ application approved in June and August 2022 demonstrated that Mr. Perkins was not going to approve Mr. Sharpe for EAHJ. *Id.* at 589–91. UCOR eventually decided to move ahead with Mr. Gutmanis as EAHJ instead of Mr. Sharpe, and UCOR submitted the entire package, which took very little time because Mr. Gutmanis had already been previously approved and therefore only needed to update the application. *Id.* at 592–93. Mr. Gibbs added additional context by testifying that it took him about a month to complete the 500-question EAHJ application package. *Id.* at 779. He testified that he never submitted an abbreviated package and neither had anybody else prior to the arrival of Mr. Morgan and Mr. Abelquist, and they asked him to submit an abbreviated application for a different position. *Id.* at 785–86.

The record contains additional evidence regarding the relationship between Mr. Sharpe and Mr. Perkins. Mr. Gibbs testified that Mr. Sharpe had been argumentative with Mr. Perkins and others at UCOR. *Id.* at 787. Mr. Gibbs stated that Mr. Sharpe was outspoken about safety issues and could be “abrasive.” *Id.* at 783–84. Mr. Perkins stated he had no problem with Mr. Sharpe, but he did not go so far as to say they worked well together. *Id.* at 266. Mr. Perkins stated that electricians can be blunt, and he did not consider Mr. Sharpe unprofessional. *Id.* at 266–67. Neither Mr. Gutmanis nor Mr. Grundt considered Mr. Sharpe unprofessional. *Id.* at 943, 975.

There is no dispute that after UCOR received the October 18 Letter, it began the process to terminate Mr. Sharpe. Mr. Abelquist recommended termination on October 19. *Id.* at 386. He testified that the October 18 Letter brought into relief that the ESP issues had been outstanding for a while and that they were not making progress convincing DOE that the ESP had improved. *Id.* at 577. He did not have confidence in Mr. Sharpe leading the corrective actions required by the October 18 Letter because “[Mr. Sharpe] was part of a number of the reasons why the program was failing.” *Id.* Despite the progressive nature of the Discipline Policy, Mr. Abelquist believed that Mr. Sharpe's termination was warranted based on the Written Warning and the October 18 Letter. *Id.* at 609.

Ms. Douglass testified that her supervisor, Charlie Malarkey,³² spoke with Mr. Abelquist and afterward told Ms. Douglass that they would hold a Discipline Review Board (DRB) for Mr. Sharpe. *Id.* at 646. According to the Discipline Policy, the DRB is composed “of individuals who review a proposed termination, suspension, or any compensatory-related disciplinary action taken by [UCOR] affecting an employee.” Ex. 70 at 3. The DRB met on October 26, 2022. Ex. UUU at 1 (DRB minutes). Mr. Malarkey testified that the voting members of Mr. Sharpe's DRB were Tom

³² Mr. Malarkey is the administrative services manager that manages labor relations and human resources and benefits. Tr. at 845–46.

Dieter, Chief Operating Officer, Mr. Abelquist, and himself. Tr. at 848; Ex. UUU. Also in attendance were Mr. Morgan, Alex Nicoll (Legal), and Ms. Douglass. Ex. UUU at 2.

According to Ms. Douglass, the DRB discussion focused on Mr. Sharpe's lack of leadership and failed relationship with Mr. Perkins. Tr. at 649. Mr. Malarkey recalled that the DRB focused on Mr. Sharpe not meeting performance expectations and deliverables outlined by management, including his difficulty with Mr. Perkins. *Id.* at 850, 852. Ms. Douglass testified that the DRB also discussed the CAMS and the concern that Mr. Sharpe did not believe that it was his responsibility to complete the assignment. *Id.* at 653–54. They also discussed moving Mr. Sharpe to a different role, but Ms. Douglass testified that his unwillingness to improve performance coupled with his senior level manager salary weighed against that. *Id.* at 648.

The DRB also determined that Mr. Sharpe had not improved his performance despite coaching and the Written Warning. *Id.* at 483. Ms. Douglass testified that step one of the UCOR progressive discipline was satisfied by Mr. Morgan's coaching. *Id.* at 636. Ms. Douglass conceded that Mr. Sharpe was not provided an improvement deadline with his Written Warning, as required by the Discipline Policy. *Id.* at 637–38. However, Ms. Douglass testified that the expectation was that his performance would change immediately given his position and the visibility of the program because his leadership was essential to UCOR's success. *Id.* at 638–39; Ex. 70 at 2. Although, the Written Warning instructs that the behavior is to change "immediately." *See supra* at 13 (citing Ex. 12). Ms. Douglass also testified that Mr. Sharpe was not given a final warning because his relationship with Mr. Perkins was deteriorating, and the DRB decided to just remove him. Tr. at 643–44. Ms. Douglass testified that as a leader, Mr. Sharpe needed to respect Mr. Perkins and provide positive customer interface because it is important to the business of UCOR because DOE pays the bills. *Id.* at 673. She testified that Mr. Sharpe calling Mr. Perkins an idiot at the Written Warning meeting made it clear that it was appropriate to terminate him regardless of the timing of the decision. *Id.* at 656. Ms. Douglass also confirmed that the Discipline Policy allows UCOR to bypass any step of the policy. *Id.* at 677. Mr. Abelquist stated that the filing of the CAMS had nothing to do with the DRB decision to terminate. *Id.* at 605.

The DRB memorandum reflects UCOR's decision to terminate Mr. Sharpe and stated the following:

- The DRB was provided "multiple examples of unprofessional emails" sent by Mr. Sharpe to "various staff as well as DOE."
- Mr. Sharpe failed to "'step up' in his role and demonstrate his willingness to work with" electricians and DOE.
- Mr. Sharpe "failed to establish rapport with subordinates and others needed . . . to get work done."
- Mr. Sharpe "exhibited frustration" with Mr. Perkins and "failed to communicate with him in a professional manner" on several occasions, and Mr. Sharpe had been verbally counseled on this performance item and received a Written Warning detailing where he needed improvement.

- Mr. Morgan and Mr. Abelquist had “both reiterated their expectations” to Mr. Sharpe “in his senior leadership role.”

Ex. 125 at 3. Mr. Abelquist recalled that Mr. Sharpe did attempt to make improvements and provided the example of Mr. Sharpe generally making an effort to improve the Electrical Safety Meetings. Tr. at 572.

On October 26, 2022, Mr. Abelquist and Ms. Douglass met with Mr. Sharpe and let him know his employment with UCOR had been terminated. *Id.* at 150. Mr. Abelquist stated, “it’s just not working out.” *Id.* at 151. The conversation focused on Mr. Perkins and the October 18 Letter. *Id.* Mr. Sharpe did not have the opportunity to defend himself during the meeting because it was ended very quickly by Ms. Douglass. *Id.* at 152. Mr. Sharpe testified that he had very little interaction with his supervisors after October 18, 2022. *Id.* at 149. He testified that he “got along with [Mr. Abelquist and Mr. Morgan] just fine” up until he reported issues with Building 3517. *Id.* at 44.

A UCOR Discipline Log covering July 2020 through April 2023 indicates that out of the seven workers identified as being disciplined in that timeframe besides Mr. Sharpe, UCOR only terminated one, and the reasons for that termination was “extremely serious misconduct” for “[f]ailure to properly manage . . . craft workforce.” Ex. 67. However, the Discipline Log also does not list Mr. Sharpe’s termination despite it occurring prior to April 2023. *Id.* Ms. Douglass testified that the reason for Mr. Sharpe’s termination was not misconduct but rather unsatisfactory performance. Tr. at 661. The Discipline Policy categorizes unsatisfactory work performance as “misconduct” and explains that UCOR “may impose any level of discipline including termination, depending on the facts of the particular case.” Ex. 70 at 7.

IV. Analysis

A. Alleged Protected Disclosures

In order for a complainant’s disclosure to be protected under Part 708, he must show by a preponderance of the evidence that he disclosed information to a DOE official, his employer, or other appropriate individual that he reasonably believed revealed (1) a substantial violation of law, rule, or regulation; (2) a substantial and specific danger to employees or to public health or safety; or (3) fraud, gross mismanagement, gross waste of funds, or abuse of authority. 10 C.F.R. § 708.5(a). The reasonableness of a complainant’s beliefs under Part 708 is assessed from the perspective of a disinterested person with knowledge of the essential facts known to and readily ascertainable by the complainant. *Dr. Shou-Yuan Zhang*, OHA Case No. WBA-16-0006 at 5 (2017).

In the Complaint, Mr. Sharpe alleges that in disclosing the issues with the condition at Building 3517, he was not only disclosing a violation of applicable code and regulation, but that based on the information he gathered regarding the condition, followed by the calculations he completed pursuant to the applicable IEEE Std. 80, he was also disclosing a potential electrocution hazard to personnel around or in the building should a fault occur. Accordingly, he argues that he disclosed a substantial violation of a law, rule, or regulation and a substantial and specific danger.

Mr. Sharpe alleges he made this disclosure on four separate occasions: in the August 3, 2022 CAMS entry, during the September 20, 2022, meeting, during the September 22, 2022, phone call, and during the October 3, 2022, meeting.³³ I find that Mr. Sharpe reported the condition of Building 3517 to his employer by submitting the CAMS entry on August 3, 2022, thereby formally logging the information into UCOR's standardized database for noncompliance and safety issues to be reviewed and resolved by corrective action. I also find he reported and discussed the same information during the September 20, 2022, and October 3, 2022, meetings. The record is clear that those meetings were for the purpose of discussing the condition at Building 3517 and Mr. Sharpe's reported concerns. However, the record is not as clear regarding what was discussed during the September 22 phone call with Mr. Perkins other than Mr. Sharpe attempting to convince Mr. Perkins, a DOE official, that the condition presented an imminent danger. Given the lack of evidence in the record, I am unable to find that Mr. Sharpe reported the previously disclosed code and regulatory violations during the phone call. I analyze the remaining factors below.

1. Substantial violation of a law, rule, or regulation

The preponderance of the evidence demonstrates that Mr. Sharpe reasonably believed he disclosed a substantial violation of a law, rule, or regulation. There is no dispute that Mr. Sharpe has technical expertise in the subject of his disclosure. Mr. Sharpe holds a degree in Engineering Science and is a licensed Professional Engineer. As manager of UCOR's ESP, Mr. Sharpe was their subject matter expert responsible for ensuring electrical safety and therefore compliance with the NEC and NFPA 70E, which UCOR was required to follow under 10 C.F.R. § 851.23.

Prior to filing the CAMS, Mr. Sharpe discussed the condition at Building 3517 with three other electrical engineers at UCOR: the engineer who discovered the condition of Building 3517, an engineer who served as a former EAHJ, and the engineer who became EAHJ after Mr. Sharpe's termination. All agreed that the condition at Building 3517 violated applicable electrical code and presented a condition that needed to be rectified. Mr. Grundt specifically stated that Building 3517 was not code-compliant in his July email that initially reported the condition.

Mr. Sharpe also reported specific detail to justify his opinion that the building condition presented code violations by describing that UT-Battelle changed the power system so that it required a neutral and no neutral was present, the conductor appeared to be undersized, and the pipe clamp over the painted conduit may not have been able to carry the secondary fault current. There is no testimony in the record to dispute Mr. Sharpe's explanation that the absence of the neutral at the grounded conductor system violated NEC section 250.24(C), that the grounding conductor size violated NEC section 250.24(C)(2), and that the ground clamp over paint violated NEC section 250.12. Since the NEC is applicable to UCOR as a contractor under 10 C.F.R. § 851.23, I find that Mr. Sharpe reasonably believed that he was reporting a substantial violation of a regulation when he submitted the CAMS to report the condition of Building 3517, and when he reported the same information at the September 20 and October 3 meetings.

³³ In Mr. Sharpe's closing argument, submitted by brief, he asserts that several other emails and communications he made regarding the condition of Building 3517 constituted protected disclosures as well. Mr. Sharpe's Closing Brief at 1-4 (November 13, 2023). Since they are not identified in the Complaint, I will not specifically analyze whether Mr. Sharpe met his burden to demonstrate that these disclosures were protected.

2. Substantial and specific danger

i. Submitting the CAMS

While Mr. Sharpe presents evidence that he believed that he was reporting a substantial and specific danger to personnel, there is significant evidence that undercuts his assertion to the same.

The inquiry into whether a disclosed danger to employees or the public is sufficiently “substantial and specific” to warrant protection under Part 708 is guided by several factors, including (1) the likelihood of harm resulting from the danger, (2) when the alleged harm may occur, and (3) the nature of the harm, *i.e.*, the potential consequences. *Brien Williams*, OHA Case No. WBH-22-0003 at 11 (2022) (citing *Dennis Rehmeier*, OHA Case No. TBU-114 at 4 (2011)).

Mr. Sharpe asserted that he performed a step potential calculation pursuant to IEEE Std. 80 and concluded that the conditions presented a potential electrocution hazard to individuals in and around the building. Mr. Sharpe and several other witnesses agreed that there could be a shock hazard or even death under particular fault circumstances. Thus, there is no dispute that if the danger Mr. Sharpe reported occurred, it could have resulted in extreme consequences to people near or around Building 3517. However, the preponderance of the evidence demonstrates a low likelihood of harm resulting from the danger because it was unlikely that the condition that could cause an actual injury or death would occur.

While the record is clear that Mr. Sharpe stated the condition at Building 3517 presented an imminent danger during the September 20, 2022, meeting, to Mr. Perkins over the phone on September 22, and during the October 3 meeting, the record is also clear that several electrical engineers disagreed with or seriously questioned that determination. Not one member of Mr. Sharpe’s team agreed with him that the danger was “imminent.” Mr. Gutmanis testified the danger was not “impending,” Mr. Grundt testified the danger was not imminent, Mr. Gibbs testified that the harm was not “close to happening,” and Mr. Strom disagreed with Mr. Sharpe and testified that imminent danger would only be present under specific circumstances. A fault would need to occur first in order for a step potential to exist. Even Mr. Sharpe testified that, typically, faults occur in very rare circumstances. While Mr. Sharpe qualified this statement by asserting that the condition of the insulation at Building 3517 increased the likelihood of a fault, Mr. Gutmanis testified that the condition did not increase the chance of fault occurring.

Based on the record, I find that the likelihood of harm resulting from the condition of Building 3517 was relatively low because the danger described by Mr. Sharpe was unlikely to occur. And even if a fault did occur to the degree that it presented a danger, only people near the building would be in the hazard area described by Mr. Sharpe, and the building was unoccupied at the time, which further reduced the likelihood that harm would result from the danger.

I also find that Mr. Sharpe’s disclosure did not identify when the harm may occur. While Mr. Sharpe’s assertion that the danger was “imminent” provided specificity, he did not immediately take action to address the condition and instead reported options and potential solutions from early August until the meeting on September 20, 2022. I am persuaded by Mr. Gibbs’s testimony that Mr. Sharpe did not display the urgency consistent with concern for an imminent danger to life or injury. I am also persuaded by Mr. Perkins’s testimony that an imminent danger or threat to safety

would require immediate action to save the lives of and prevent injury to other workers. Mr. Morgan, Mr. Sharpe's supervisor, had the same expectation and testified that Mr. Sharpe had the ability to enter a work order to address the issue. Mr. Grundt, who originally identified the problem, asserted that he would have taken immediate action to have the power shut off if he thought the danger was imminent, which also suggests that Mr. Sharpe had the same ability. I find that Mr. Sharpe did not take action consistent with his characterization of the danger, which undercuts his claim that he reasonably believed the danger was imminent. Therefore, I do not find the evidence sufficient to conclude that Mr. Sharpe disclosed when the harm may occur.

Considering the entire record before me, I conclude that Mr. Sharpe did not reasonably believe he was disclosing a substantial and specific danger at any time he reported the condition in Building 3517.

ii. Disclosing his concern about being assigned the CAMS

Mr. Sharpe alleges in the Complaint that, by complaining to Mr. Morgan and Mr. Abelquist that the CAMS was assigned to him instead of the group responsible for implementing the corrective activities, Mr. Sharpe was disclosing a serious safety concern because UCOR's "failure" to appropriately assign the CAMS meant that "necessary remedial action would be delayed, further increasing the likelihood of injury or death upon equipment failure." Ex. 95 at 10–11. I find insufficient evidence in the record to conclude that Mr. Sharpe reasonably believed that UCOR assigning him the CAMS created a substantial and specific danger. As an initial matter, as I found in the preceding section, Mr. Sharpe did not reasonably believe the condition of Building 3517 presented a substantial and specific danger to begin with. But even supposing he did, assigning the CAMS to Mr. Sharpe would certainly not increase the likelihood of danger resulting from the condition, but rather decrease it, since he would be responsible for remedying the condition that had not yet been addressed. Accordingly, I conclude that Mr. Sharpe's disclosure that assigning the CAMS to him increased the likelihood of injury or death from the condition of Building 3517 is not a disclosure that conveyed a reasonable belief of a substantial and specific danger.

B. Alleged Retaliation

In addition to demonstrating that he engaged in protected conduct by disclosing a substantial violation of a regulation, he must also show that the protected conduct was a contributing factor in one or more acts of retaliation by UCOR. 10 C.F.R. § 708.29. OHA has previously concluded that, absent direct evidence of retaliation, an employee may meet his burden through circumstantial evidence by showing that the personnel who engaged in the alleged retaliatory acts had actual or constructive knowledge of the protected disclosures and that there was temporal proximity between the disclosures and the retaliation. *Denise Hunter*, OHA Case No. WBH-12-0004 at 10 (2013). The two acts of retaliation alleged in the Complaint are the Written Warning and termination.

1. Written Warning

Mr. Sharpe alleged that UCOR retaliated against him on September 22, 2022, when it issued the Written Warning. Ex. 95 at 14. However, as stated earlier, "[a] complaint must be filed by the 90th day after the date the employee knew, or reasonably should have known, of the alleged retaliation." 10 C.F.R. § 708.15. Accordingly, Mr. Sharpe's Complaint regarding this alleged act of retaliation

is untimely because it occurred more than ninety days prior to January 18, 2023, the date Mr. Sharpe filed the Complaint. As such, I am dismissing those claims in the Complaint that allege the Written Warning to be an act of retaliation. 10 C.F.R. § 708.28(b)(5).

2. Termination

As indicated above, Mr. Sharpe alleged that he was also terminated in retaliation for disclosing the condition of Building 3517. Ex. 95 at 14. There is no dispute that Mr. Morgan and Mr. Abelquist had actual knowledge of Mr. Sharpe's protected disclosure because there is no dispute that Mr. Morgan and Mr. Abelquist were aware of Mr. Sharpe's August 3, 2022, CAMS and the resultant meetings and emails discussing how to resolve the reported condition. Furthermore, Mr. Abelquist and Mr. Morgan participated in the October 26, 2022, DRB meeting, albeit in different capacities. Mr. Abelquist, as a voting member of the DRB, knew about Mr. Sharpe's CAMS entry. There is also evidence in the record, through Ms. Douglass's testimony, that the DRB considered the fact that Mr. Sharpe had filed a CAMS, which demonstrates the members of the DRB had actual knowledge of Mr. Sharpe's disclosure. The DRB reached the unanimous decision to terminate Mr. Sharpe. Accordingly, I find that the members of the DRB had knowledge of Mr. Sharpe's alleged protected disclosure at the time they decided to terminate his employment.

Mr. Sharpe was terminated on October 26 following the DRB meeting, eighty-four days after filing the August 3, 2022, CAMS entry. These facts are not in dispute. OHA previously found sufficient temporal proximity in cases where the alleged acts of retaliation occurred less than one year after the protected activity. *See Luis P. Silva*, OHA Case No. VWA-0039 (2000) (finding that eight months was sufficiently proximate in time). Accordingly, it appears that Mr. Sharpe's termination took place within a sufficiently proximate timeframe after his protected disclosure.

Accordingly, I find that Mr. Sharpe has met his burden to show that his CAMS entry disclosing the condition of Building 3517 was a contributing factor to his termination by showing that the UCOR personnel who engaged in the alleged retaliatory act had actual knowledge of his protected disclosure and there is temporal proximity between his disclosure and termination.

C. Assertions of Discipline for Cause Notwithstanding the Disclosure

Given that Mr. Sharpe has met his burden under Part 708 to establish that his protected activity was a contributing factor to an act of retaliation, *i.e.*, his termination, the burden shifts to UCOR to prove by clear and convincing evidence that it would have taken the same action regardless of his protected disclosure. 10 C.F.R. § 708.29. Clear and convincing evidence is that measure or degree of proof that produces in the mind of the trier of fact a firm belief as to the allegations sought to be established. *See David L. Moses*, OHA Case No. TBH-066 (2008). If UCOR meets its burden, Mr. Sharpe's allegation of retaliation for whistleblowing is defeated despite evidence that the protected disclosure was a contributing factor to the alleged retaliation. *Denise Hunter*, at 13.

It is well settled that several factors may be considered in determining whether an employer has shown, by clear and convincing evidence, that it would have taken the alleged act of retaliation against an employee in the absence of that employee's protected conduct. Among those factors are (1) the strength of the employer's reasons for the personnel action excluding the whistleblowing, (2) the strength of any motive to retaliate for the whistleblowing, and (3) any evidence of similar

action against similarly situated employees. *Anthony T. Rivera*, OHA Case No. WBA-17-0010 at 24 (citing *Kalil v. Dep't of Agric.*, 479 F.3d 821, 824 (Fed. Cir. 2007)). I examine each *Kalil* factor below.

1. The strength of the employer's reasons for the personnel action absent the disclosure

Turning to the first factor, UCOR provides significant evidence to support its assertion that UCOR was not satisfied with Mr. Sharpe's performance as the ESP manager and as a senior leader. First, Mr. Morgan's testimony demonstrates that he had been trying to improve Mr. Sharpe's performance by providing feedback and suggestions as early as March 2022, approximately five months before Mr. Sharpe filed the CAMS. He also documented his efforts with hand-written notes. Mr. Morgan testified that Mr. Sharpe was his worst performing manager and characterized his feedback at their weekly meetings as "coaching." For example, he provided feedback on assignments that were not being completed in a timely fashion, including completing the job posting for Mr. Wilson and making progress on the EAHJ application. Mr. Abelquist also attended these meetings, which indicates they were genuinely concerned about Mr. Sharpe's performance, since Mr. Abelquist was Mr. Morgan's supervisor. While Mr. Sharpe denied any coaching, he admitted that Mr. Abelquist asked him at a meeting whether he was going to be a "team player." Although Mr. Sharpe asserted that this was "bizarre" and "may" have been a suggestion to not file any more CAMS, I do not find this characterization persuasive as there is no additional evidence to directly support this assertion and Mr. Sharpe did not provide any additional context. On the contrary, it is more consistent with Mr. Morgan's narrative of seeking to improve Mr. Sharpe's performance in that Mr. Abelquist was asking for Mr. Sharpe's buy-in. And Mr. Morgan testified that he was often unsure whether Mr. Sharpe agreed with his feedback or just placated him.

The Shifting Focus Email and attachment also documents Mr. Morgan's attempt to improve the ESP and Mr. Perkins's negative view of it. That document provided goals and metrics for Mr. Sharpe to establish that UCOR owns electrical safety "through influence, rather than policing," establish and maintain constructive partnerships, and have "Best-in-Complex" ESP implementation. Mr. Sharpe's assertion that these metrics were merely to change the perception of the ESP as opposed to actually improving safety, even if accepted as true, does not detract from the fact that UCOR wanted to see a change in the ESP, and it demonstrates a misalignment between Mr. Sharpe and UCOR leadership prior to Mr. Sharpe's CAMS.

I also find persuasive the testimony that Mr. Morgan and Mr. Abelquist considered Mr. Sharpe's response to being assigned the CAMS as an example of his unwillingness to take responsibility and demonstrate leadership. The record demonstrates that Mr. Sharpe disclosed the electrical safety issue at Building 3517 to a broad audience, recommended options to resolve the issue, and then filed a CAMS to formally document the issue for resolution. He knew somebody would have to take responsibility for it. I find it puzzling that he then declared that being assigned responsibility for overseeing the resolution of the CAMS was punishment, and that he had no ability to direct the workers under Mr. Strom to resolve the issue. On the contrary, once he scheduled the September 20 meeting to discuss his concerns, the meeting resulted in an agreed-upon path forward to resolve those concerns, which Mr. Strom's team implemented despite the fact that Mr. Strom and others disagreed with Mr. Sharpe's view of the danger. Thus, Mr. Sharpe did in fact have the ability to resolve the issues he reported in the CAMS, not to mention the always-present ability to enter a work order for those issues. Accordingly, I find that Mr. Sharpe's initial attempt to avoid the CAMS

assignment and the way he communicated it prompted Mr. Morgan to reach out to HR regarding Mr. Sharpe's performance. Furthermore, while it is true that Mr. Morgan and Mr. Abelquist did not assist Mr. Sharpe in working with Mr. Strom leading up to September 20, this conduct is consistent with their expressed expectation that Mr. Sharpe should be able to successfully work with other managers and demonstrate leadership through influence as opposed to through formal or "policing" authority.

The record also contains significant evidence of the negative opinion other UCOR employees had of Mr. Sharpe's work performance that corroborate Mr. Morgan's and Mr. Abelquist's concerns about Mr. Sharpe's performance. Mr. Wilson noted Mr. Sharpe's relative absence from the field. This supports Mr. Morgan's concern that Mr. Sharpe had not worked to build relationships in the field. Mr. Garcia was so bothered by Mr. Sharpe disturbing a DOE assessment that Mr. Garcia immediately reported it to Mr. Morgan. Mr. Aylor stated that he had a poor opinion of Mr. Sharpe's performance based on observing Mr. Sharpe's interactions with Mr. Perkins. Ms. Douglass observed Mr. Sharpe refer to Mr. Perkins as an idiot, which made it clear in her mind that he was not a good fit for UCOR. Mr. Strom testified that Mr. Sharpe had a nickname amongst the employees that mocked his competency. Finally, even Mr. Gibbs, who testified that Mr. Sharpe was a pretty good supervisor, stated that Mr. Sharpe could be abrasive and had been argumentative with Mr. Perkins and others.

UCOR alleged that Mr. Sharpe's attitude toward Mr. Perkins was an important part of UCOR's decision to terminate Mr. Sharpe. The record strongly supports this assertion. Mr. Perkins was often referred to as UCOR's customer. Mr. Perkins essentially represented DOE. There is no question that Mr. Perkins was considered an important figure for UCOR's success. Ms. Douglass put it succinctly: DOE pays the bills. Mr. Perkins wielded significant power in that he had approval authority over the ESP and he could require UCOR to submit Corrective Action Plans. The need for Mr. Sharpe to work successfully with Mr. Perkins was specifically identified in the Shifting Focus Email: maintaining "constructive partnerships" and the "Client[']s]" trust in ESP leadership. Mr. Sharpe was specifically told during the September Written Warning meeting to improve his relationship with Mr. Perkins. Despite UCOR's expressed expectations, Mr. Sharpe's performance on October 3 embarrassed UCOR staff and leadership. Even if Mr. Sharpe had a reasonable excuse for being unprepared to communicate the extent of condition related to Building 3517 at the October 3 meeting, Mr. Morgan and Mr. Abelquist still observed him fail to convince Mr. Perkins and the other participants of his opinion regarding the danger. The record also demonstrates that Mr. Morgan and Mr. Abelquist had concerns about Mr. Sharpe's ability to work with Mr. Perkins to successfully address the problems identified in the October 18 Letter, which Mr. Abelquist and Mr. Perkins testified that the ESP would be responsible for addressing. Although Mr. Sharpe denied he had a problem working with Mr. Perkins, there is evidence that Mr. Sharpe was confrontational with Mr. Perkins and outright told his leadership he could not work with Mr. Perkins. Furthermore, while Mr. Perkins denied he had difficulty working with Mr. Sharpe, Mr. Perkins fell short of stating that they worked well together. Further still, their divergent responses to the October 18 Letter demonstrates that UCOR leadership and Mr. Sharpe did not have the same view of DOE's critique of UCOR's ESP. Mr. Morgan and Mr. Abelquist viewed the issues cited in the October 18 Letter as problems that needed to be resolved by ESP while Mr. Sharpe placed the blame elsewhere. Mr. Morgan characterized the scaffolding issue as resulting from a lack of ESP visibility, the grounding issue as a failure of the ESP to provide guidance to ensure compliance with its procedures, and the EAHJ application failure as Mr. Sharpe's inability to take leadership over the

task. Mr. Sharpe believed that the scaffolding issue was the problem of D&D, the grounded generators did not present a code violation, and his failure to submit an approved EAHJ package was due to his leadership telling him to attempt an abbreviated package. It is clear that UCOR and Mr. Sharpe had misaligned perspectives regarding the ESP and Mr. Sharpe's relationship with Mr. Perkins, which supports UCOR's assertion that it had a non-retaliatory justification for removing Mr. Sharpe as the ESP manager.

Based on my above findings, I conclude there is strong evidence that UCOR leadership was dissatisfied with Mr. Sharpe's performance unrelated to his protected disclosure.

2. The strength of any motive to relate for the alleged whistleblowing

Turning to the second factor, the strength of any motive to retaliate for the alleged whistleblowing, Mr. Sharpe asserted that UCOR retaliated against him for his protected disclosure because of Mr. Perkins's response to it. *See* Mr. Sharpe's Initial Brief at 3–4 (June 2, 2023) (stating that UCOR was motivated to retaliate because Mr. Sharpe took “steps to correct the danger and violations of regulations”), Mr. Sharpe's Memorandum in Opposition to Summary Judgment at 24–25 (October 16, 2023) (stating it was UCOR's “knee jerk reaction to [Mr.] Perkins getting upset at [Mr.] Sharpe due to the CAMS and steps taken to mitigate the issues at Building 3517 that led to [UCOR's] illegal retaliation . . .”), *and* Mr. Sharpe's Closing Brief at 1–10 (November 13, 2023) (stating that UCOR had a “retaliatory knee-jerk reaction to find any excuse to fire [Mr.] Sharpe after he made protected disclosures”).

An employee disclosing regulatory or safety violations may arguably provide management with a motive to retaliate against them. This may well be the case when an employee formally documents, as in Mr. Sharpe's case, violations of federal regulations. Mr. Sharpe provided an example of that alleged motive in that UCOR was motivated to retaliate against him because his report of the condition of Building 3517, which was based on the same information submitted in his CAMS, met resistance from Mr. Perkins.

There is no dispute that Mr. Perkins questioned the actions UCOR took to resolve the condition at Building 3517 on September 22, 2022, and disagreed with Mr. Sharpe's categorization of Building 3517 as an imminent danger during the October 3, 2022, meeting. Furthermore, the record is clear that UCOR leadership was concerned with Mr. Perkins's opinion of the ESP. Mr. Perkins's perception of the ESP undoubtedly impacted Mr. Morgan's and Mr. Abelquist's perception of the ESP's performance. As the previous EAHJ, Mr. Gutmanis described how Mr. Perkins could snatch back the EAHJ powers if he was unhappy with the ESP. UCOR leadership was aware of the same. This dynamic, therefore, presented a retaliatory motive in that UCOR may have wanted to disincentivize Mr. Sharpe -- or any other employee -- from reporting unsafe conditions or code violations in order to avoid the displeasure of Mr. Perkins and any resultant consequences. The timing of the Written Warning provides circumstantial support for the existence of a retaliatory motive. It came right after Mr. Perkins learned about the mitigation efforts UCOR took to address the condition of Building 3517 based on Mr. Sharpe's description of the circumstances.

However, the strength of UCOR's motive is undercut by a few factors. First, there is significant evidence that Mr. Perkins and others questioned the claimed severity of the condition at Building 3517, not whether it presented code violations or electrical hazards that needed to be resolved. As

explained in the preceding section, none of the other witnesses agreed with Mr. Sharpe's opinion of the imminent danger presented by the condition of Building 3517. Mr. Perkins's concern and disagreement with Mr. Sharpe's opinion regarding Building 3517 went to Mr. Sharpe's assertion of the severity of the condition and the actions taken to address it, not the fact that Mr. Sharpe had reported the condition itself. Thus, UCOR would not have a particularly strong incentive to retaliate against Mr. Sharpe for reporting code or regulatory violations because Mr. Perkins did not appear to have a negative reaction to that information. Second, hundreds of CAMS are filed each year. Several other employees, and even Mr. Sharpe himself, had filed CAMS in the past. Two of those employees, Mr. Gibbs and Mr. Gutmanis, also carried the title of EAHJ. Not one of these employees besides Mr. Sharpe stated that they had any concerns or experienced negative consequences as a result.³⁴ Their testimony, instead, supports the viewpoint described by Mr. Morgan and Mr. Abelquist that UCOR did not have a negative reaction to employees filing CAMS, including Mr. Sharpe's entry. Based on my above reasoning, I find that UCOR did not have a very strong motive to retaliate against Mr. Sharpe for his protected disclosure.

3. Any evidence of similar action against similarly situated employees

There is evidence that UCOR decided to not continue with Mr. Gibbs as the EAHJ after it received a DOE letter that highlighted deficiencies with the ESP. Thus, like Mr. Sharpe, Mr. Gibbs suffered a negative employment action, albeit not as severe as termination, upon receipt of a DOE letter critiquing the ESP. While there is no evidence regarding any other concerns UCOR had regarding Mr. Gibbs's performance, he had already obtained the designation of EAHJ, something that Mr. Sharpe had been unable to achieve.

I have also considered the evidence that UCOR did not follow its incremental disciplinary process for Mr. Sharpe, but rather fast-tracked his discipline. Only approximately two months elapsed between Mr. Morgan's first email to HR in August and UCOR's decision to terminate Mr. Sharpe in October. Even though the Discipline Policy explains that following each incremental step is not mandatory, one would expect an adequate justification for not following the policy's general guidance in Mr. Sharpe's case, especially if there were other similarly situated employees where leadership closely followed the Discipline Policy's progressive steps. However, there is no evidence regarding whether management treated Mr. Sharpe any differently in this regard. Above, I found that UCOR documented its concerns with Mr. Sharpe's performance beginning in March 2022 and ultimately decided that Mr. Sharpe was not the right person to lead the ESP. Ms. Douglass explained that Mr. Sharpe's position as a senior leader for a visible program, the challenges of addressing behavioral issues with senior leaders, and management's desire to escalate the process to termination resulted in a condensed disciplinary process. Thus, while the evidence tends to show that UCOR had a non-retaliatory justification for not following the Discipline Policy, there is no evidence to show that the policy was similarly disregarded as to other similarly situated employees.

Additionally, the Disciplinary Log demonstrates that the only other employee identified as being terminated was fired for "extremely serious misconduct." This categorization is more severe than unsatisfactory performance, which is the reason given for Mr. Sharpe's termination, but there is no

³⁴ I have considered that Mr. Sharpe expressed during a February 2022 meeting with Mr. Morgan that assigning CAMS can create a chilling effect. Because there is no additional context provided nor any evidence that Mr. Sharpe's statement was in response to him or anybody else being assigned a CAMS, it does not disturb my finding.

additional context for this designation. The Discipline Policy also appears to be incomplete, and therefore has minimal evidentiary value regarding similarly situated employees.

Based on the above, I conclude that the third factor is neutral. The evidence of Mr. Gibbs being removed as EAHJ demonstrates that UCOR had previously removed the leader of the ESP based on receiving a DOE letter, but his consequence was not as severe as Mr. Sharpe's termination. UCOR did not put evidence forward to demonstrate that they treated Mr. Sharpe similarly to employees who may have been similarly situated.

Based on the above analysis of the three *Kalil* factors, I conclude that UCOR demonstrated by clear and convincing evidence that it would have taken the same action against Mr. Sharpe irrespective of his protected activity. There is strong evidence that UCOR terminated Mr. Sharpe based on concerns with Mr. Sharpe's performance as a senior leader. There is also strong evidence that UCOR was relatedly concerned about Mr. Sharpe's contentious relationship and ability to work with Mr. Perkins, the main representative of UCOR's customer. And Mr. Sharpe's inability to handle the Building 3517 condition in line with UCOR's expectations was one more factor that made UCOR leadership question whether Mr. Sharpe was the right person to be UCOR's ESP manager and EAHJ. By contrast, there is very little evidence to demonstrate UCOR had a strong motive to retaliate against Mr. Sharpe for his protected disclosure. Ultimately, and for non-retaliatory reasons, UCOR decided that Mr. Sharpe was not the right person to lead UCOR's ESP.

V. Conclusion

It is therefore ordered that the Complaint by Mr. Sharpe is hereby denied.

This is an Initial Agency Decision, which shall become the Final Decision of the Department of Energy unless a party files a notice of appeal by the fifteenth day after the party's receipt of the Initial Agency Decision, in accordance with 10 C.F.R. § 708.32.

James P. Thompson III
Administrative Judge
Office of Hearings and Appeals