United States Department of Energy
Office of Hearings and Appeals

In the Matter of Dalena Tripplet	)	
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Filing Date: June 12, 2023	)	Case No. WBA-23-0003
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	)	

Issued: June 5, 2024

Decision and Order

This Decision concerns the appeal (Appeal) filed by Dalena Tripplet (Appellant) of an initial agency decision (IAD) by an Administrative Judge of the United States Department of Energy's (DOE) Office of Hearings and Appeals (OHA). The IAD denied Appellant's complaint of retaliation against her former employer, Hanford Mission Integration Solutions, LLC (HMIS), a management and operating contractor at DOE's Hanford Site, under DOE's Contractor Employee Protection Program codified at Part 708 of Title 10 of the Code of Federal Regulations (Part 708). Appellant challenges the Administrative Judge's conclusion that she failed to establish that she made a protected disclosure under Part 708, and therefore did not meet her burden to demonstrate that such a disclosure was a contributing factor in one or more acts of alleged retaliation by HMIS. For the reasons set forth below, Appellant's Appeal is denied.

I. The DOE Contractor Employee Protection Program

DOE's Contractor Employee Protection Program was established to safeguard "public and employee health and safety; ensur[e] compliance with applicable laws, rules, and regulations; and prevent[] fraud, mismanagement, waste and abuse" at DOE's government-owned, contractor-operated facilities. *See* Criteria and Procedures for DOE Contractor Employee Protection Program, 57 Fed. Reg. 7,533 (Mar. 3, 1992). Its primary purpose is to encourage contractor employees to disclose information which they believe exhibits unsafe, illegal, fraudulent, or wasteful practices and to protect those "whistleblowers" from consequential reprisals by their employers.

The Part 708 regulations prohibit retaliation by a DOE contractor against an employee because that employee has engaged in protected activity, including disclosing information that the employee reasonably believes reveals a substantial violation of a law, rule, or regulation, a substantial and specific danger to employees or to public health or safety, or fraud, gross mismanagement, gross waste of funds, or abuse of authority. 10 C.F.R. § 708.5(a). Available relief includes reinstatement, back pay, transfer preference, and such other relief as may be appropriate. *Id.* at § 708.36.

Employees of DOE contractors who believe they have been retaliated against in violation of the Part 708 regulations may file a whistleblower complaint with DOE and are entitled to an investigation by an investigator assigned by the Office of Hearings and Appeals (OHA), followed by a hearing conducted by an OHA Administrative Judge, and an opportunity for review of the Administrative Judge's IAD by the OHA Director. *Id.* at §§ 708.22, 708.28, 708.32.

An employee who files a complaint has the burden of establishing by the preponderance of the evidence that he or she engaged in protected activity, as described in *Id.* at § 708.5, and that the employee's protected activity was a contributing factor in one or more alleged acts of retaliation by the contractor against the employee. *Id.* at § 708.29. If the employee meets that burden, the burden then shifts to the contractor to prove by clear and convincing evidence that it would have taken the same action without the employee's protected activity. *Id.*

II. Procedural Background

On June 12, 2023, Appellant filed a Part 708 Complaint against HMIS, alleging that HMIS had terminated her for making disclosures protected under Part 708. *Dalena Tripplet*, OHA Case No. WBH-23-0003 at 2 (2024). The Complaint was sent to OHA on August 16, 2023, and upon its receipt, OHA assigned a staff attorney (OHA investigator) to investigate the allegations contained therein. Ex. G at 2. On December 11, 2023, the OHA investigator issued a Report of Investigation (ROI). *Tripplet* at 2. An Administrative Judge was assigned to the matter after the completion of the ROI. On January 19, 2024, HMIS submitted a motion to dismiss Appellant's Complaint, which Appellant moved to strike as untimely on January 26, 2024. Interlocutory Order at 1 (January 29, 2024).[1] The Administrative Judge granted Appellant's motion to strike HMIS's motion to dismiss on January 29, 2024. *Id.* On March 11–12, 2024, the Administrative Judge held a hearing concerning this matter, during which ten witnesses, including the Appellant, testified, and nineteen total exhibits were received into the record. *Tripplet* at 2. On April 16, 2024, the Administrative Judge issued the IAD, finding that Appellant failed to establish that she made a protected disclosure under Part 708, and therefore did not meet her burden to demonstrate that such a disclosure was a contributing factor in one or more acts of alleged retaliation by HMIS.[2] *Id.* at 8–14.

On April 25, 2024, Appellant filed a timely notice of appeal, and she filed a Statement of Issues on May 10, 2024. HMIS provided a timely response on May 30, 2024. The issue on appeal is whether the Administrative Judge correctly determined that Appellant failed to meet her burden under Part 708.

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[1] In the Interlocutory Order, the Administrative Judge noted that, pursuant to the Scheduling Notice issued on December 14, 2023, all submissions were required to be "made to oha.filings@hq.doe.gov by 5:00 p.m. (ET) on the day of the applicable deadline . . . ." Interlocutory Order at 1. HMIS submitted its motion to dismiss at 11:28 p.m. (ET) on the applicable due date, and Appellant subsequently moved to strike the motion as untimely. *Id.*

[2] As the Administrative Judge made the aforementioned determinations, only facts pertinent to the analysis of whether Appellant proved by the preponderance of the evidence that she made a protected disclosure have been included in the Factual Background section, *infra*. Please see the Administrative Judge's decision in *Dalenna Tripplet*, OHA Case No. WBH-23-0003 (2024), for a more comprehensive summary of the background information. Decisions issued by OHA are available on the OHA website located at http:www.oha.doe.gov.

III. Factual Background

Appellant was hired by HMIS's predecessor contractor in 2014 as an "instructor/program manager" at the Hazardous Materials Management and Emergency Response (HAMMER) training facility, which is the central health and safety center for DOE's Hanford site. *Dalena Tripplet* at 3; Tr. at 117, 228. In November 2021, HMIS promoted Appellant to Activity Manager at HAMMER. *Tripplet* at 3. As Activity Manager, Appellant was responsible for managing various emergency response programs such as first aid, CPR, fire watch, and blood-borne pathogens. *Tripplet* at 3; Ex. H at 93; Tr. at 114, 117. Although Appellant did not serve as a supervisor, her duties included "developing and implementing course materials, overseeing course instructors, and ensuring that classrooms and equipment were maintained." *Tripplet* at 3; Ex. G at 3. Appellant, along with the other course instructors, including Sue Day and Sharon Burns, reported to Owen Peters, HMIS's Industrial Safety Training Program Manager. *Tripplet* at 3; Tr. at 66, 117. All HAMMER first aid classes were certified by the Health and Safety Institute (HSI) and taught pursuant to HSI's guidelines and materials, which included the Training Center Administrative Manual (TCAM) and instructor guide.[3] *Tripplet* at 3; Tr. at 17–19; Ex. 1 at 10; Ex. C.

In approximately March 2022, Appellant alleged that Ms. Dey spoke to her in a "forceful, direct, bullying style" during an argument regarding a first aid "refresher" course length. Ex. G at 4; *Tripplet* at 3. After the disagreement, Appellant described her working relationship with Ms. Dey as "hostile."[4] Tr. at 131; *Tripplet* at 3. On October 12, 2022, Appellant and Ms. Dey had a disagreement regarding proposed updates to the bloodborne pathogen class materials. *Tripplet* at 4; Ex. H at 207–208. Mr. Peters believed that this disagreement caused their relationship to deteriorate further. *Tripplet* at 4; Tr. at 83. Approximately one week later, Ms. Dey reported what she believed to be a "serious safety concern" to Mr. Peters – two "live" epinephrine auto injectors (EpiPens) in a first aid classroom.[5] Ex. 3 at 1; *Tripplet* at 4. Because Ms. Dey did not report the safety concern to Appellant, and instead relayed her concerns to Mr. Peters directly, Appellant perceived Ms. Dey to be "after [her] personally." Tr. at 316; *Tripplet* at 4.

After observing one of Ms. Dey's first aid classes in early November 2022, Appellant disclosed to Mr. Peters that Ms. Dey was using a PowerPoint presentation that was not produced or approved

[3] HSI is an "organization that provides training programs to business clients." *Tripplet* at 3.

[4] Appellant stated during the hearing that she disclosed her perception of a "hostile environment" to Mr. Peters in March 2022. Tr. at 131. However, the Administrative Judge noted that Mr. Peters denied recollection of this disclosure in March 2022, and Appellant's own notes indicated that her "troubles with Ms. Dey began in October 2022." *Tripplet* at 2; Tr. at 88–89; Ex. D at 1. The Administrative Judge therefore found that although Ms. Dey may have disclosed the March 2022 disagreement with Ms. Dey to Mr. Peters at that time, she did not disclose the presence of a hostile work environment until later. *Tripplet* at 3–4.

[5] One of the EpiPens containing an injector and medication was used as a visual aid in teaching first aid classes. *Tripplet* at 4. Although Ms. Burns, Appellant, and Mr. Peters were aware of this display EpiPen prior to Ms. Dey's disclosure, Ms. Dey believed that an accidental injection of the EpiPen could pose the risk of "tissue damage" or "possible cardiac emergency." Ex. 3 at 1; *Tripplet* at 4. After Ms. Dey reported her concern, Mr. Peters ordered that the display EpiPen be discharged with the needle removed. *Tripplet* at 5; Tr. at 74–75; Ex. E at 3–4.

by HSI. *Tripplet* at 5; Tr. at 90, 136, 152. Then, in late November 2022, Appellant held a meeting with the other course instructors regarding the teaching of new material, which Mr. Peters described as "combative" on the part of Ms. Dey. Tr. at 77; *Tripplet* at 5. On November 30, 2022, Ms. Dey asked Appellant "for clarification" after Appellant removed her from ten classes "in a very short period of time."[6] Ex. H at 248. In response, Appellant stated that she had an HMIS administrative staffer put herself "in place of either [Ms. Dey] or [Ms. Burns]," and that she would be "teaching a bit more than [she] [has]," which "will impact all the instructors that teach [first aid]." *Id.*

In November or December 2022, Ms. Burns observed Ms. Dey showing what she believed to be an unauthorized, "graphic" video of lifeguards performing CPR. Tr. at 24–26; *Tripplet* at 5. Although she did not view the entire video, Ms. Burns reported her concerns to Appellant, who then disclosed this information to Mr. Peters.[7] *Tripplet* at 5–6; Tr. at 29–30, 82, 136.

In December 2022, Appellant scheduled Ms. Burns to teach one of the bloodborne pathogen classes that she had previously removed from Ms. Dey. *Tripplet* at 6; Ex. H at 251. On December 19, 2022, Ms. Dey asked Appellant why she would "take [Ms. Dey's] class then give it to [Ms. Burns]." Ex. H at 251. Appellant stated that she was no longer able to teach on that day, and she asked Ms. Burns to cover the class because she "didn't think of [Ms. Dey] first." Ex. H at 249–250. On December 21, 2022, Ms. Dey spoke with the Director of HAMMER, Paul Vandervert, and expressed her belief that Appellant removed her as an instructor from several classes that she was scheduled to teach in retaliation for her disclosures related to the EpiPens. *Tripplet* at 6; Tr. at 228. Approximately one week later, Mr. Vandervert communicated Ms. Dey's concerns to HMIS's Workforce Relations (WR) office, and WR subsequently initiated an investigation. *Tripplet* at 6; Ex. 6 at 1.

In December 2022, or early January 2023, Appellant expressed her concern to Mr. Peters that Ms. Dey's behavior towards her constituted a hostile work environment. *Tripplet* at 6; Tr. at 89. Mr. Peters then told Appellant to speak with Mr. Vandervert regarding the issue. *Tripplet* at 6; Tr. at 146. In January 2023, Appellant also expressed the same concerns regarding a hostile work environment to Benjamin Culver, an HMIS Activity Manager.[8] *Tripplet* at 6; Tr. at 187–88. After Appellant advised Mr. Culver to "keep an [eye] out" for what material Ms. Dey was using, Mr. Culver decided to attend one of Ms. Dey's classes "with a very critical eye." Tr. at 149, 195; *Tripplet* at 6. After observing the class, Mr. Culver did not believe Ms. Dey was teaching her own material, but instead compared her PowerPoint presentation to "cue cards that an instructor would

[6] The Administrative Judge noted that although Ms. Dey's email indicated she was removed from ten classes, HMIS's investigation concluded that she was removed from nine classes. *Tripplet* at 5 n.4; Ex. 6 at 4.

[7] At the hearing, Appellant stated that she believed the video could "scare [students] to the point where they don't want to assist" someone in need of CPR. Tr. at 168; *Tripplet* at 13.

[8] Mr. Culver testified that he and Appellant were "peers" at this time. Tr. at 207.

hold up."[9] Tr. at 195. Mr. Culver noted that Ms. Dey's PowerPoint presentation "matched what was going on in the [HSI] student guide" bullet-by-bullet. Tr. at 195–196.

During a meeting with Mr. Vandervert in February 2023, Appellant expressed her concern that the on-going WR investigation "was causing a hostile work environment inside of her team." Tr. at 230; *Tripplet* at 7. Appellant stated that "one of her teammates was keeping his door shut," and she was getting "side-eyed from different individuals on the team who had been interviewed by [WR]," which "create[ed] a tension inside of the organization." Tr. at 230; *Tripplet* at 7.

In March 2023, after the completion of the WR investigation, an HMIS disciplinary review board (DRB) recommended termination of Appellant's employment. *Tripplet* at 7; Ex. 10 at 5. HMIS subsequently terminated Appellant's employment on March 16, 2023. *Tripplet* at 7; Ex. 11.

IV. Analysis

Pursuant to the Part 708 regulations, all underlying conclusions of law are reviewed *de novo* on appeal, and all underlying conclusions of fact are reviewed for clear error. *See* 10 C.F.R. § 708.33(b). Under the applicable regulations, Appellant, having initiated the Appeal, is tasked with identifying the issues that she wishes the OHA Director to review. *Id.* at § 708.33(a).

The first issue Appellant identifies on appeal is "[w]hether [Appellant]'s disclosures to Ben Culver were protected under 10 C.F.R. Part 708, where Culver had made the Director of the facility aware of the disclosures." Appeal at 1. In the IAD, the Administrative Judge noted that Mr. Culver testified that he and Appellant were "peers" at the time she made her alleged disclosures to him. *Tripplet* at 8. Therefore, the Administrative Judge concluded that Appellant's alleged disclosures to Mr. Culver were not protected because "[s]haring information concerning safety issues or potential violations of laws with co-workers who have no responsibility for the subject matter of the disclosures does not constitute a protected disclosure under Part 708." *Id.* (citing *Douglas L. Cartledge*, OHA Case No. TBH-0096 at 7 (2010)). In her Appeal, Appellant does not argue that such a determination was clearly erroneous, nor does she cite any case law contrary to the Administrative Judge's conclusion. In addition, we are not aware of any such case law to the contrary either. Therefore, because the Administrative Judge's finding is supported by the record evidence and relevant case law, Appellant has not established on appeal that the Administrative Judge erred. Further, given that the Administrative Judge concluded that Appellant did make the very same disclosures to appropriate individuals pursuant to Part 708, such as Mr. Peters and Mr. Vandervert, consideration of Appellant's disclosures to Mr. Culver "would have no bearing on the outcome of this case" and is therefore "irrelevant and immaterial." *See Alison Marschman*, OHA Case No. WBA-13-0011 at 8 (2014).

The second issue Appellant identifies on appeal is "[w]hether [Appellant]'s belief that she had disclosed a hostile work environment from bullying and harassment by Sue Dey was reasonable." Appeal at 1–2. In the IAD, the Administrative Judge concluded that Appellant "alleged insufficient

[9] Mr. Culver stated that, for example, "if we were looking at anaphylactic shock up on the PowerPoint screen, there was a giant bumble bee. It was an instructor cue note for [Ms. Dey] so that she knew she was talking about anaphylactic shock." Tr. at 196.

facts" to demonstrate the reasonableness of her belief that Ms. Dey's actions towards her were motivated by a discriminatory animus, which is necessary element of a hostile work environment claim.[10] *Id.* at 9–10 (citing *Harris v. Forklift Sys. Inc.*, 510 U.S. 17, 21 (1993)). Furthermore, the Administrative Judge reasoned that, even if Appellant believed Ms. Dey harbored a discriminatory animus towards her, the record did not support a finding that Ms. Dey engaged in "intimidation, ridicule, or insult indicative of a hostile work environment." *Id.* at 10 (citing *Harris*, 510 U.S. at 21). The Administrative Judge noted that Appellant's allegations regarding "an employee closing his door or giving her 'side eye' are, at most, mere 'petty insults' or 'vindictive behavior' that are not severe enough to establish a hostile work environment." *Id.* (citing *Brooks v. Grundmann*, 748 F.3d 1273, 1278–79 (D.C. Cir. 2014)). Therefore, the Administrative Judge concluded that it was not reasonable for Appellant to believe that she had been subjected to a hostile work environment. *Id.* In her Appeal, Appellant makes no argument as to why the Administrative Judge's conclusions regarding this issue were clearly erroneous or contrary to law. Accordingly, because the Administrative Judge's findings are supported by the record evidence and relevant case law, Appellant has not established on appeal that the Administrative Judge erred.

The third issue Appellant identifies on appeal is, "[w]here the work environment was one of instruction on industrial safety, and [Appellant] was program manager of emergency response training, whether [Appellant] reasonably believed that the conduct of Sue Dey in undermining [Appellant]'s authority was a danger to employees or public health or safety." Appeal at 2. In the IAD, the Administrative Judge reasoned that Appellant's "allusions to physical illness are too vague to assess the nature of the potential harm or whether it was likely to occur." *Tripplet* at 11. The Administrative Judge also cited case law in support of the assertion that "the effects of stress or discomfort [Appellant] might have experienced as a result of her interactions with Ms. Dey" were not sufficient to form the basis for a protected disclosure under Part 708. *Id.* (citing *Mary Ravage*, OHA Case No. TBH-0102 at 8 (2010)). Therefore, the Administrative Judge concluded that Appellant's "belief that Ms. Dey's conduct posed the risk of a substantial and specific danger to employees or public health and safety was unreasonable." *Id.* In her Appeal, Appellant makes no argument as to why the Administrative Judge's conclusion on this issue was clearly erroneous or contrary to law. Accordingly, because the Administrative Judge's finding is supported by the record evidence and relevant case law, Appellant has not established on appeal that the Administrative Judge erred.

The fourth issue Appellant identifies on appeal relates to "whether [Appellant] reasonably believed her disclosures regarding the use of unauthorized training materials by Sue Dey were a substantial violation of a law, rule, or regulation." Appeal at 2. Additionally, Appellant asks whether the "[HSI] training requirements [were] imposed in compliance with a government mandate[,]" and whether Appellant "reasonably believe[d] Sue Dey's actions were a substantial violation of [HSI] standards." *Id.* In the IAD, the Administrative Judge first concluded that HSI's standards were not

[10] The Administrative Judge noted that Appellant suggested that Ms. Dey's "disdain" towards her may have been motivated by the fact that Ms. Dey was a registered nurse, and Appellant was not. *Tripplet* at 10. The Administrative Judge recognized, however, that "professional credentials or lack thereof do not make a person part of a protected class[,]" and Appellant did not identify any source of law that could have informed a belief to the contrary. *Id.*

government mandated, and therefore, were not a law, rule, or regulation under Part 708.[11] *Id.* at 12 (citing *Sherrie Walker*, OHA Case No. WBA-13-0005 at 5 (2014)). In her Appeal, Appellant failed to cite any record evidence or case law indicating that such a finding was clearly erroneous or contrary to law.

Furthermore, the Administrative Judge next determined that, even if Appellant established the HSI certification was required by regulation or DOE order, "there [was] insufficient evidence in the record to establish that [Appellant] reasonably believed that Ms. Dey's use of the [training] materials constituted a substantial violation of HSI's standards." *Id.* In support of this conclusion, the Administrative Judge cited Mr. Culver's observation that Ms. Dey's slides were more akin to "cue cards," rather than unauthorized, substantive material. *Id.* Although Appellant also observed Ms. Dey's slides, the Administrative Judge credited Mr. Culver's account "[g]iven the specificity of [his] recollection" and "lack of specific information provided by [Appellant]."[12] *Id.* The Administrative Judge further reasoned that "[i]n light of the temporal proximity between [Appellant]'s disclosures and Ms. Dey's complaint regarding the EpiPens," Appellant's disclosures were more likely "motivated by her conflict with Ms. Dey rather than a genuine, informed belief that Ms. Dey was placing the training center's HSI certification at risk." *Id.* The Administrative Judge concluded that Appellant failed to articulate any "source of information by which she might have formed the opinion that HSI would have been so opposed to the use of Ms. Dey's supplemental materials as to potentially revoke the training center's certification." *Id.* at 13.

It is apparent that the Administrative Judge's decision to credit Mr. Culver's account of Ms. Dey's slides, rather than Appellant's, is a credibility determination "within the proper purview of an [Administrative Judge]'s role." *Anthony Rivera*, OHA Case No. WBA-17-0010 (2017). And Appellant does not offer any argument as to why the Administrative Judge's conclusions regarding this issue were clearly erroneous or contrary to law. Accordingly, giving due deference the Administrative Judge's credibility judgments on this issue, we find no reason to conclude that they were clearly erroneous.

The fifth issue Appellant identifies on appeal is, "[w]here multiple witnesses testified failure to follow approved course curriculum can present safety issues, whether [Appellant] reasonably believed her disclosures regarding the use of unauthorized training materials by Sue Dey were a substantial and specific danger to employees." Appeal at 2. As an initial matter, Appellant was required to raise any alleged protected disclosures in the Complaint or during the OHA investigation; alleged disclosures raised for the first time at the hearing stage are untimely. *See Marschman* at 6–7 (2014). However, the Administrative Judge noted that Appellant raised this issue for the first time at the hearing. *Tripplet* at 13. Therefore, Appellant's alleged disclosure

[11] The Administrative Judge determined that Appellant failed to identify any government-mandated regulation or DOE Order that "specifically require[ed] that first aid or CPR training be conducted by HMIS pursuant to HSI's curriculum." *Tripplet* at 12. The Administrative Judge further reasoned that "[i]n the event that HSI decertified the HAMMER training center, there is no information in the record to establish that employees could not receive first aid and CPR training through an internally-developed curriculum . . . or an alternative HSI-certified training provider to fulfill regulatory training requirements." *Id.*

[12] The Administrative Judge also noted that Appellant never actually viewed Ms. Dey's alleged unauthorized video either, but instead relied on Ms. Burns' account. *Tripplet* at 12.

regarding this issue was untimely, and the Administrative Juge properly concluded that he "lack[ed] jurisdiction . . . to consider the alleged disclosure." *Tripplet* at 13 (citing *Marschman* at 6–7 (2014)). In her Appeal, Appellant does not present any argument as to why this conclusion was clearly erroneous, nor does she cite any case law contrary to the Administrative Judge's conclusion that he lacked jurisdiction to consider such an allegation for the first time at the hearing stage. In addition, we are unaware of any such case law. Accordingly, Appellant has not established on appeal that the Administrative Judge erred.

Furthermore, the Administrative Judge stated that, even if this issue had been raised in the Complaint or during OHA's investigation, it would still be "meritless." *Id.* at 14. Although Appellant stated that she believed the alleged "graphic" video that Ms. Dey showed students could "scare" them into not performing CPR, the Administrative Judge reasoned that "the nature of harm arising from a [CPR student] being unwilling to provide CPR in an emergency situation" would necessarily have to "persist for an indefinite length of time until that student encountered a situation in which he or she might need to perform CPR." *Id.* Citing case law, the Administrative Judge concluded that "OHA has previously rejected assertions that such speculative, remote harms constitute a disclosure of a substantial and specific danger to employees." *Id.* (citing *Edward G. Gallrein, III*, OHA Case No. WBA-13-0017 at 7–8 (2014)). Although Appellant states in her Appeal that "multiple witnesses testified failure to follow approved course curriculum can present safety issues," Appellant does not cite any evidence in the record demonstrating that the Administrative Judge's conclusions regarding the speculative, "indefinite" nature of the alleged danger were clearly erroneous. Appellant also fails to cite any case law contrary to the Administrative Judge's conclusion that speculative, remote harms cannot constitute a disclosure of a substantial and specific danger to employees. And OHA is not aware of any such case law to the contrary. Accordingly, Appellant has not established on appeal that the Administrative Judge erred regarding this issue.

Lastly, Appellant asks whether this matter should be remanded to decide if HMIS met its burden to prove that it did not engage in retaliation and whether Appellant should be "reinstated with preference in transfer, back pay, and awarded her costs and fees." Appeal at 3. However, as previously stated, the Administrative Judge did not err in concluding that Appellant failed to establish that her alleged disclosures were protected conduct under Part 708. Therefore, the burden of proof does not shift to HMIS, and no further analysis is necessary.

V. Conclusion

Appellant has not established that the Initial Agency Decision was based on a legal defect or clearly erroneous finding of fact. Accordingly, the determination of the Administrative Judge is affirmed.

It Is Therefore Ordered That:

(1) The appeal filed by Dalena Tripplet, Case Number WBA-23-0003, is denied.

(2) This Decision shall become a Final Agency Decision unless a party files a Petition for Secretarial Review with the Office of Hearings and Appeals within 30 days after receiving this Decision, pursuant to 10 C.F.R. § 708.34(d).

Poli A. Marmolejos
Director
Office of Hearings and Appeals