Department of Energy
Washington, DC 20585

MAR - 4 2008

Timothy T. Pridmore, Esq.
McWhorter, Cob and Johnson, LLP
P.O. Box 2547
Lubbock, TX 79408-2547

Re: Case No. TBB-0030

Dear Mr. Pridmore:

This letter concerns the complaint of retaliation filed with the Department of Energy (DOE) under 10 C.F.R. Part 708 by Curtis Broaddus. On October 3, 2007, the Office of Hearings and Appeals (OHA) received your petition for Secretarial review of the August 29, 2007, Appeal Decision issued by the OHA Acting Director.

Under the Part 708 regulations, the Secretary will reverse or revise an appeal decision by the Director of OHA only in extraordinary circumstances. 10 C.F.R. § 708.35. As discussed below, your submission does not meet this standard.

In your petition, you raise three arguments in support of your contention that Secretarial review is warranted. First, you claim that you were not accorded an opportunity to brief retaliation issues during the Appeal phase of this proceeding. However, the record indicates that while you did have the chance to file a brief on such matters, in a letter of August 7, 2007, you requested that the record be closed. You did not include any arguments regarding retaliation. This objection is untimely raised.

Second, you allege that the OHA Hearing Officer improperly limited the retaliations that he would consider during the hearing. The record shows that the exclusions were warranted. They involved alleged retaliations such as the reassignment of Broaddus' wife to another program, and the purportedly improper suspension of Broaddus' security clearance. Both of these actions lie outside the purview of Part 708. Since Broaddus filed the Part 708 complaint of retaliation in this case, he is entitled to a review of any alleged retaliations taken against him. However, Part 708 does not provide protections for Broaddus' wife in this same proceeding. Further, the allegedly improper suspension of Broaddus' security clearance is subject to review under the provisions of 10 C.F.R. Part 710, not under Part 708. 10 C.F.R. §710.4(b). *See also* 64 Fed. Reg. 12862 at 12867 (March 15, 1999).

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In any event, objections regarding the Hearing Officer's ruling as to the scope of the retaliations that would be considered should have been raised during the hearing phase of this proceeding, not at the Secretarial review phase.

Finally, you contend that Broaddus was improperly removed from his position at BWXT. This allegation was not a retaliation claimed in this Part 708 proceeding. Therefore it lies outside the purview of the instant Secretarial appeal. Moreover, the termination took place in connection with the revocation of Broaddus' security clearance under 10 C.F.R. Part 710. As such, it is not entitled to review under the provision of Part 708.

The Deputy Secretary of Energy has authorized me to send you this letter dismissing the petition for failure to demonstrate extraordinary circumstances.

Accordingly, the petition for review filed in Case No. TBB-0030 is hereby dismissed.

If you have any questions regarding this letter, please call Fred L. Brown, Associate Director, Office of Hearings and Appeals, at telephone number (202) 287-1545.

Sincerely,

Poli A. Marmolejos
Director
Office of Hearings and Appeals

cc: John Alan Jones, Esq.
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