Department of Energy
Washington, DC 20585

JUL 16 2008

Thad M. Guyer, Esq.
T.M. Guyer and Ayers, & Friends, P.C.
116 Mistletoe Street
P.O. Box 1061
Medford, OR 97501

Re: OHA Case No. TBB-0042

Dear Mr. Guyer:

This letter concerns the complaint of retaliation filed by Curtis Hall (the complainant or Mr. Hall) with the Department of Energy under 10 C.F.R. Part 708, the DOE Contractor Employee (Whistleblower) Protection Program. On March 13, 2008, the Office of Hearings and Appeals (OHA) received your Petition for Secretarial Review of the appeal decision we issued on February 13, 2008. Under 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(d).

The complainant, a former employee of Bechtel National, Inc. (BNI) at the DOE's Hanford site in Richland, Washington, filed a Complaint of Retaliation under Part 708. He alleged that he had made protected disclosures regarding the safety of a control system used to track waste and materials as they are processed through the waste treatment plant at the Hanford site. The complainant claimed that, in retaliation, he was selected for inclusion in a reduction in force (RIF) that led to his termination.

OHA conducted an investigation and a hearing regarding this matter. On March 15, 2007, an OHA Hearing Officer issued a Decision (IAD), finding that Mr. Hall had made protected disclosures, and that BNI's termination of Mr. Hall in the RIF was a retaliation for those disclosures. The IAD ordered BNI to reinstate the complainant to the position from which he was laid off, or to a comparable position, and to reimburse him for lost wages, legal fees and other expenses. Mr. Hall appealed, challenging several of the relief provisions. BNI also appealed, challenging the overall finding that its decision to include the complainant in the RIF was retaliatory. On February 13, 2008, we issued a decision rejecting BNI's challenge to the IAD, and sustained the finding that Mr. Hall was entitled to relief. We made additional findings regarding the relief to which he would be entitled, including that he be provided

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training and transfer preference if BNI places him in a position comparable to the one he vacated. Pursuant to 10 C.F.R. § 708.35, the complainant requested Secretarial review of our February 13 appeal decision. He filed a statement of issues for review and BNI filed a response to the statement of issues. After a review of the submissions, we believe that Mr. Hall has not shown the existence of extraordinary circumstances meriting Secretarial review under Part 708.

The complainant's key contentions at the Secretarial review phase are as follows. Mr. Hall seeks damages for pain, suffering and emotional distress. Based on Section 708.36(a)(3) and our precedent, monetary awards are limited to reimbursement of lost wages. *See also* 64 Fed. Reg. 12867-68 (March 15, 1999). Accordingly, this type of remedy has never been awarded under Part 708.

Mr. Hall also asks for a clearer description of his former position. In addition, he seeks reinstatement to the position he purportedly would have had if he had been promoted. He requests that he be reinstated to a "not-at-will" position, and guaranteed a period of employment through approximately 2019. The complainant seeks greater training and transfer preferences than those provided in the February 13 Order.

These matters do not rise to the extraordinary level necessary to invoke Secretarial review under Part 708. They amount to minor objections to the February 13 determination.

The Acting 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 Secretarial Review filed in Case No. TBB-0042 is hereby dismissed.

If you have any questions regarding this letter, please call Virginia A. Lipton at telephone number (202) 287-1436.

Sincerely,

Poli A. Marmolejos
Director
Office of Hearings and Appeals

cc: Barbara L. Johnson, Esq.
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