

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of Donna Deedy)	
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Filing Date: January 30, 2014)	Case No.: FIA-14-0009
)	
_____)	

Issued: February 5, 2014

Decision and Order

This Decision concerns a Motion for Reconsideration of a Decision and Order filed with the Department of Energy’s (DOE) Office of Hearings and Appeals (OHA) by Donna Deedy. In this Motion, Ms. Deedy requests that OHA modify a Decision and Order that we issued in response to an Appeal she filed under a Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. *See Donna Deedy*, Case No. FIA-14-0001 (2014) (*Donna Deedy*).

I. Background

On September 18, 2013, Donna Deedy submitted a FOIA request to DOE’s Office of Health, Safety and Security, Office of Health and Safety (HS), for records pertaining to certain health research projects. Specifically, Ms. Deedy requested the following:

- (1) A “listing of nuclear worker health effects research funded by the [DOE] outside of the Occupational Energy Research Program [(OERP)] since 1991,” and
- (2) Copies of “internal DOE reports on health effects research strategies since 2004, and copies of correspondence with agency management and its epidemiological research office that references its nuclear worker health effects research goals and objectives.”

See Electronic FOIA Request Submission Form (September 18, 2013) (FOIA Request). In its December 18, 2013, determination, HS informed Ms. Deedy that its search for responsive records yielded eleven documents, which HS released in their entirety to Ms. Deedy. Letter from Patricia R. Worthington, Ph.D., Director, HS, to Donna Deedy (December 18, 2013) (Determination Letter). After receiving the Determination Letter and the accompanying documents, Ms. Deedy filed an appeal in which she challenged the adequacy of the DOE’s search for responsive documents and specifically requested “information about the DOE’s

* OHA FOIA decisions issued after November 19, 1996, may be accessed at <http://www.oha.doe.gov/foia1.asp>.

research agenda funded outside of the Occupational Energy Research Program, along with agency correspondence detailing the goals and objectives of [the Agency's] epidemiological research," which she had not requested in her original request. Email from Donna Deedy to OHA (received January 6, 2014) (Appeal).

OHA denied Ms. Deedy's Appeal. In considering the Appeal, OHA noted that Ms. Deedy was attempting to broaden her request on Appeal, by requesting additional information, not included in her request. As we stated in the Appeal Decision, "it is clear from our review of the record in this case that Ms. Deedy sought substantially more documents on appeal than were included in the scope of the underlying FOIA Request." *Donna Deedy* at 3. OHA stated that requesters are not permitted to expand the scope of a FOIA request on Appeal, but must file a new FOIA request for those documents. *See, e.g., The Oregonian*, Case No. FIA-13-0065 (2013); *Tarek Farag*, Case No. TFA-0385 (2010); *Cliff Jenkins*, Case No. TFA-0122 (2005).

OHA also determined that the search conducted by HS was reasonably calculated to reveal records responsive to Ms. Deedy's FOIA request. OHA based this decision on HS' description of its search to include "an extensive search was conducted of the office's electronic and paper files for responsive documents using the following search terms or keywords: NIOSH, HHS, worker health studies, research agenda." *Donna Deedy* at 3.

In her Motion for Reconsideration, Ms. Deedy asserts that the search parameters were unnecessarily limiting. Email from Donna Deedy to OHA (received January 29, 2014). She asserts that the search terms, "NIOSH, HHS" should not have been used to craft a search. *Id.* at 2. Ms. Deedy concludes that "[t]he failure to provide the requested correspondence means that the epidemiological program has had no communication with agency officials about its activities and actions. Unless I received a correction through a motion to reconsider that will become the agency's official response." *Id.* at 2.

II. Analysis

The DOE FOIA regulations do not explicitly provide for reconsideration of a final Decision and Order. See 10 C.F.R. § 1004.8. However, in prior cases, we have used our discretion to consider Motions for Reconsideration where circumstances warrant. *See, e.g., Citizen Action New Mexico*, Case No. TFA-0215 (2007). In reviewing such requests for reconsideration, we may look to OHA's procedural regulations regarding modification or rescission of its orders. See 10 C.F.R. Part 1003, Subpart E; *see also Terry M. Apodaca*, Case No. TFA-0237 (2007). Those regulations provide that an application for modification or rescission of an order shall be processed only when the application "demonstrates that it is based on significantly changed circumstances." 10 C.F.R. § 1003.55(b)(1).

Significantly changed circumstances include "the discovery of material facts that were not known or could not have been known" at the time of the original proceeding; "the discovery of a law, rule, regulation ... that was in effect" at the time of the original proceeding "and which, if such had been known to the OHA, would have been relevant to the proceeding and would have substantially altered the outcome;" and "a substantial change in the facts or circumstances upon which an outstanding or continuing order of the OHA affecting the applicant was issued, which change has occurred during the interval between the issuance of such order and the date of the

application [for modification or rescission] and was caused by forces or circumstances beyond the control of the applicant.” 10 C.F.R § 1003.55(b)(2).

Applying these standards to the case at hand, we find that Ms. Deedy has not presented any evidence in her Motion warranting modification or rescission of our prior decision in *Donna Deedy*, Case No. FIA-14-0001 (2014). Ms. Deedy’s argument that the search parameters were unnecessarily limiting is erroneous and does not demonstrate “significantly changed circumstances.” By including the terms NIOSH and HHS, HS would have recovered more results rather than less; consequently, the search was broader than warranted by Ms. Deedy’s request. As such, her Motion does not demonstrate “significantly changed circumstances.”

In sum, Ms. Deedy’s Motion for Reconsideration is an attempt to reargue the merits of her case, rather than a demonstration of “significantly changed circumstances” warranting modification or rescission of our decision in *Donna Deedy*, Case No. FIA-14-0001 (2014). Consequently, the Motion should be denied.

It Is Therefore Ordered That:

(1) The Motion for Reconsideration filed by Donna Deedy on January 30, 2014, OHA Case No. FIA-14-0009, is denied.

(2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

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