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FRANCIS M. O'LAUGHLIN, Complainant

v.

BOEING PETROLEUM SERVICES, INC., Respondent.

OHA Case No.LWA-0005

FINAL DECISION AND ORDER

This is an appeal by complainant Francis O'Laughlin of the Initial Agency Decision by an Office of Hearings and Appeals ("OHA") Hearing Officer who found, following two days of hearings, that the complainant had not satisfied his burden of establishing by a preponderance of the evidence that he made protected safety disclosures to respondent Boeing Petroleum Services, Inc., a contractor of the Department of Energy's Strategic Petroleum Reserve, as required by 10 C.F.R. Part 708.

On appeal, the complainant challenges the Hearing Officer's finding that he had not met his burden of showing that he had made protected health or safety disclosures. The Hearing Officer found the disclosures cited by complainant represented intangible concerns regarding a proposed reorganization of Boeing Petroleum Services rather than evidencing any substantial and specific danger

to health and safety under 10 C.F.R. 708.5(a)(1)(ii). In assessing the complainant's allegations, the Hearing Officer correctly stated the applicable legal standard set forth in 10 C.F.R. 708.5. The complainant's challenge to OHA's decision, therefore, turns on the Hearing Officer's factual determinations, which are subject to being overturned only if they can be deemed to be clearly erroneous. *See, e.g., Pullman Standard v. Swint*, 456 U.S. 273 (1982); *Amadeo v. Zant*, 486 U.S. 214, 223 (1988), quoting Federal Rule of Civil Procedure 52(a). Measured against this standard, my review of this matter discloses no basis for overturning OHA's fact-based determinations as "clearly erroneous."

For the reasons set forth above, the Initial Agency Decision is affirmed and hereby adopted as the Final Agency Decision in this case.

Dated: January 31, 1995

William H. White

Deputy Secretary