

December 19, 2006

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Appeal

Name of Case: Donald R. Rhodes
Date of Filing: December 8, 2006
Case Number: TBU-0058

Donald R. Rhodes (Rhodes or the complainant) appeals the dismissal of his August 25, 2006 complaint of retaliation filed under 10 C.F.R. Part 708, the Department of Energy (DOE) Contractor Employee Protection Program. He filed the complaint with the Whistleblower Program Manager (WP Manager) of the DOE's National Nuclear Security Administration Service Center (NNSA/SC), located in Albuquerque, New Mexico. As explained below, the WP Manager's November 16, 2006 dismissal of the complaint should be upheld, and the appeal denied.

I. Background

The complainant is employed by the DOE's Sandia National Laboratories (SNL) located in Albuquerque, New Mexico. On August 25, 2006, Rhodes filed a Complaint of Retaliation with the NNSA/SC WP Manager. In that complaint, he alleged that his supervisor directed him to change his time card estimation of time spent on his various work projects by rounding from 20 minute intervals to 30 minute intervals.¹ Believing that this change would not reflect the correct amount of time spent, Rhodes refused to make this amendment. After several such refusals, his employer eventually suspended him for one day, as a punishment for insubordination.²

In the November 16, 2006 dismissal letter, the WP Manager determined that the complaint should be dismissed because Rhodes' refusal to make the time card changes was an internal dispute between him and SNL, and not a protected disclosure under Part 708. The WP Manager

1/ According to SNL, the 30 minute estimation period is the standard practice for this work group.

2/ The complainant later made the correction as directed and returned to work.

further determined that the complainant's refusal to change his time card did not constitute a refusal to participate in an activity protected by Part 708. In this regard, the WP Manager stated that Rhodes' refusal to follow his supervisor's instructions is not "a refusal to participate in an activity that would constitute a violation of federal health or safety law, or put you in reasonable fear of serious injury to yourself or others." ³

Based on the above findings the WP Manager dismissed the complaint.

Pursuant to 10 C.F.R. § 708.18(a), Rhodes filed the instant appeal with the Office of Hearings and Appeals. In that appeal, Rhodes again claims that the one-day suspension was a retaliation by SNL because he refused to engage in fraudulent time-card amendment.

II. Analysis

The issue in this case is whether Rhodes' refusal to adjust his time cards as his supervisor directed constitutes an activity or disclosure protected under Part 708. As discussed below, I find it does not.

A. Refusal to Participate

As the WP Manager noted, Rhodes' refusal to correct his time card as directed by his supervisor does not amount to a "refusal to participate" under Part 708. Section 708.5 describes the types of "refusals to participate" that are protected. Such refusals are limited to activities, policies or practices that an individual believes would "(1) constitute a violation of a federal health or safety law; or (2) cause [the individual] to have a reasonable fear of serious injury to [himself], other employees or members of the public." 10 C.F.R. §708.5(c). It is quite obvious that there is no health or safety concern or fear of serious injury at issue in connection with adjusting a time card. Accordingly, Section 708.5(c) is not applicable in this case.

^{3/} The WP Manager stated that an additional basis for dismissal of the claim was the complainant's failure to exhaust grievance and arbitration procedures as required by his union's collective bargaining agreement. 10 C.F.R. § 708.13. I need not reach this issue in order to arrive at a dispositive result in this case.

B. Claim of Protected Disclosure of Fraud

I see no Part 708 protected disclosure with respect to Rhodes' purported revelation to his supervisor that changing the estimate of time spent on a task would amount to "time card fraud." On its face, SNL's policy of estimates of time spent on job projects rounded to 30 minute intervals rather than 20 minute intervals does not appear to be unreasonable or designed to result in fraud or overbilling. Rhodes has certainly not made any case for such a conclusion. In any event, the change that his supervisor asked him to make, to provide estimates rounded to 30 minute intervals rather than 20 minute intervals, is de minimis. Whether to estimate time spent on projects in 20 minute or 30 minute intervals is such a small matter so as not to rise to the level of fraud under Part 708, nor is the complainant's disclosure significant enough to warrant protection under Part 708.

As indicated by the above discussion, I find that the NNSA/SC dismissal was correct and that the Rhodes appeal should be denied.

IT IS THEREFORE ORDERED THAT:

The Appeal filed by Donald R. Rhodes (Case No. TBU-0058) is hereby denied.

George B. Breznay
Director
Office of Hearings and Appeals

Date: December 19, 2006