

June 2, 2004
DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Decision of the Director

Name of Petitioner: Charles L. Evans

Date of Filing: May 17, 2004

Case Number: TBU-0026

Charles Evans, a former employee of Fluor Hanford Inc. (Fluor), a Department of Energy (DOE) contractor, appeals the DOE Richland Operations Office's (Richland) dismissal of the whistleblower complaint he filed against Fluor under 10 C.F.R. Part 708, the DOE Contractor Employee Protection Program.

I. BACKGROUND

A. The DOE's Contractor Employee Protection Program

The DOE's Contractor Employee Protection Program was established to safeguard public and employee health and safety; ensure compliance with applicable laws, rules, and regulations; and prevent fraud, mismanagement, waste and abuse at DOE's government-owned, contractor-operated facilities. 57 Fed. Reg. 7533 (March 3, 1992). Its primary purposes are to encourage contractor employees to disclose information which they believe exhibits unsafe, illegal, fraudulent, or wasteful practices, and to protect those whistleblowers from consequential reprisals by their employers. The regulations governing the DOE's Contractor Employee Protection Program are set forth at Title 10 Part 708 of the Code of Federal Regulations.

Under Part 708, the DOE office initially receiving a complaint may dismiss the complaint for lack of jurisdiction or other good cause. 10 C.F.R. § 708.17. The complainant may appeal such a dismissal to the Director of the Office of Hearings and Appeals (OHA). 10 C.F.R. § 708.18.

B. The Procedural History

On February 19, 2004, the Complainant filed a "Complaint of Retaliation" with Richland. The Complaint alleges that the DOE and Fluor have retaliated against him for "previously filed paper work outlining gross mismanagement of DOE responsibilities to the citizens of Benton County and others adjoining the Hanford site for fire protection." Complaint at 1. The Complaint alleges that Richland and Fluor retaliated against him by delaying reimbursement for course work that was due to him under a DOE program. On March 29, 2004, Richland issued a Jurisdictional Determination under 10 C.F.R. § 708.17 dismissing the Complaint (the

Jurisdictional Determination). The Jurisdictional Determination found that “the matter has been resolved though [Fluor’s] commitment to work with [the Complainant] to answer any questions [the Complainant has] concerning [his] tuition reimbursement.” Jurisdictional Determination at 1. In addition, Richland found that the Complaint fails to state a claim for which relief can be granted under 10 C.F.R. Part 708. *Id.* Richland then erroneously informed the Complainant that he could request that his Complaint be forwarded to this office for a hearing, under 10 C.F.R. §708.21. Instead, Richland should have informed the Complainant of his right to seek an appeal of Richland’s dismissal under 10 C.F.R § 708.18. On April 19, 2004, the Complainant filed a request for hearing and investigation under 10 C.F.R. § 708.21(a)(2). For the reasons stated below, we are treating the April 19, 2004 submission as an appeal of Richland’s Jurisdictional Determination.

II. ANALYSIS

10 C.F.R. ' 708.17 provides that a Complaint may be dismissed for lack of jurisdiction or for other good cause by the head of a DOE field element or a employee concerns manager. 10 C.F.R. § 708.18(a) provides the only available recourse to a complainant whose complaint has been dismissed by the Head of Field Element:

If your complaint is dismissed by the Head of Field Element or EC Director, **the administrative process is terminated** unless you appeal the dismissal to the OHA Director by the 10th day after you receive the notice of dismissal as evidenced by a receipt for delivery of certified mail.

10 C.F.R. § 708.18(a) (emphasis supplied). Accordingly, Richland’s dismissal letter terminated the administrative process. Since the administrative process had been terminated this office does not presently have jurisdiction to conduct an investigation or a hearing. Therefore, we must reject the Complainant’s request for an investigation followed by a hearing.

Normally, our consideration would end with our determination that our office does not have jurisdiction over the complaint. But in the present case, the Complainant proceeded to the wrong venue after being misled by Richland’s error. Accordingly, we will process the Complainant’s submission as if it were properly filed under § 708.18.

Turning to the merits of the Appeal we note that § 708.17(b) requires the Employee Concerns Manager to “give [the Complainant] specific reasons for the dismissal . . .” The Jurisdictional Determination provides only the following reasons for dismissal:

[Fluor] found no retaliation with regard to the allegations raised. [Richland] agrees with this evaluation and finds that the matter has been resolved through [Fluor’s] commitment to work directly with [the Complainant] to answer any questions you have regarding [the Complainant’s] tuition reimbursement. In

addition, [Richland] finds that the facts, as alleged in your complaint, do not present issues for which relief can be granted under 10 C.F.R. Part 708.

Jurisdictional Determination at 1. The unsupported conclusions set forth in the Jurisdictional Determination are too vague and conclusory to allow the Complainant or this office to determine whether the Complaint was properly dismissed under § 708.17. Accordingly, we are remanding this matter to Richland. On remand, Richland must issue a new jurisdictional determination which indicates the factual and legal basis for its conclusions that (1) Fluor did not retaliate against the Complainant, and (2) the facts, as alleged in the complaint, do not present issues for which relief can be granted under 10 C.F.R. Part 708. Moreover, Richland must also explain the relevance of Fluor's professed willingness to work with the Complainant to answer his questions about tuition reimbursement, if it continues to serve as a basis for dismissing the Complaint.

III. Conclusion

The Department of Energy's Richland Operations Office issued a letter dismissing the Complaint filed by Charles Evans. The letter lacked sufficient specificity and detail and failed to clearly explain Richland's reasons for dismissing the Complaint. In addition, Richland provided the Complainant with inaccurate information about his procedural options which led the Complainant to file a request for an investigation and hearing instead of a jurisdictional appeal. Accordingly, we are remanding this matter to Richland in order to provide it with an opportunity to issue a new jurisdictional determination that would provide a sufficient basis for meaningful review.

It Is Therefore Ordered That:

- (1) The Appeal filed by Charles Evans (Case No. TBU-0026) is hereby granted in part, as set forth in Paragraph (2) and denied in all other aspects.
- (2) The Appeal is remanded to the Richland Operations Office for further processing in accordance with the instructions set forth above.
- (3) This is a Final Decision and Order of the Department of Energy

George B. Breznay
Director
Office of Hearings and Appeals

Date: June 2, 2004