

October 12, 2006

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Appeal

Name of Case: Felecia Broaddus
Date of Filing: September 15, 2006
Case Number: TBU-0053

Felecia Broaddus (Broaddus or the complainant) appeals the dismissal of her July 18, 2006 complaint of retaliation filed under 10 C.F.R. Part 708, the Department of Energy (DOE) Contractor Employee Protection Program. She 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 August 28, 2006 dismissal of the complaint should be upheld, and the appeal denied.

I. Background

Broaddus is employed by BWXT Pantex, LLC (BWXT), the Management and Operations Contractor at the DOE's Pantex Plant located in Amarillo, Texas. On July 18, 2006, she filed a Complaint of Retaliation with the NNSA/SC WP Manager. In that complaint, she alleged that she had made disclosures that are protected under Part 708. Broaddus believes that her alleged revelations are protected pursuant to Section 708.5(a)(1), which covers disclosures that reveal "a substantial violation of a law, rule or regulation." She claims that BWXT retaliated against her for making those disclosures.

A. Disclosures

1. Testimony at Part 710 Hearing

Broaddus states that in June 2005, she appeared as a witness in a hearing held pursuant to 10 C.F.R. Part 710. Hearings under that Part consider whether an individual is eligible to hold a DOE access authorization. The complainant states that her husband was the subject in that hearing, during which she gave testimony. Broaddus contends that the statements she made at this hearing disclosed

significant violations of law, policy and regulation committed by both BWXT and DOE/NNSA, and that they are therefore protected.

2. Disclosures to Human Reliability Program Team

Broaddus claims that in March 2006, she provided evidence to a team investigating the Human Reliability Program (HRP) at Pantex. She claims that she disclosed that BWXT was improperly administering the HRP program, and believes that providing such information is a disclosure of a violation of law, rule or regulation.

3. Disclosures Regarding Department Manager

The complainant states that on May 23, 2006, she told the BWXT employee concerns office about a "relationship" between one of her co-workers and her Department Manager. She stated that the co-worker was being given minimal assignments, while Broaddus herself was given more assignments, and further that this co-worker was being paid more than Broaddus herself.

4. Disclosure Regarding Unequal Pay Act

Broaddus states that in January 2006, she reported an inequity involving her own pay to the BWXT employee concerns office, and she believes that the inequity violates a law, the "Equal Pay Act."

5. Disclosure of Unsafe Working Conditions

Broaddus claims that on July 14, 2005, she was "accosted" by a co-worker. She asserts that she reported this unsafe work environment to her supervisor and to the Pantex employee concerns office.¹

B. Retaliations

Broaddus claims that BWXT retaliated against her in the following ways. First, she alleges that she was involuntarily reassigned in July 2003, and again on January 10, 2005. She claims that in this latter position she was paid less than other employees in her department. In this regard, she states she was told when she was assigned to her new work group in 2005, that her pay would be

1/ She does not provide the date on which this disclosure was made. However, I will assume for purposes of this determination that she reported the incident on the day that it occurred.

commensurate with that of the others in the group. She believes her pay was never brought to the appropriate level.

Broaddus also claims that in November 2004, BWXT retaliated against her by giving her a performance appraisal which included evaluation for activities with which she was not involved. Broaddus also believes that as a retaliation for her protected disclosures, Pantex employees told lies about her at the Part 710 hearing. Finally, Broaddus claims that in retaliation for reporting the co-worker/department manager "relationship" and the pay/work inequity, her department manager and her second line supervisor falsely accused her of taking extended lunch breaks.

C. WP Manager's Determination

In the August 28, 2006 dismissal letter, the WP Manager determined that the complaint should be dismissed. The WP Manager found two "arguably protected" disclosures: Broaddus' June 2005 statements at a Part 710 hearing; and the information that she provided to the DOE HRP inspection team on March 14, 2006.

In considering these two disclosures, the WP Manager found that the two reassignments about which Broaddus complained took place before her alleged protected activities, and could therefore not be considered Part 708 retaliations. Regarding the claim that some of the testimony given at the Part 710 hearing was false, the WP Manager found that this was not reviewable under Part 708, and further that it was untimely. The WP manager found that Broaddus' assertion that she was retaliated against for disclosure of the unsafe workplace condition was untimely, since it was filed nearly a full year after the incident took place. She further found that the claim was vague and did not appear to be connected to any matter associated with her participation in the Part 710 hearing. The WP Manager determined that Broaddus' disclosure concerning the Equal Pay Act was not a matter within the purview of Part 708. The WP manager also found that BWXT had no motive to retaliate against Broaddus.

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

Pursuant to 10 C.F.R. § 708.18(a), Broaddus filed the instant appeal with the Office of Hearings and Appeals. In that appeal, Broaddus (i) claims that the WP Manager's finding that BWXT had no motive to retaliate against her was improper and that this issue should be addressed at a hearing; (ii) contends that the claim of an unsafe work environment was a protected disclosure; (iii) reiterates her

claim that she was forced into her current job as a retaliation, and that but for her protected disclosures she would not have been transferred multiple times, and (iv) claims that in her current position, her salary is approximately one-half of the salary being paid to a man with a similar position and that she has a substantially higher workload than others in her department.

II. Analysis

A. Retaliations

As stated above, Broaddus claims that she was involuntarily reassigned in 2003, and again on January 10, 2005. She also objects to a 2004 performance appraisal. These are obviously not retaliations for her testimony at the June 2005 Part 710 hearing or for the March 2006 HRP "revelations," since they preceded those alleged disclosures. Her claims that in the position to which she was assigned in 2005, her pay is less than that of another worker and her workload is greater are too vague to rise to the level of a Part 708 retaliation. There is no allegation or evidence that the pay and workload matters arose after a protected disclosure. In fact, her claim of unequal pay seems to be a continuing one: her belief that since her 2005 reassignment, she has not been payed at the appropriate level. No new evidence of any additional pay disparity arising after her protected disclosures has been alleged.

Broaddus' allegations that Pantex employees told lies about her at the Part 710 hearing are frivolous. I see no retaliation. I reach a similar conclusion regarding her claim that in response to reporting a relationship between a co-worker and a manager and some pay/work inequity, she was falsely accused of taking extended lunch breaks. 10 C.F.R. § 708.17(c)(4).

B. Disclosure of an unsafe work place

Disclosures concerning an unsafe work environment are entitled to protection under 10 C.F.R. § 708.5(a)(1) and (2). Broaddus claims that she disclosed that a co-worker assaulted her. In this regard, Broaddus asserts that BWXT failed to take any action to report the "assault" to law enforcement agencies, or correct the behavior of the employee involved. She seems to believe that this "failure" on the part of the contractor is a retaliation. I do not agree. Part 708 covers adverse personnel actions taken by a contractor against the employee who made a disclosure. 10 C.F.R. § 708.2. The purported failure of BWXT to punish another employee cannot be considered a Part 708 retaliation against Broaddus. It is not an

adverse personnel action against her. I fail to see a Part 708 retaliation that took place after the disclosure of the unsafe workplace. Therefore, Broaddus' allegation regarding the unsafe workplace must be dismissed.

C. BWXT Motive to Retaliate

Broaddus objects to the WP manager's finding that BWXT had no motive to retaliate against Broaddus. Broaddus believes that this finding was improper and should be addressed at a hearing. I agree that this determination was prematurely made, and that if I had found that there were a reason to overturn the dismissal, the WP Manager's finding regarding motive to retaliate would not be sustained. This type of determination is one that should be based on a full airing of all facts and circumstances, and not on untested assertions by the parties. However, given the fact that, as discussed above, I find no Part 708 retaliations, I see no harm in this error.

D. Timeliness

Part 708 requires that complaints be filed within 90 days of the date that the complainant knew or reasonably should have known of the alleged retaliation. 10 C.F.R. § 708.14(a). BWXT claims the Broaddus complaint was untimely filed, although it points to no specific events or retaliation from which to measure the filing of the complaint. Broaddus argues that the complaint was timely, because additional time beyond the 90 days is permitted to resolve a dispute through an internal company grievance-arbitration procedure. The parties' arguments regarding timeliness need not be given any further review. Ultimately, this issue is irrelevant because, as discussed above, I see no BWXT retaliation in this case.

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

IT IS THEREFORE ORDERED THAT:

The Appeal filed by Felecia Broaddus (Case No. TBU-0053) is hereby denied.

George B. Breznay
Director
Office of Hearings and Appeals

Date: October 12, 2006