



## Department of Energy

Washington, DC 20585

JUL 22 2009

### DEPARTMENT OF ENERGY OFFICE OF HEARINGS AND APPEALS

#### Appeal

Name of Petitioner: Dean P. Dennis

Date of Filing: March 2, 2009

Case Number: TBA-0072

Dean D. Dennis filed a complaint of retaliation under the Department of Energy (DOE) Contractor Employee Protection Program, 10 C.F.R. Part 708. Mr. Dennis alleged that he engaged in protected activity and that his employer, National Security Technologies, LLC (NSTec), subsequently terminated him. An Office of Hearings and Appeals (OHA) Hearing Officer denied relief in *Dean P. Dennis*, Case No. TBH-0072,<sup>1</sup> and Mr. Dennis filed the instant appeal. As discussed below, the appeal is denied.

#### I. Background

The DOE established its Contractor Employee Protection Program to "safeguard public and employee health and safety; ensur[e] 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). To that end, the program prohibits a contractor from retaliating against an employee who discloses certain information or engages in certain activity. 10 C.F.R. § 708.1.<sup>2</sup>

If an employee believes that a Part 708 retaliation has occurred, the employee may file a complaint requesting that the DOE order the contractor to provide relief. *Id.* The employee has the burden of showing, by a preponderance of the evidence, that the employee engaged in protected activity and that the protected activity was a contributing factor to the alleged retaliation. 10 C.F.R. § 708.29. If the employee meets that burden, the contractor has the burden of showing, by clear and convincing evidence, that it would have taken the same action in the absence of the protected activity. *Id.*

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<sup>1</sup> Decisions issued by the Office of Hearings and Appeals after November 16, 1996, are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>. The Hearing Officer's Decision in this matter will be cited henceforth as "H.O. Decision."

<sup>2</sup> Part 708 concerns (i) disclosures of information concerning substantial violations of law, substantial dangers to health and safety, and fraud, gross mismanagement or waste of funds, or abuse of authority; (ii) participation in Congressional proceedings; and (iii) refusals to participate in dangerous activities.



The facts surrounding Mr. Dennis's complaint have been set forth in detail in the Hearing Officer's Decision from which Mr. Dennis has taken this appeal, and a full recounting will not be reproduced here. The facts pertinent to this appeal are as follows. Mr. Dennis's educational background is in finance and management. In 2003 he began working at the Nevada Site Office as a contractor employee. Due to a reorganization of his initial employer, Mr. Dennis's position was abolished, and his new position was that of a Senior Operations Specialist. He was asked to assume additional duties as an Information Systems Security Officer (ISSO) at the Sensitive Compartmented Information Facilities (SCIF)<sup>3</sup> at the Remote Sensing Laboratory (RSL) and the Nevada Intelligence Center. *See* Ex. D. Mr. Dennis testified that he had no background or training for either the Senior Operations Specialist position or the ISSO position. When NSTec became the management and operating (M&O) contractor for the NNSA's Nevada Test Site and the Nevada Site Office in 2006, it retained Mr. Dennis in the same position. Although NSTec management recognized that Mr. Dennis had no background in the positions that he occupied, it believed that he was qualified for his positions with "some on-the-job training." Mr. Dennis participated in several training programs that covered cyber security and other security-related topics. H.O. Decision at 5.

Due to the nature of his position, Mr. Dennis reported to several supervisors and managers. Ron Gross, Manager of the Special Programs Department, was his manager of record. For technical matters, he reported to Jeff Harvey, the Information Systems Security Manager (ISSM). For functions he performed in the RSL SCIF, he reported to Loretta DeVault, the Deputy Field Intelligence Element (FIE) Director and Special Security Officer, or, in her absence, Rhonda Fulkerson, the Alternate Special Security Officer. All of these supervisors reported to Alan Will, the Deputy Director of the RSL and the Director of FIE. *Id.* at 6.

Early in 2007, the DOE directed NSTec to implement new procedures to improve the safeguarding of classified and non-classified media. His reaction to these new procedures caused two of his supervisors, Mr. Gross and Ms. DeVault, to raise concerns with Mr. Will. Among the concerns they brought to Mr. Will, in separate conversations, were that Mr. Dennis sought permission to use a thumb drive, which had been banned under the new procedures; that he had gained access to a large number of classified documents as a derivative classifier; that he often worked after regular business hours, in isolated circumstances; that he was suffering financial and emotional stress due to a divorce and an automobile accident; that he was accessing classified sites on the computer that he should not have; that he had often expressed his opinion that the new procedures were ineffective; and that he had on at least one instance stated that, as an insider with his responsibilities, he had the ability to circumvent the procedures without being detected. Mr. Will communicated these concerns to NSTec senior management and to the DOE overseer of NSTec's operations in April 2007. *Id.* at 6-9.

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<sup>3</sup> A SCIF is an "accredited area, room, group of rooms, or installation where Sensitive Compartmented Information may be stored, used, discussed, and/or electronically processed." *See* DOE Order 5639.8A at <http://www.directives.doe.gov>.

In mid-May 2007, Mr. Dennis reported to Mr. Harvey that he had discovered tracking software on his computer. Mr. Harvey immediately brought this matter to the attention of Ms. DeVault and Mr. Will. On May 31 and June 1, 2007, Mr. Dennis sent e-mails to Mr. Will requesting an opportunity to discuss with him the negative impact of the new procedures on his work responsibilities; this meeting was scheduled for June 6, 2007. At roughly the same time, the DOE notified NSTec that Mr. Dennis was no longer to work in the SCIF. NSTec senior management then met and unanimously agreed to terminate Mr. Dennis's employment. Mr. Dennis was terminated on June 6, 2007. *Id.* at 9-10.

On August 10, 2007, Mr. Dennis filed a Part 708 Complaint against NSTec with the local DOE Employee Concerns Program (ECP) Office. After efforts to engage in mediation proved unsuccessful, the ECP Office transferred the Complaint to OHA for an investigation, followed by an administrative hearing. In his Complaint, as clarified in conversations with the OHA investigator, Mr. Dennis alleged that he made six disclosures to NSTec management that led to his termination, four related to security matters and two related to management issues. *Id.* at 2-3. At the hearing, the Hearing Officer received evidence regarding all six alleged disclosures, but ultimately held, in her February 12, 2009, Decision, that only one—Mr. Dennis's reporting that there was tracking software on his classified computer—was a protected disclosure under Part 708. *Id.* at 3, 13-14. She also determined that the disclosure was a contributing factor in his termination, and therefore found that Mr. Dennis had successfully met his burden under the Part 708 regulations. *Id.* at 15-16. Mr. Dennis did not ultimately prevail in his request for relief under Part 708, however, because the Hearing Officer also found that NSTec had proven by clear and convincing evidence that it would have terminated Mr. Dennis even if he had not made a protected disclosure. *Id.* at 16-20.

On March 2, 2009, Mr. Dennis filed the instant appeal. In his appeal, Mr. Dennis challenges the Hearing Officer's finding that NSTec met its burden of demonstrating, by clear and convincing evidence, that it would have terminated him even if he had not made his protected disclosure. Dennis Br. at 2. His primary argument is that the Hearing Officer relied on the testimony of Loretta DeVault, despite the fact that she had found her testimony on one occasion not to be credible. *Id.* at 3-6. He also contends that Mr. Will was aware that Mr. Dennis had a concern about tracking software before he was terminated, *id.* at 7, and that NSTec's claim that it had lost trust in Mr. Dennis is not supported by the evidence. *Id.* at 8-9. Finally, Mr. Dennis argues that his immediate termination, without following a process of progressive discipline, did not adhere to NSTec's company policy and was without precedent. *Id.* at 9, 11-12. Throughout his brief, Mr. Dennis argues that the Hearing Officer relied on non-credible testimony, ignored inconsistent testimony, and misinterpreted evidence, all of which caused her to reach her erroneous conclusion. He also presents new facts in his brief to demonstrate that the conclusion is wrong. After careful consideration of the various bases for Mr. Dennis's appeal, I have determined, as explained below, that the Hearing Officer was correct when she concluded that NSTec met its evidentiary burden.

## II. Analysis

The standard of review for Part 708 appeals is well-established. Conclusions of law are reviewed *de novo*. See *Curtis Hall*, Case No. TBA-0002 at 5 (2008). Findings of fact, however, are overturned only if they are clearly erroneous, giving due regard to the trier of fact to judge the credibility of the witness. *Id.*; *Salvatore Gianfriddo*, Case No. VBA-0007 (1999).

As stated above, Mr. Dennis has limited his appeal to a challenge of the Hearing Officer's conclusion that NSTec met its burden of showing by clear and convincing evidence that it would have terminated Mr. Dennis even if he had not made a protected disclosure. My review of the testimony and other evidence in this proceeding is therefore restricted to those portions of the evidence that had a bearing on that conclusion. For the reasons set forth below, I find that the Hearing Officer's findings of fact are not clearly erroneous and her conclusions of law are sound. Consequently, the Hearing Officer's decision will be allowed to stand as written.

### A. The Credibility of Loretta DeVault as a Witness and NSTec's "Loss of Trust"

A substantial portion of Mr. Dennis's appeal is devoted to attacking Ms. DeVault's credibility, both as a supervisor reporting to management and as a witness at the hearing. Mr. Dennis argues that Ms. DeVault was the source of all complaints that NSTec management received about Mr. Dennis, and it should not have given credence to her complaints. Dennis Br. at 3-4. He further argues that NSTec management's alleged loss of trust in Mr. Dennis arose solely from those complaints, and therefore was unfounded. *Id.* at 4. Whether NSTec was reasonable in believing Ms. DeVault's complaints about Mr. Dennis's behavior is not a proper subject for appeal in this forum. This appellate review may consider whether the Hearing Officer erred in her findings of fact or conclusions of law, but it is not a vehicle for finding whether the contractor was at fault for misplacing its belief in one of its employees.

I may therefore review whether the Hearing Officer properly supported her conclusion that NSTec would have terminated Mr. Dennis in the absence of his disclosure regarding tracking software. NSTec's stated position is that (1) it terminated Mr. Dennis because it "lost trust" in him, and (2) that loss of trust was predicated upon information its management received from his supervisors, including Ms. DeVault. Therefore, if NSTec management knew that the information it received from Ms. DeVault was not reliable, then its reliance on that information would demonstrate that it was less than candid in claiming a loss of trust, and the Hearing Officer improperly concluded that the purported loss of trust was the basis for Mr. Dennis's termination. After reviewing the record in this proceeding, I conclude that there is simply no evidence that would have supported the Hearing Officer finding that NSTec management had any reason to question the accuracy of the concerns Ms. DeVault expressed concerning Mr. Dennis's behavior.

In her Decision, the Hearing Officer did find Ms. DeVault's testimony not credible in one respect: that she did not recollect that Mr. Harvey had reported the discovery of

unauthorized tracking software on Mr. Dennis's computer. H.O. Decision at 13 n.17. In his appeal, Mr. Dennis sets forth the following argument: if Ms. DeVault was not credible regarding her recollection in the above instance, then none of her testimony should be considered credible regarding any of the complaints she raised to NSTec management about Mr. Dennis. Dennis Br. at 3. Mr. Dennis contends that Ms. DeVault was factually inaccurate in three areas: her recollections of certain meetings, her reporting of Mr. Dennis's financial and emotional difficulties to management, and her testimony that Mr. Dennis had asked her to research the clearance of a former girlfriend. *Id.* at 4-5. As support for these accusations, he refers to portions of his own testimony at the hearing and offers new testimony and opinion in the body of the appeal. For example, he claims that Ms. DeVault included "fictitious allegations" regarding his divorce and an insurance claim when she spoke to Mr. Will about her concerns, and reiterates facts and dates from his testimony to establish that those difficulties were no longer relevant at the time Ms. DeVault reported them to Mr. Will. *Id.* at 5; *see* Tr. at 480, 488. In addition, he objects to Ms. DeVault's testimony, at Tr. at 381, that, at Mr. Dennis's request, she obtained the security status of a former girlfriend. In his appeal, he contends that "[t]he truth regarding this can easily be verified as this simply didn't happen," and then submits his version of the events. Dennis Br. at 5-6.

Mr. Dennis's contention that the Hearing Officer erred in finding any of Ms. DeVault's testimony credible is flawed in two respects. First, as trier of fact, the Hearing Officer assessed the credibility of all of the witnesses who appeared before her, including Ms. DeVault. The Hearing Officer saw the witnesses testify and had the opportunity to observe their demeanor. She was in a position to consider the testimony in conjunction with the documentary evidence presented at the hearing. Although she found that, in one particular instance, Ms. DeVault's testimony was not credible, the Hearing Officer clearly determined that the remainder of Ms. DeVault's testimony was reliable. *See, e.g., id.* at 8-9. That determination is not clearly erroneous merely because the Hearing Officer found one portion of the witness's testimony unreliable. The Hearing Officer observed Ms. DeVault as she testified, and received additional testimony, such as that of Mr. Gross and Mr. Will, that permitted her to assess the reliability of Ms. DeVault's testimony regarding what she divulged to Mr. Will. Tr. at 290-97 (testimony of Gross), 384 (testimony of Will). The references to Mr. Dennis's testimony and the recitations of facts that Mr. Dennis has produced in his appeal brief do not in fact support his challenge to Ms. DeVault's credibility as a witness at the hearing, because they do not establish that she provided Mr. Will with information different from that which she testified she did. Instead, they address his contention that the concerns she expressed to Mr. Will contained "fictitious allegations." Even if they successfully established that Ms. DeVault's concerns were not based in fact, they do not constitute evidence that Ms. DeVault did not testify credibly at the hearing about the concerns she expressed to Mr. Will. Consequently, I cannot find that the Hearing Officer was clearly erroneous in accepting Ms. DeVault's testimony as credible in this regard.

Second, Mr. Dennis appears to assume that if he can establish that NSTec relied on false information in its deliberations regarding his June 2007 termination, then the Hearing Officer was wrong to conclude that NSTec would have terminated Mr. Dennis absent his

protected disclosure. That assumption lacks logic. Mr. Dennis does not claim that Ms. DeVault's testimony was untrue regarding her recollection of which concerns she brought to Mr. Will's attention; the Hearing Officer's enumeration of that information is not challenged. What is challenged, however, is the factual bases for those concerns. Mr. Dennis has supported his challenge with references to his own testimony, which the Hearing Officer has already considered, and with new versions of facts, of which the Hearing Officer was not aware. The critical question regarding Mr. Dennis's termination was what information the decisionmakers relied upon in reaching their decision. However, even if we were to assume that the concerns Ms. DeVault provided to Mr. Will, and through him to senior management, were falsified, and even if we were also to assume that NSTec relied on those concerns when it decided to terminate Mr. Dennis because it had "lost trust" in him, it does not follow that the Hearing Officer's conclusion was incorrect.<sup>4</sup> Nothing in the record indicates that the decisionmakers believed or had any reason to believe that any information before it had been deliberately falsified or was unreliable. If NSTec had no reason to believe the concerns were factually unfounded, the Hearing Officer correctly concluded that NSTec lost trust in Mr. Dennis and would have terminated him even in the absence of his protected disclosure.<sup>5</sup>

Moreover, the record reflects that Mr. Dennis is incorrect in contending that NSTec management relied solely on Ms. DeVault's concerns when it determined that it had "lost trust" in Mr. Dennis. Mr. Will had transmitted Mr. Gross's concerns, as well as Ms. DeVault's, to senior management and to the DOE in early April 2007. Tr. at 384, 389. In addition, at the time of its decision, NSTec management also knew that DOE no longer supported Mr. Dennis working in the SCIF. *Id.* at 389. Thus, NSTec management clearly had other, independent information before it when it decided to terminate Mr. Dennis and, even if the decisionmakers had discounted Ms. DeVault's concerns, the Hearing Officer had a sufficient basis to conclude that NSTec would have terminated Mr. Dennis absent his protected disclosure, based on its "loss of trust" in Mr. Dennis.

#### B. Whether Mr. Will Knew Mr. Dennis Was Aware of the Tracking Software

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<sup>4</sup> I note that the Hearing Officer found no credible evidence to support NSTec's concern about Mr. Dennis's alleged financial difficulties. H.O. Decision at 17 n.21. Discounting this alleged concern, she nevertheless concluded that NSTec management had "lost trust" in Mr. Dennis.

<sup>5</sup> Although Mr. Dennis did not raise this argument, there is one situation in which Ms. DeVault's alleged falsification might have a bearing on this conclusion. If Ms. DeVault, as Mr. Dennis's supervisor, had fabricated her concerns in response to Mr. Dennis making a protected disclosure to her, in an effort to have his employment adversely affected, her fabrications might constitute an act of retaliation under Part 708. Under the facts presented in this case, however, this result is not possible. Ms. DeVault discussed her concerns with Mr. Gross and Mr. Will before Mr. Gross issued his performance evaluation of Mr. Dennis in March 2007. Tr. at 257-58 (testimony of Mr. Gross), 282-83 (testimony of Mr. Will). Mr. Dennis testified that he reported his discovery of the tracking software to Mr. Harvey, who immediately reported it to Ms. DeVault, in mid-May 2007. *Id.* at 92, 94, 96. Therefore, because Mr. Dennis made his protected disclosure about two months after Ms. DeVault delivered her concerns to management, even if those concerns were falsified as Mr. Dennis claims, his protected disclosure could not possibly have been a contributing factor to her expression of concerns.

In his appeal, Mr. Dennis contends that Mr. Will knew that he was aware of tracking software on his computer and had asked for a meeting with Mr. Will on that topic. Dennis Br. at 7. Mr. Will testified at the hearing that he believed Mr. Dennis had requested the meeting in order to discuss access procedures in the SCIF. Tr. at 378-81. To establish that Mr. Will was incorrect in his belief, Mr. Dennis cites a portion of a June 1, 2007, e-mail message from Mr. Dennis to Mr. Will, which reads, "I don't even know what the rules are. At first, I had to be let in, which doesn't pose a problem for me at all . . . but now I have to be 'escorted' but not really." Dennis Br. at 7-8.

I fail to see how the cited language establishes that Mr. Will's belief was other than that to which he testified. Moreover, I fail to see what bearing Mr. Will's belief regarding the scope of the requested meeting has on the Hearing Officer's finding that NSTec had met its burden. Mr. Will was clearly aware of the tracking software issue, Tr. at 403, even if he did not believe it to be the topic Mr. Dennis wanted to discuss with him. The Hearing Officer acknowledged that NSTec management was aware of Mr. Dennis's knowledge of the tracking software, because she found that Mr. Dennis had made a protected disclosure in that regard. H.O. Decision at 14. She nevertheless found that NSTec would have terminated Mr. Dennis in the absence of his protected disclosure. H.O. Decision at 19. Mr. Dennis has not presented any argument regarding the tracking software that convinces me that her conclusion should be overturned.<sup>6</sup>

### C. Whether NSTec Followed Its Termination Procedures

In his appeal, Mr. Dennis contends that NSTec's failure to follow its own procedures when it terminated his employment is additional evidence that the Hearing Officer erred in finding that NSTec had met its burden. Mr. Dennis argues that he should have been subjected to progressive discipline rather than immediate termination.<sup>7</sup> Dennis Br. at 6, 9. He also challenges NSTec's contention that other employees who had been immediately terminated were similarly situated to Mr. Dennis. *Id.* at 9.<sup>8</sup>

<sup>6</sup> Mr. Dennis also asserts that Mr. Will admitted in his testimony that "the decision to speed up Dennis' termination was based on his protected disclosure that he found" the tracking software. Dennis Br. at 11-12 (citing Tr. at 403). I have reviewed that portion of Mr. Will's testimony and have determined that the context in which it was presented does not in any way support Mr. Dennis's interpretation: the "decision" that Mr. Will states needs to be made refers to reaching a conclusion in an ongoing cyber security investigation, not reaching a conclusion regarding Mr. Dennis's possible termination.

<sup>7</sup> He also finds NSTec at fault for "not using the DOE Administrative Review process for security matters" and for not "even asking my client any questions." I note that administrative review is one stage of adjudication of an individual's eligibility for access to classified material or information under 10 C.F.R. Part 710. It has no bearing on employment determinations and thus does not constitute an alternative mechanism for resolving workplace concerns raised by an employee's managers.

<sup>8</sup> Mr. Dennis also contends that the Hearing Officer ignored evidence that the decision to terminate him had been made before the meeting of the NSTec managers at which his termination was ostensibly decided. *Id.* at 11 (citing Mr. Gross's testimony, Tr. at 305, that a few days earlier he had been told that Mr. Dennis was going to be terminated). As this is the totality of the evidence on this matter, and it is unclear even who relayed this information to Mr. Gross, let alone its accuracy, I find that it is not reliable enough to prove, as Mr. Dennis alleges, that NSTec "lied about its [termination] process." Dennis Br. at 11.

To place this argument in the appropriate context, the Hearing Officer addressed NSTec's compliance with existing employee relations procedures in her application of a Federal Circuit opinion that provides guidance on whether an employer has met its evidentiary burden in a Part 708 case. *See Kalil v. Dep't of Agriculture*, 479 F.3d 821 (Fed. Cir. 2007). *Kalil* sets forth three factors to consider in evaluating the employer's burden. The third factor is "any evidence of similar action against similarly situated employees . . ." *Id.* at 824. After finding that the first two factors weighed in favor of NSTec having met its burden, the Hearing Officer considered the evidence relevant to this factor: that the company president admitted he had never previously fired anyone else for concerns related to national security, but that the employee relations manager testified that the company had terminated other employees when it determined that termination was "the immediate and only discipline." Tr. at 467. Acknowledging that NSTec had not had "an employee similarly situated to Mr. Dennis," the Hearing Officer found that NSTec had demonstrated that "it has disciplined other employees through immediate termination when it deemed conduct to be so serious that it resulted in management losing 'trust' in an employee." H.O. Decision at 19.

I find no error in the Hearing Officer's finding that, despite the non-existence of a similarly situated employee who faced similar action by the employer, NSTec satisfied the third factor of the test set forth in *Kalil*. Even if Mr. Dennis's behavior was not identical to the behavior that led to the termination of other employees—and it clearly was not—the record supports the Hearing Officer's finding that the company had lost trust in Mr. Dennis and deemed his conduct to be extremely serious. Moreover, NSTec established that, in such circumstances, it had immediately terminated employees, as it did Mr. Dennis. Taking into consideration that these findings of fact affected only one of three factors the Hearing Officer considered, and that the Hearing Officer found that NSTec clearly met two of the three *Kalil* factors in addition to this factor, I agree with the Hearing Officer that under the *Kalil* test, the company met its burden of proving that it would have taken the same action against Mr. Dennis even if he had not made his protected disclosure.

#### D. Other Grounds for Appeal

In his appeal, Mr. Dennis raises a number of additional challenges to the Hearing Officer's conclusion that NSTec met its evidentiary burden, and he is therefore not entitled to relief under Part 708. He claims that the Hearing Officer misinterpreted or misunderstood some of the evidence in the record. Examples of such evidence are whether, in his role as a derivative classifier, he was in fact aggressively pursuing classified information, Dennis Br. at 8-9, and whether he was in fact an insider threat to national security, when he told Ms. DeVault and others of the security breach he could inflict were he so inclined. *Id.* at 10-11. Mr. Dennis also questions why his complaints about the prohibition against using thumb drives raised a concern, when Mr. Will himself testified that many employees were unhappy with the new rule. *Id.* at 10. As with other facts in evidence in this proceeding, Mr. Dennis's opinion of their significance to his termination is at odds with the opinions of a number of NSTec managers, including those to whom he made statements and those responsible for his termination. Despite the

divergence of opinion and Mr. Dennis's reiteration of his interpretation of the import of these facts, I cannot find that the Hearing Officer was clearly erroneous in finding the facts as she did. Consequently, I cannot overturn her decision on these grounds.<sup>9</sup>

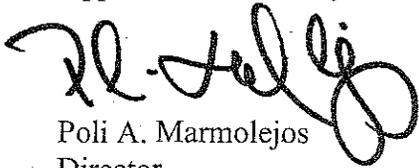
### III. Conclusion

The Hearing Officer correctly concluded that NSTec met its burden of showing, by clear and convincing evidence, that it would have terminated Mr. Dennis even if he had not made a protected disclosure.

It Is Therefore Ordered That:

(1) The Appeal filed by Dean P. Dennis on March 2, 2009 (Case No. TBA-0072), of the Initial Agency Decision IAD) issued on February 12, 2009, under 10 C.F.R. Part 708 is hereby denied.

(2) This Appeal Decision shall become the Final Decision of the Department of Energy unless a party files a petition for Secretarial review with the Office of Hearings and Appeals within 30 days after receiving this Decision. 10 C.F.R. § 708.35.



Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date: JUL 22 2009

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<sup>9</sup> Finally, Mr. Dennis demands that certain passages of the Hearing Officer's decision be stricken, as they consist of "speculative remarks," *id.* at 11, and "speculative conclusions . . . that are inappropriate and potentially damaging to Mr. Dennis's reputation." *Id.* at 10. In fulfilling her duties to reach findings of facts and conclusions of law, the Hearing Officer must draw inferences that are based on her interpretation of the evidence before her. To the extent that any of her inferences appear derogatory, I do not find them excessively inflammatory or beyond her proper role as Hearing Officer.