



Department of Energy
Washington, DC 20585

JUL 16 2008

John Frith Stewart, Esq.
Stewart, Roelandt, Stoess,
Craigmyle & Emery LLC
P.O. Box 307
Crestwood, KY 40014

Re: Case No. TBB-0069

Dear Mr. Stewart:

This letter concerns the complaint of retaliation filed with the Department of Energy (DOE) under 10 C.F.R. Part 708 by Gary S. Vander Boegh (Vander Boegh). On February 5, 2008, the Office of Hearings and Appeals (OHA) received your petition for Secretarial review of the December 18, 2007, Appeal Decision issued by the Director of OHA.

Under the Part 708 regulations, the Secretary will reverse or revise an appeal decision by the Director of OHA only in extraordinary circumstances. 10 C.F.R. § 708.35. As discussed below, your submission does not meet this standard.

In your petition, you argue that we had no authority to issue the December 18, 2007, decision because you had filed a Petition for Secretarial Review before we issued our December 18 appeal decision. However, your earlier Petition became moot when a February 22, 2007, decision dismissing Vander Boegh's complaint was withdrawn. To the extent this argument raises only a procedural legal question under Part 708, it does not merit Secretarial review.

You also assert that we erred with regard to our finding as to the timeliness of Vander Boegh's Part 708 complaint. In essence, your arguments represent a difference with our assessment of the evidence with regard to the issue of timeliness - specifically, our determination of when Vander Boegh knew or should have known that the actions taken against him by his former employers were retaliatory. These arguments disagreeing with our assessment of the weight of evidence do not rise to the standard for Secretarial review. You also argue in your Petition that Vander Boegh's former employers are "estopped" from asserting a defense of a lack of timeliness. The Petition asserts that Vander Boegh's former employers cannot argue that their actions were not retaliatory and, at the same hearing, argue that his whistleblower complaint was filed untimely. The validity of the arguments raised by Vander Boegh's former employers is irrelevant. OHA has made its own determination that the complaint was untimely.

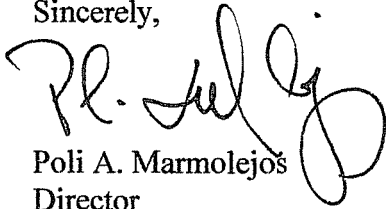
Your Petition further argues that we erred when we found that Vander Boegh's subsequent Part 708 complaint was properly dismissed. Your Petition seeks to raise a legal argument concerning the provision of Part 708, 10 C.F.R. § 708.17, that provides for dismissal of Part 708 claims that are raised in alternate legal forums. We believe that Part 708 is clear on this point. The fact that you disagree with our view of the regulations does not present extraordinary circumstances.



The Acting Deputy Secretary of Energy has authorized me to send you this letter dismissing the petition for failure to demonstrate extraordinary circumstances. Accordingly, the petition for review filed in Case No. TBB-0069 is hereby dismissed.

If you have any questions regarding this letter, please call Richard A. Cronin, Jr., Attorney-Examiner, Office of Hearings and Appeals, at telephone number (202) 287-1589.

Sincerely,



Poli A. Marmolejos
Director
Office of Hearings and Appeals

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