

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of Guobin Hu)		
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Filing Date: September 23, 2025)	Case No.:	WBU-25-0002
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Issued: September 30, 2025

Decision and Order

Guobin Hu (Appellant), an employee of Brookhaven Science Associates, LLC (BSA),¹ appealed the dismissal of a complaint that he filed against BSA under Part 708 of Title 10 of the Code of Federal Regulations (Part 708), the Department of Energy’s (DOE) Contractor Employee Protection Program. The Head of Field Element for DOE’s Brookhaven Site Office (BSO) dismissed Appellant’s complaint on August 28, 2025, for lack of jurisdiction and other good cause pursuant to 10 C.F.R. § 708.18(c). On September 29, 2025, BSA submitted a response to the appeal in which it argued that Appellant’s appeal should be denied. For the reasons set forth herein, Appellant’s appeal is granted.

I. Background

A. The DOE Contractor Employee Protection Program

DOE’s Contractor Employee Protection Program was established 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. Criteria and Procedures for DOE Contractor Employee Protection Program, 57 Fed. Reg. 7,533 (Mar. 3, 1992). Its primary purpose is to encourage contractor employees to disclose information which they believe exhibits unsafe, unlawful, fraudulent, or wasteful practices and to protect those “whistleblowers” from consequential reprisals by their employers. *Id.*

Part 708 prohibits DOE contractors from retaliating against an employee because that employee has engaged in protected activity, such as disclosing information that the employee reasonably believes reveals a substantial violation of a law, rule, or regulation, a substantial and specific danger to employees or to public health or safety, or fraud, gross mismanagement, gross waste of funds, or abuse of authority. 10 C.F.R. § 708.5(a). Employees are also protected from retaliation

¹ BSA manages Brookhaven National Laboratory on behalf of DOE. *Brookhaven Science Associates*, BROOKHAVEN NAT’L LAB’Y, <https://www.bnl.gov/about/bsa.php> (last visited Sep. 30, 2025).

for refusing to participate in an activity, policy, or practice if the employee believes that doing so would violate a Federal health or safety law or cause the employee to have a reasonable fear of serious injury to themselves or others, provided that the employee first asks the contractor to correct the violation or remove the danger. *Id.* §§ 708.5(c), 708.7(a). Available relief includes reinstatement, back pay, transfer preference, and such other relief as may be appropriate. *Id.* § 708.36.

A complainant who files a Part 708 complaint has the burden of establishing by a preponderance of the evidence that he or she engaged in protected activity, as described in 10 C.F.R. § 708.5, and that the complainant's protected activity was a contributing factor in one or more alleged acts of retaliation by the contractor against the complainant. *Id.* § 708.29. If the complainant meets that burden, the burden then shifts to the contractor to prove by clear and convincing evidence that it would have taken the same action without the complainant's protected activity. *Id.*

An employee employed at a DOE field facility or site who alleges that he or she suffered retaliation for engaging in protected activity may file a Part 708 complaint with the Head of Field Element at the DOE field element with jurisdiction over the contract. *Id.* § 708.11(b). The Head of Field Element may dismiss a complaint for lack of jurisdiction or for other good cause. *Id.* § 708.18(a). Such a dismissal is appropriate if:

- (1) The complaint is untimely; or
- (2) The facts, as alleged in the complaint, do not present issues for which relief can be granted under [Part 708]; or
- (3) The complainant filed a complaint under State or other applicable law with respect to the same facts as alleged in a complaint under [Part 708]; or
- (4) The complaint is frivolous or without merit on its face; or
- (5) The issues presented in the complaint have been rendered moot by subsequent events or substantially resolved; or
- (6) The employer has made a formal offer to provide the remedy requested in the complaint or a remedy that DOE considers to be equivalent to what could be provided as a remedy under [Part 708].

Id. § 708.18(c).

A complainant may appeal dismissal of his or her Part 708 complaint by the Head of Field Element to the Director of the Office of Hearings and Appeals (OHA) "by the 10th day after receipt of the notice of dismissal" *Id.* § 708.19(a).

B. The Complaint

On July 18, 2025, Appellant submitted a Part 708 complaint (Complaint) to the Head of Field Element for DOE's BSO. Appeal at 10 (including a copy of the e-mail by which Appellant submitted his Complaint). In the Complaint, Appellant alleged that on April 14, 2025, he disclosed research misconduct by his manager on a DOE-funded project to BSA management. *Id.* at 11. Appellant further alleged that BSA retaliated against him for this disclosure by placing him on a performance improvement plan (PIP). *Id.*

Appellant also filed a complaint with DOE's Office of Inspector General (OIG), on the same grounds as the Complaint, under the Enhancement of Contractor Protection from Reprisal for Disclosure of Certain Information program codified at 41 U.S.C. § 4712. *Id.* On August 19, 2025, OIG notified Appellant that it lacked jurisdiction to address his complaint under 41 U.S.C. § 4712 because a BSA official had advised OIG that Appellant's manager had requested to place him on a PIP in February 2025, and therefore the PIP could not have been in retaliation for Appellant's disclosure concerning research misconduct because the PIP "was initiated prior to [Appellant's] disclosure." *Id.* at 8–9 (OIG letter appended to the Appeal). Accordingly, OIG advised Appellant that it would "not open an investigation into the matter." *Id.* at 9.

C. Dismissal

BSO collected a response to the Complaint from BSA on August 11, 2025, and a reply from Appellant on August 24, 2025. *Id.* at 4–5 (summarizing BSO's processing of the Complaint). The Head of Field Element subsequently issued a letter (Dismissal), dated August 28, 2025, dismissing the Complaint on two grounds. *Id.* at 4–7 (Dismissal appended to the Appeal). First, the Head of Field Element concluded that Appellant had filed a complaint with OIG pursuant to 48 C.F.R. Part 3 based on the same set of facts and therefore that the Complaint must be dismissed for lack of jurisdiction. *Id.* at 5; *see also* 10 C.F.R. § 708.16(a) (providing that an employee may not file a complaint under Part 708 if he or she also filed a complaint under "State or other applicable law"); 10 C.F.R. § 708.18(c)(3) (providing for dismissal if "[t]he complainant filed a complaint under State or other applicable law with respect to the same facts as alleged in a complaint under [Part 708]"). Second, the Dismissal concluded that the Complaint did not satisfy regulatory requirements for the form and content of a complaint because Appellant failed to include a statement that he was not pursuing a remedy under State or other applicable law, a statement that all of the facts alleged in the Complaint were true and correct to the best of his knowledge and belief, and an affirmation that Appellant had exhausted all applicable grievance or arbitration procedures. Appeal at 6; *see also* 10 C.F.R. § 708.13(b)–(d) (requiring inclusion of the aforementioned statements and affirmation in a complaint); 10 C.F.R. § 708.18 (providing for dismissal of a Part 708 complaint for lack of jurisdiction or other good cause).

D. Appeal

On September 22, 2025, Appellant submitted the Appeal.² In the Appeal, Appellant argued that the Head of Field Element's determination that he had filed a complaint under State or other applicable law was moot because OIG had found that it lacked jurisdiction and would not investigate his complaint. Appeal at 2. Appellant also provided affirmations that he was not pursuing other remedies based on the same facts alleged in the Complaint, that the facts he alleged in the Complaint were true and correct, and that he had exhausted all applicable BSA grievance or arbitration procedures, which he asserted cured the defects in his Complaint cited by the Head of Field Element. *Id.*

E. Response

On September 29, 2025, BSA submitted a response to the Appeal. Response Brief (Sep. 29, 2025) (Response). Therein, BSA denied that placing Appellant on a PIP was a retaliatory action and indicated that it "supports the decision" of the Head of Field Element. *Id.* at 1–2. However, BSA declined to "comment on the various procedural improprieties cited by [Appellant] in his [A]ppeal . . . [or] on the dismissal by the [OIG] of his claim concerning retaliation." *Id.* at 1.

II. Analysis

In deciding appeals of dismissals for lack of jurisdiction or other good cause, OHA "will review findings of fact for clear error and conclusions of law *de novo*." 10 C.F.R. § 708.19(c).

A. Appellant's Complaint to OIG Does Not Bar His Part 708 Complaint

A Part 708 complaint may be dismissed if a complainant filed "a complaint under State or other applicable law with respect to the same facts as alleged in a [Part 708] complaint" 10 C.F.R. § 708.18(c)(3). However, a Part 708 complaint is not barred if the other complaint filed with respect to the same facts "was filed under 48 C.F.R. Part 3, subpart 3.9 and the Inspector General, after conducting an initial inquiry, determines not to pursue it." *Id.* § 708.16(a)(2).

The Head of Field Element concluded that Appellant's complaint to OIG pursuant to 48 C.F.R. Part 3 was based on the same facts alleged in the Complaint, it was a complaint under State or other applicable law, and Appellant had "not provided evidence demonstrating that [OIG] ha[d] determined not to pursue [his] [c]omplaint." Appeal at 5; *see also* 48 C.F.R. § 3.900(a) (indicating that 48 C.F.R. Part 3, subpart 3.9, covers complaints filed under 41 U.S.C. § 4712). However, Appellant has now brought forth evidence that OIG determined not to pursue his complaint under 41 U.S.C. § 4712. Appeal at 8–9. Accordingly, Appellant has demonstrated that his complaint to OIG does not bar his Part 708 Complaint pursuant to 10 C.F.R. § 708.16(a)(2). Therefore, dismissal of the Complaint pursuant to 10 C.F.R. § 708.18(c)(3) is inappropriate in this case.

B. The Defects in Appellant's Complaint are Not a Jurisdictional Bar

² Appellant did not receive the Dismissal until September 20, 2025. E-mail from BSO to OHA (Sep. 23, 2025). Accordingly, Appellant's Appeal was timely submitted by the tenth day after receipt of the Dismissal as required by 10 C.F.R. § 708.19(a).

In the Appeal, Appellant affirmed that he was not currently pursuing a remedy under State or other applicable law with respect to the same facts alleged in the Complaint, all facts he alleged were true and correct, and he had exhausted all applicable grievance procedures through BSA. Appeal at 2. We construe Appellant's affirmations as an effort to amend the Complaint. There is no indication in the record that Appellant was advised of the defects in the form of his Complaint prior to the Dismissal. Upholding the Dismissal, without providing Appellant an opportunity to amend the Complaint to resolve the deficiencies, would subject Appellant to a more stringent procedural standard than if his Complaint was subject to the Federal Rules of Civil Procedure. *See* FED. R. CIV. P. 15(a)(1)(b) (providing that a party may amend a pleading as a matter of right before trial twenty-one days after service of a motion to dismiss filed pursuant to Rule 12(b)). Such a rigorous standard for complaints would be inconsistent with the more relaxed standards applicable to Part 708 proceedings. *See, e.g., Clint Olson*, OHA Case No. TBU-0027 at 5–6 (2004) (indicating that complainants “should be given an opportunity to correct deficiencies” and remanding a complaint dismissed by the manager of a DOE employee concerns program to allow the complainant to, among other things, provide required statements and affirmations). Considering that Appellant has endeavored to remedy the defects in the form of his Complaint through the Appeal after being placed on notice of the defects in the Dismissal, we find that dismissal pursuant to 10 C.F.R. § 708.18(c) is inappropriate in this case.

III. Conclusion

Having concluded that Appellant's complaint to OIG and failure to include all required statements and affirmations in his Complaint no longer present jurisdictional bars to consideration of the Complaint, we must reverse the Dismissal. Therefore, we grant the Appeal and remand the matter to BSO for further processing.

It is therefore ordered that:

- (1) The Appeal filed by Guobin Hu (Case No. WBU-25-0002) is hereby: GRANTED.
- (2) This matter is remanded to the Brookhaven Site Office for further processing pursuant to 10 C.F.R. § 708.21(a).

Poli A. Marmolejos
Director
Office of Hearings and Appeals