In the Matter of:	Andrei Seryi	)		
		)		
Filing Date:	April 20, 2026	)	Case No.:	WBU-26-0003
		)		
		)		

Issued: May 22, 2026

Decision and Order

Dr. Andrei Seryi (Appellant), a former employee of Jefferson Science Associates, LLC, (JSA), appealed the dismissal of a complaint (Complaint) that he filed against JSA under Part 708 of Title 10 of the Code of Federal Regulations (Part 708), the Department of Energy's (DOE) Contractor Employee Protection Program. JSA is the operator of the DOE's Thomas Jefferson National Accelerator Facility (JLAB). The Head of Field Element for DOE's Thomas Jefferson Site Office (TJSO) dismissed the Complaint on April 9, 2026, for lack of jurisdiction pursuant to 10 C.F.R. § 708.18(a) and (c). On May 8, 2026, JSA submitted a response to the appeal, arguing that it should be denied. For the reasons set forth herein, the 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 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.*

A contractor 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). Upon review of the complaint and the employer's response, the Head of Field Element may dismiss the 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
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> (2) The facts, as alleged in the complaint, do not present issues for which relief can be granted under [Part 708]; or
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> (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

Appellant filed his Complaint with TJSO on March 3, 2026. TJSO Dismissal Decision (Dismissal Decision) at 1 (April 26, 2026); Complaint (Compl.) from Andrei Seryi to TJSO at 1 (March 3, 2026). The Complaint alleged that Appellant made the following three protected disclosures without providing any additional detail as to their content:

> 1. July 6, 2025 – Submission through JSA EthicsPoint system raising safety and integrity concerns.
>
> 2. December 2, 2025 – Complaint to DOE Office of Inspector General (OIG) concerning suppression and distortion of safety and financial integrity information.
>
> 3. Internal disclosures during 2024–2025 concerning safety governance and financial reporting.

Compl. at 2.

The Complaint further alleged the following. Appellant reasonably believed the above information "evidenced violations of law, regulation, gross mismanagement, gross waste of funds, abuse of authority, and substantial and specific danger to worker safety." *Id.* at 1. JSA management knew of Appellant's above protected activities because he disclosed filing the DOE OIG complaint, he believed that senior leadership identified him as the author of the anonymous EthicsPoint submission, and there were "observable changes in management" following his disclosures. *Id.* And JSA retaliated against Appellant by presenting him with "separation options" on November 21, 2025, and thereafter terminating him on December 11, 2025. *Id.*

Appellant did not include the EthicsPoint submission, the OIG complaint, or the content of the "internal disclosures during 2024–2025" with his Complaint.[1] However, JSA provided the EthicsPoint submission to TJSO with its response to the Complaint, which is recounted and addressed below in our analysis. JSA Response (Resp.) to Compl. at 2.

C. Dismissal

In response to the Complaint, JSA filed a request that it be dismissed because it failed to allege facts sufficient to establish he made a protected disclosure under one of the enumerated bases in 10 C.F.R. § 708.5(a). JSA Resp. to Compl. at 2 (March 19, 2026). JSA argued that the Complaint instead alleged that Appellant reported mere disagreements with the ProActive Review Team and JSA management's response to the safety observations, disagreements with management's operational and personnel decisions, and disagreements with management's allocation of operational funds for the lab. *Id.* at 2–3. Furthermore, JSA argued that the Complaint was meritless because JSA had decided to take employment action against Appellant before they learned he was

[1] After filing the Complaint, Appellant reported to TJSO that

> in additional materials submitted to OIG on February 17, 2026, to complement my December 2, 2025 OIG submission, I provided details related to the scale of large financial mismanagement, based on distorted safety data. Sharing the details of this OIG submission is the prerogative of the OIG, so I will not include further details in this rebuttal.

Rebuttal at 1. Since the underlying details were not provided to TJSO, this revelation will not be considered further in our Decision regarding whether TJSO properly dismissed the Complaint.

responsible for the EthicsPoint submission[2] and Appellant asked to be terminated[3] during employment negotiations with JSA related to JSA's November 21, 2025, separation options, which included the ability to continue working at the lab in a non-supervisory role for a term period. *Id.* at 5–6.

Appellant filed a rebuttal to JSA's dismissal request. Compl. Rebuttal (March 30, 2026). Therein, he disputed the assertion that he did not sufficiently allege protected disclosures. *Id.* at 1. He alleged that JSA personnel had sufficient knowledge to identify him as the author of the EthicsPoint submission. *Id.* at 2–3. He also disputed that his termination was voluntary and argued that "the choice presented did not constitute a voluntary separation, but a forced choice between immediate termination and a time-limited separation, consistent with constructive discharge principles." *Id.* at 5.

TJSO dismissed the Complaint for two reasons. First, TJSO concluded that the Complaint "fail[ed] to substantiate a protected disclosure" under 10 C.F.R. Part 708 because the Complaint included general allegations and vague statements but did not allege a disclosure of a specific violation of law, rule, or regulation or a substantial and specific danger to worker safety, and it failed to "state any facts regarding gross mismanagement" or establish a disclosure of gross waste of funds or abuse of authority. Dismissal Decision at 2–4. In its analysis, TJSO specifically stated that "neither the Complaint nor [Appellant's] April 1, 2026[4] response substantiate the allegation that [he] made protected disclosures." *Id.* at 2. The wording of that sentence indicates that TJSO considered information Appellant provided during the course of TJSO's review to determine whether he had adequately alleged that he engaged in protected activity. Second, TJSO concluded the Complaint did not meet the required form and content standards of 10 C.F.R. § 708.13 because it did not include necessary statements and affirmations, such as a declaration that the complainant is not pursuing the same remedy under other laws and that the facts presented are true to the best of the complainant's knowledge. *Id*. TJSO's decision does not reference the content of the EthicsPoint submission in its evaluation of Appellant's Complaint.

D. Appeal

In the appeal, Appellant argued that TJSO "arbitrarily and capriciously dismissed these disclosures as mere disagreement with management decisions, failing to address their systemic implications and significant impact on the Laboratory's mission." Appeal at 3 (April 19, 2026). He also alleged that his EthicsPoint submission disclosed how JSA distorted safety data in 2024 to make the safety situation look worse than reality and distorted safety data in May 2025 to look better than reality, which raises a reasonable belief that "data was being presented selectively to support management objectives, including decisions affecting overhead growth and resource allocation." *Id*. He asserted

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[2] JSA asserted in their response that they first learned that Appellant was the author of the EthicsPoint submission when they received noticed of his Complaint. JSA Resp. to Compl. at 2.

[3] JSA provided a December 8, 2025, email from Appellant to a Human Resources (HR) representative where Appellant indicates that he decided to reject JSA's offered options for continuing employment and notes his realization that his rejection will result in his termination. Email from Appellant to Rhonda Barbosa (December 8, 2025).

[4] TJSO mistakenly ascribed the wrong date to this filing; the correct date is March 30, 2026. Compl. Rebuttal at 1.

that "financial and safety reporting integrity was compromised, and decisions were made based on distorted information provided to oversight bodies." *Id.*

He further argued that he need not cite to a specific statute or regulation to demonstrate that JSA's actions "violated federal oversight and reporting obligations under the law, and/or were an abuse of authority or gross mismanagement negatively impacting DOE's mission." *Id.* at 2. He argued that his disclosures meet the standard of gross mismanagement because they concern the integrity of reporting to DOE, and reliance on accurate data is fundamental to DOE's mission. *Id.* at 3. Next, he argued that his OIG complaint is independently protected because it "is a disclosure to a DOE official with responsibility for oversight of contractor operations—precisely the category protected under 10 CFR 708.5(a)." *Id.* at 4. Thus, even if "OHA were to find the July 6 EthicsPoint disclosure insufficient . . . the December 2 OIG filing alone satisfies the protected disclosure requirement." *Id.* Finally, he argued that the missing formal elements of his Complaint are readily curable, and he provided the statements in his appeal by asserting 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 JSA. *Id.*

E. Response

In its response to the appeal, JSA agreed with the TJSO decision. JSA Appeal Resp. at 3 (May 7, 2026). JSA argued that Appellant's allegations, at best, establish a mere "disagreement with Jefferson Lab leadership" and the "DOE ProActive Review Team." *Id.* (internal quotations omitted). JSA also argued that by omitting the three required disclosure statements in the Complaint Appellant introduced incurable error, and allowing him to fix the defect would give Appellant "a second bite at the apple . . . ." *Id.* at 4.

II. Analysis

Under Part 708, dismissal by the Head of Field Element is appropriate when "[t]he facts, as alleged in the complaint, do not present issues for which relief can be granted[.]" 10 C.F.R. § 708.18(c)(2). When reviewing an appeal of a dismissal, "[t]he OHA Director will review findings of fact for clear error and conclusions of law *de novo*." *Id.* § 708.19(c). OHA utilizes Rule 12(b)(6) of the Federal Rules of Civil Procedure, which concerns dismissals for failure to state a claim upon which relief can be granted, as a guide when considering dismissals pursuant to 10 C.F.R. § 708.18(c)(2). *See Erik DeBenedictis*, OHA Case No. WBU-20-0003 at 4 (2019) (identifying prior cases in which OHA looked to Rule 12(b)(6) in evaluating whether a complaint should be dismissed for failing to present issues for which relief can be granted under Part 708). Dismissal under Rule 12(b)(6) is proper only if the complaint does not "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). In assessing whether a claim is plausible, the adjudicator must accept all statements of fact in the complaint as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

As an initial matter, we will examine the Complaint as if the EthicsPoint submission had been submitted by Appellant while under the TJSO's review in an effort to provide the information necessary to demonstrate that he made a protected disclosure. In the past, we have remanded cases

where the complaint had been summarily dismissed without providing the complainant the opportunity to supply missing key facts to establish that the complainant had made a protected disclosure. *See, e.g.*, *Clint Olson*, OHA Case No. TBU-0027 at 5–6 (2004). Here, Appellant referenced the actual content of the EthicsPoint submission when arguing against dismissal. *See* Compl. Rebuttal at 1 (Appellant asserting that his EthicsPoint submission "raised well founded concerns regarding, JSA's [] suppression of a corrected safety report . . . . ."). He also referenced the content of the EthicsPoint submission when attempting to rebut JSA's factual assertions that JSA had researched the issue raised in the submission and concluded that the ProActive Review Team came to the correct conclusion. *Id.* JSA, in making their argument, also referenced the allegations contained in the EthicsPoint submission. Given that OHA favors allowing complainants to supply the necessary facts to substantiate their case while under review by the Head of the Field Element, and here those facts were not only provided by JSA to carry their argument in responding to the Complaint, but both parties referenced the submission in their filings, we think it appropriate to consider the EthicsPoint submission as part of the Complaint to determine whether TJSO correctly concluded the Complaint should be dismissed for failure to state a claim.[5]

As a final preliminary matter, we disagree with Appellant's argument that his OIG complaint is automatically protected because it was a disclosure to a DOE official with responsibility for oversight of contractor operations under 10 C.F.R. § 708.5(a). Appellant appears to mistake 10 C.F.R. § 708.5(a) for 10 C.F.R. § 708.5(b), which protects complainants from retaliation for "participating in . . . . an administrative proceeding conducted under this [Part 708]." Filing a complaint with OIG does not constitute participating in an administrative proceeding under Part 708. While a disclosure to OIG may satisfy the requirement in 10 C.F.R. § 708.5(a) that disclosure be made to a "DOE official" with oversight responsibilities, his disclosures to the DOE OIG must still meet the additional requirements of 10 C.F.R. § 708.5(a), recited above.

The EthicsPoint submission contains three discrete allegations, which according to the Complaint, constitute a protected disclosure. Compl. at 1. The first, entitled Suppression of Corrected Safety Report, reports that a "safety peer review"[6] was conducted at JLAB in May 2024 and resulted in a safety report (Safety Report) that identified deficiencies concerning workplace Personal Protective Equipment (PPE). EthicsPoint Submission at 3. That Safety Report allegedly "prompted" personnel consequences that included two employee terminations, a lab Director's resignation, and mandatory training for employees. *Id.* Appellant also alleged that the Safety Report contained a confirmed error,[7] and a corrected report (Corrected Report) was subsequently created, but JSA's Chief Operations Officer (COO) suppressed it. *Id.* By suppressing the Corrected Report, the COO allegedly "maintain[ed] the inaccurate narrative of a pervasive safety culture problem" and misled stakeholders, contributed to the Director's resignation, caused "undue stress to staff, and violated ethical stands of transparency and integrity." *Id.* The EthicsPoint submission described the error as

[5] TJSO also dismissed the Complaint for being meritless. Dismissal Decision at 2. However, there is no analysis provided for that conclusion other than stating it after concluding that the Complaint failed to state a claim for each of the alleged bases of protected disclosures address in the Dismissal Decision. *See, e.g., id.*

[6] This was conducted by the ProActive Review Team referenced in JSA's appeal response. JSA Appeal Resp. at 2.

[7] While the submission references "errors," Appellant confirmed that only one error existed in the form of a picture being mischaracterized. EthicsPoint Submission at 5.

a "a photo of a technician without PPE" in a safe area, where PPE would not have been required, that is nonetheless "mischaracterized as [an instance of] non-compliance." *Id.*

The second allegation contained in the EthicsPoint submission is entitled Manipulation of 2025 Safety Culture Review and alleged the following. *Id.* at 3. An outside firm conducted a May 2025 safety culture review at JLAB in which that firm sent a survey to all JSA employees. *Id.* The survey had a "low" participation rate of only eleven percent. *Id.* Despite the low participation, the company's communications did not include any reminders to complete the survey. *Id.* Furthermore, the outside firm planned to do staff interviews regarding the safety culture, and the HR Director and COO created a list of staff who should be excluded from interviews because those staff members would provide critical comments. *Id.* at 4. It is not clearly alleged that the staff members were actually excluded. The EthicsPoint submission recounted that the above "actions suggest an intent to bias the [safety culture] review, portraying an improved safety culture while suppressing critical voices" which "violates ethics standards by undermining the integrity of independent review." *Id.* It further alleged that the "manipulation obscured ongoing issues, affecting DOE oversight." *Id.*

The final EthicsPoint allegation is entitled Potential Financial Motive. *Id.* The submission explained that the COO's post-May 2024 safety narrative "led to large increases of indirect spendings, that benefited the COO group over other groups in the budget." *Id.* Further, it asserted that the COO exaggerated safety issues to justify the increase in indirect spending. *Id.* It then asserted that exaggerating safety issues by suppressing the Corrected Report could constitute fraud because it involved deception for financial gain. *Id.* Lastly, it asserted JSA's conduct "manipulating safety culture assessments, suppressing accurate reports, and potentially misrepresenting JLAB's safety status to secure financial benefits, violat[ed] Jefferson Science Associates code of conduct and DOE standards for integrity, as well as potentially violat[ed] the 18 U.S.C. § 1001[.]"

A. The Complaint alleged sufficient facts to establish that Appellant reasonably believed he disclosed an abuse of authority

An abuse of authority is an arbitrary or capricious act that adversely affects the rights of a person or results in personal gain or advantage to the decision maker or preferred persons. *Sherrie Walker*, OHA Case No. WBA-13-0015 at 7 (2014); *Cassondra B. Stark*, at *6. "An action is arbitrary or capricious if the decision maker has relied on inappropriate factors, failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence, or is so implausible that it could not be ascribed to a difference in view or the product of relevant expertise." *Erik DeBenedictis*, OHA Case No. WBA-20-0003 at *9 (2020). Here, Appellant characterizes the COO's action as "suppressing" the release of the Corrected Report, which implies that the COO used his authority to prevent the report from being released. He also alleges that the COO conspired to manipulate the safety culture review data to portray an improved safety culture by suppressing critical voices. Appellant also provides the "potential financial motive" for the COO's conduct in that his conduct led to a large increase of indirect spendings that benefited the COO's groups. He further alleges that the COO exaggerated safety issues to justify the increase in indirect spendings. These alleged facts support a reasonable belief that the COO took an action that was motivated by—and therefore based on—the inappropriate factor of exaggerating safety issues to accrue more resources to his program. The allegations also provide the factual basis from

which one could reasonably conclude that the COO received a personal gain or advantage, at the very least, by protecting the image that the increased expenditures in COO groups was justified by an improved safety culture.

Although this is not a case where Appellant is alleging that the COO took an action that resulted in a direct financial benefit to himself, that is not a bar to finding that Appellant nonetheless disclosed what he reasonably believed to be an abuse of authority. *See Chacon v. HHS*, 2016 MSPB LEXIS 329 (January 21, 2016). In *Chacon*, the Merit Systems Protection Board concluded that a whistleblower complainant sufficiently alleged an abuse of authority by asserting that her supervisor coerced her to prematurely close out complaints that were identified in an audit in order to cover up the supervisor's own mismanagement. *Id.* at *27–28. In that case, the personal gain or advantage for the supervisor was not personal financial gain, but rather, by inference, protecting his track record or job performance that would have been reduced by evidence that he had failed to perform his duties to manage the resolutions of those complaints.

Given that we have concluded the Appellant provided sufficient information that, if true, demonstrates he made a protected disclosure, we will remand the Complaint to TJSO on that basis for further processing.

B. The defects in the Complaint are not a jurisdictional bar

Appellant provided the three required disclosure statements in the appeal. We construe Appellant's affirmations in the appeal as an effort to amend the Complaint. There is no indication in the record that TJSO advised Appellant of the defects in his Complaint prior to dismissing it. We conclude that "[u]pholding the dismissal on this basis, 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." *Guobin Hu*, OHA Case No. WBU-25-0002 at *5 (2025) (citing FED. R. CIV. P. 15(a)(1)(b), which provides 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)). As we stated in *Hu,* "[s]uch a rigorous standard for complaints would be inconsistent with the more relaxed standards applicable to Part 708 proceedings." *Id.* Considering that Appellant has attempted to cure the defects in his Complaint through the appeal after being placed on notice of the defects in the Dismissal Decision, we find that dismissal pursuant to 10 C.F.R. § 708.18(c) is inappropriate in this case. *See*, *e.g.*, *Clint Olson*, OHA Case No. TBU-0027 at 5-6 (2004) (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 that could correct its deficiencies).

III. Conclusion

For the foregoing reasons, we reverse the Dismissal. Therefore, we grant the appeal and remand the matter to TJSO for further processing.

It is therefore ordered that:

(1) The appeal filed by Andrei Seryi (Case No. WBU-26-0003) is hereby GRANTED.

(2) This matter is remanded to the DOE's Thomas Jefferson Site Office for further processing pursuant to 10 C.F.R. § 708.21(a).

Poli A. Marmolejos
Director
Office of Hearings and Appeals