

United States Department of Energy
Office of Hearings and Appeals

In the Matter of Micheal Daniel Ramirez)
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Filing Date: January 7, 2026) Case No.: WBH-25-0006
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Issued: August 4, 2026

Initial Agency Decision

This decision considers a complaint (Complaint) filed by filed by Micheal D. Ramirez on May 16, 2025, against Triad National Security, LLC (Triad) under the Department of Energy’s (DOE) Contractor Employee Protection Program and its governing regulations set forth at Part 708 of Title 10 of the Code of Federal Regulations (Part 708). Mr. Ramirez alleges that Triad terminated his employment in retaliation for making protected disclosures under Part 708. For the reasons set forth below, I find that Mr. Ramirez is not entitled to relief.

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.

Employees of DOE contractors who believe they have been retaliated against in violation of Part 708 may file a whistleblower complaint with DOE. *Id.* § 708.11. Complaints are investigated by an investigator with the Office of Hearings and Appeals (OHA), followed by a hearing conducted by an OHA Administrative Judge, and an opportunity for review of the Administrative Judge's Initial Agency Decision by the OHA Director. *Id.* §§ 708.22, 708.25, 708.32.

B. Factual Background

Mr. Ramirez began his employment with Triad, the management and operations contractor for Los Alamos National Laboratory (LANL), as a Radiation Control Technician (RCT) in June 2020. Hearing Transcript, OHA Case No. WBH-25-0006 (Tr.) Pt. 1 at 12;¹ Exhibit (Ex.) OO at 4. Mr. Ramirez was hired as an RCT Level 2 (RCT-2) and received promotions in 2022 and 2023 to RCT-3 and RCT-4, respectively. Tr. Pt. 1 at 12, 120. As an RCT, Mr. Ramirez conducted surveys to measure the intensity of radiation on objects and people, developed radiological work permits, responded to incidents of radiological contamination involving workers, and prepared initial notifications documenting radiological incidents. *Id.* at 13. Mr. Ramirez received training on numerous policies and procedures related to his RCT duties, including Technical Procedure-201: Radiological Emergency Response (TP-201) and DOE Standard 1098: Radiological Control (DOE-STD-1098-2017). *Id.* at 11; *see also* Ex. JJ (Copy of TP-201); Ex. 20 (Copy of DOE-STD-1098-2017).

TP-201 provides detailed instructions for “the initial response and supplemental/follow-up actions by [radiation protection] personnel for emergency response situations such as . . . personnel contamination.” Ex. JJ at 160. Of particular relevance to this matter is section 4.10 of TP-201 which describes procedures for responding to personnel contamination. *Id.* at 172. TP-201 provides specific steps that must be taken when personal protective equipment (PPE) and non-PPE clothing are contaminated. *Id.* at 173–75. Both the PPE and non-PPE procedures refer the reader to section 4.10.9 for “Follow-Up Actions.” *Id.* at 173, 175. Among the actions listed in section 4.10.9 is the following: “Notify the HPFC [Health Physics Field Coordinator] and Management *as appropriate*, AND request assistance *as needed*.” *Id.* at 179 (*italics added, underlined and capitalized emphasis in original*).

DOE-STD-1098-2017 provides management officials with information to assist them in meeting their responsibilities for implementing radiological control programs, and includes, among other things, the following relevant guidance:

Managers should ensure radiological safety is not compromised to achieve production, remediation, or research objectives.

¹ The hearing transcript was delivered in three parts, each of which contained page numbers in the upper right corner of each page. This decision will refer to the applicable part number and the pagination within that part when citing to the transcript.

Supervisors and managers should encourage the workers to identify radiological control deficiencies and concerns, and should take prompt appropriate action to address identified issues and prevent their recurrence. Training, indoctrination, and procedure review are useful in addressing these issues.

Cleanliness and good housekeeping are essential to a robust radiological control program. Workers should routinely clean up after operations.

Ex. 20 at 133–34 (reflecting subsections 2, 6, and 8 of section 125 of DOE-STD-1098-2017).

Beginning in 2023, Mr. Ramirez’s direct supervisor was HPFC Robert Monsalve-Jones, and his manager for performance evaluation purposes was Deputy Group Leader for Radiation Protection and Field Support Mark Martinez. Tr. Pt. 1 at 15; Tr. Pt. 2 at 51. Mr. Monsalve-Jones reported to Mr. Martinez. Tr. Pt. 1 at 15; Tr. Pt. 2 at 7. The Group Leader to whom Mr. Martinez reported was John Garcia. Tr. Pt. 1 at 15; Tr. Pt. 2 at 234. Mr. Garcia reported to Division Leader Stephanie Archuleta who in turn reported to Associate Laboratory Director for Environment, Safety, Health, and Quality Steven Coleman. Tr. Pt. 1 at 15; Tr. Pt. 2 at 175–76, 234. From 2022 until his employment was terminated, Mr. Ramirez worked at TA-3-66, known as the “Sigma” facility. Tr. Pt. 1 at 17.

1. January 10, 2024, Contamination Incident

On January 10, 2024, a monitor in Room B-100 of the Sigma facility detected radiological contamination that had penetrated a worker’s PPE and contaminated the worker’s modesty clothing under the PPE. Ex. B at 5. James Jones, an RCT-2, was the first to respond to the scene. Tr. Pt. 1 at 18; Tr. Pt. 3 at 11, 240. Mr. Ramirez, who was the RCT responsible for overseeing the work being performed that day, responded while Mr. Jones was performing a full body survey of the contaminated worker. Tr. Pt. 1 at 19; Ex. 18 at 110; *see also* Ex. 3 at 14 (indicating that beta-gamma contamination on the worker’s PPE was measured at 100,000 disintegrations per minute (dpm)/100 cm²); Ex. 15 at 79 (Radiological Work Permit (RWP) indicating that 100,000 dpm/100 cm² is the beta-gamma contamination “suspension limit,” at which point work is to be stopped and the responding RPT is to “notify [the] Job Supervisor and Radiological Control Supervision”).

Mr. Ramirez and Mr. Jones provided differing accounts of the response to the contamination incident. According to Mr. Ramirez, Mr. Jones “started to panic when he saw the levels of contamination on the modesty clothing” and “was having a difficult time with the survey.” Tr. Pt. 1 at 19–20. Mr. Jones denied that he panicked or did not know how to proceed and instead indicated that he felt in control of the situation. Tr. Pt. 3 at 35–36; *see also id.* at 44 (Mr. Jones testifying as to the actions he took to address the situation and that he had taken similar actions “several times” in the past). Mr. Ramirez also asserted that “[t]he exposed worker was incredibly stressed [and] wanted to speak with Monsalve-Jones about [Mr. Monsalve-Jones] not appearing and helping Mr. [] Jones with the survey.” Tr. Pt. 1 at 33; *but see* Tr. Pt. 3 at 37 (Mr. Jones denying that the employee asked why Mr. Monsalve-Jones was not present). The exposed employee himself, in his hearing testimony, denied that he viewed the contamination incident as presenting a significant or substantial risk to his health on the day it occurred, indicated that he had no concerns with how Mr. Jones and Mr. Ramirez handled the situation, and stated that January 10, 2024, was not the

first occasion on which he had experienced contamination penetrate his PPE. Tr. Pt. 3 at 241, 244–45; *see also id.* at 244–45 (testifying that, prior to January 2024, he had worked in an environment in which exposure to plutonium presented substantial health risks and that he believed that the risks from exposure in Room B-100 were “very low risk in comparison”). As explained in detail below, I credit the accounts of Mr. Jones and the contaminated worker over Mr. Ramirez’s. *Infra* pp. 14–15.

According to Mr. Ramirez, due to the difficulties he perceived that Mr. Jones was having in completing the survey, he recommended that Mr. Jones notify Mr. Monsalve-Jones and Mr. Martinez of the contamination incident. Tr. Pt. 1 at 20; *see also id.* at 31 (testifying that he perceived “[t]hat it was a significant and serious event. And that we were at risk for skin exposure”); *id.* at 259–60 (Mr. Martinez testifying that Triad took events in which contamination penetrated PPE seriously); Tr. Pt. 2 at 12 (Mr. Monsalve-Jones testifying that this was the only instance in his career in which “we had contamination going through the PPE at LANL”); *but see* Tr. Pt. 2 at 193 (Ms. Archuleta testifying that contamination events involving PPE failing and non-PPE being contaminated “happen[] at the laboratory,” that it was “not necessarily unexpected or uncommon,” and that “we’re trained to address such issues”); Tr. Pt. 3 at 241 (contaminated worker testifying that he had previously experienced contamination that penetrated his PPE). Mr. Ramirez claimed that Mr. Jones made the call, Mr. Monsalve-Jones and Mr. Martinez did not answer, Mr. Ramirez asked Mr. Jones to walk to Mr. Monsalve-Jones’ office to request assistance, and that when Mr. Jones returned Mr. Jones said “the supervisor said that the contamination incident was our problem.” Tr. Pt. 1 at 20–21. Mr. Jones indicated that he called Mr. Monsalve-Jones and spoke to him by phone but denied that he requested immediate assistance. Tr. Pt. 3 at 13, 36. Contrary to Mr. Ramirez’s account, Mr. Monsalve-Jones denied recollection of either Mr. Ramirez or Mr. Jones insisting that he come to the scene immediately or telling him that they could not handle the situation. Tr. Pt. 2 at 39; *see also* Tr. Pt. 1 at 298 (Mr. Martinez testifying that he or Mr. Monsalve-Jones did not always respond to the scene of contamination incidents “immediately” after being contacted). Eventually, about one hour later, Mr. Monsalve-Jones reported to the scene. Tr. Pt. 1 at 21; Tr. Pt. 3 at 13. For reasons described in detail below, I conclude that Mr. Monsalve-Jones was not asked to report to the scene of the contamination incident “immediately” as Mr. Ramirez claimed. *Infra* pp. 14–15.

Hours after the January 10, 2024, contamination incident, Mr. Ramirez met with Mr. Monsalve-Jones and Mr. Martinez. Tr. Pt. 1 at 34–35; Tr. Pt. 2 at 12. Mr. Ramirez alleged that, during this meeting, he disclosed to Mr. Monsalve-Jones and Mr. Martinez that management’s response to the contamination incident violated DOE regulations, DOE standards, and Triad policies implementing those requirements. Tr. Pt. 1 at 34–37. In their hearing testimony, Mr. Monsalve-Jones and Mr. Martinez denied recollection of Mr. Ramirez having raised concerns about Mr. Monsalve-Jones’ response to the January 10, 2024, contamination incident during the meeting. *Id.* at 277; Tr. Pt. 2 at 13; *see also* Ex. MM at 414 (Mr. Martinez denying that Mr. Ramirez made the alleged disclosure, not just that Mr. Martinez did not recall, in a June 2025 affidavit).

2. Radiological Survey and Second Contamination Incident

On January 10, 2024, after a cleanup following the aforementioned contamination incident, Mr. Ramirez, Mr. Jones, and Erika Montoya performed a radiological survey of Room B-100. Tr. Pt.

1 at 28; Ex. C at 12–13. That survey identified beta radiation levels as high as 8,430 dpm/100 cm². Ex. C at 13. Mr. Ramirez interpreted these results as indicating that, “even after cleaning the area, the area still was not properly cleaned.” Tr. Pt. 1 at 29. According to Mr. Ramirez, he “raised the concern [to Mr. Monsalve-Jones] that there were elevated counts.” *Id.* at 138; *see also* Tr. Pt. 3 at 37 (Mr. Jones denying that Mr. Ramirez ever expressed to him that Mr. Monsalve-Jones should direct a cleanup of the room).

A second contamination event in room B-100 occurred on January 17, 2024, in which a worker’s hair and nasal cavity were contaminated. Tr. Pt. 1 at 43. Mr. Ramirez was present for the pre-job briefing and throughout the entire job on January 17, 2024, and thus had ample opportunity to object to the work proceeding if he believed the room should be further decontaminated; at no time did he attempt to exercise stop work authority or prevent the work from moving forward. *Id.* at 137–38; *see also id.* at 140 (Mr. Ramirez testifying that he was comfortable with the work proceeding “at the time”). Mr. Monsalve-Jones was notified of the contamination incident and reported to the scene within five minutes. *Id.* at 140; Tr. Pt. 2 at 16; *see also* Tr. Pt. 2 at 40–41 (testifying that he responded to that contamination incident more quickly than the January 10, 2024, incident because it “involved skin contamination” which presented a complicated decontamination situation whereas, in the January 10, 2024, incident, “as soon as that [] PPE or the clothing was removed, [the] contamination was gone”).

Mr. Ramirez alleged that, in late January 2024, he spoke to Mr. Monsalve-Jones and Mr. Martinez about the second contamination incident and told Mr. Monsalve-Jones that “if [Mr. Monsalve-Jones] had scheduled a decontamination effort of the area [following the January 10, 2024, contamination incident], that the individual may not have been exposed” on January 17, 2024. *Id.* at 48–50. He further alleged that he disclosed that Mr. Monsalve-Jones’ inaction violated DOE-STD-1098-2017 and 10 C.F.R. §§ 835.1101–1102.² *Id.* at 50–51. Mr. Martinez denied recollection of Mr. Ramirez having made such a disclosure. *Id.* at 277. Mr. Monsalve-Jones recalled that Mr. Ramirez suggested a revision to the RWP governing work in Room B-100 following the second contamination incident but did not recall Mr. Ramirez having disclosed that the second contamination was preventable. Tr. Pt. 2 at 15, 17.

3. *Review of Contamination Incidents*

Following the January 2024 contamination incidents, Triad convened a fact finding and a “Learning Team” to review the events.³ Ex. 19 (fact finding transcript); Ex. 18 (Learning Team report); *see also* Tr. Pt. 2 at 248 (Mr. Garcia explaining that the fact finding establishes an event timeline and determines the “level of severity” of the event, and a Learning Team uses the results of the fact finding to “tr[y] to come up with improvement actions based on what they found”). The Learning Team, which included Mr. Ramirez and Mr. Monsalve-Jones, was convened to review

² 10 C.F.R. Part 835, Subpart L, provides for the control of areas, material, and equipment based on surface contamination levels specified in Appendix D to Part 835.

³ A Learning Team is not convened after all contamination events. Tr. Pt. 2 at 252. According to Mr. Garcia, “[t]he fact that there were two coincidental contamination events was enough to draw the attention of the people to do a Learning Team.” *Id.*

the facts of the January 10 and 17, 2024, contamination incidents and ascertain how to “lower the chances for contamination” Ex. 18 at 94; Tr. Pt. 2 at 44–45; Tr. Pt. 1 at 100–01. Although the fact finding discussed Mr. Monsalve-Jones’ involvement after the January 10, 2024, contamination incident, Mr. Ramirez did not raise any concerns regarding Mr. Monsalve-Jones failing to promptly report to the scene of the incident or failing to ensure that the room was decontaminated. Tr. Pt. 1 at 141–42; *see also* Ex. 19 at 112–13 (indicating in the fact finding transcript that Mr. Monsalve-Jones provided an account of his learning of the contamination incident and notifying Mr. Martinez of the situation).

On January 26, 2024, the Learning Team issued a report. Ex. 18. While the Learning Team identified a number of solutions to prevent similar incidents in the future, the report did not draw any conclusions related to actions by Mr. Monsalve-Jones. *Id.* at 95–97; *see also* Tr. Pt. 2 at 46 (Mr. Monsalve-Jones identifying several actions taken with respect to the RWP based on the Learning Team’s feedback).

4. Complaints Regarding Mr. Ramirez’s Conduct

At some point in January 2024, Mr. Jones complained to Mr. Monsalve-Jones about Mr. Ramirez’s workplace conduct, and Mr. Monsalve-Jones advised him to “contact HR.” Tr. Pt. 2 at 18. On February 1, 2024, Mr. Jones sent an email to Mr. Martinez stating that Mr. Ramirez had “cuss[ed] at [him]” when he attempted to correct a mistake that he perceived Mr. Ramirez was making, “cuss[ed] at [] customers,” and had “threaten[ed] to throw people down the stairs almost daily” in frustration.⁴ Ex. E at 25; *see also* Tr. Pt. 1 at 148–49 (Mr. Ramirez denying that he had done so); Ex. 13 at 76 (Mr. Ramirez indicating in a text message to a coworker, Patricia Lozano, that he had told another employee “if I’m in a bad mood I would kick you down the stairs”). Mr. Martinez forwarded Mr. Jones’ email to Mr. Garcia, who in turn forwarded it to a Triad HR representative and stated that he and Mr. Martinez would talk to Mr. Ramirez about “the hostile work environment [he] ha[d] been creating” Ex. E at 25.

Mr. Martinez and Mr. Monsalve-Jones met with Mr. Ramirez on February 5, 2024, concerning Mr. Jones’ allegations.⁵ Tr. Pt. 1 at 286; Ex. 3 at 6. During the meeting, Mr. Martinez reviewed Triad’s Respectful Workplace Policy with Mr. Ramirez and directed him to correct the behaviors complained of by Mr. Jones. Tr. Pt. 1 at 287; Ex. 3 at 6.

Mr. Martinez and Mr. Monsalve-Jones received another complaint about Mr. Ramirez’s behavior on February 15, 2024, when Amy Maestas, an RCT with whom Mr. Ramirez shared an office at the time, emailed them alleging that Mr. Ramirez was engaged in “consistent jabbing [sic], smart remarks, [and] slamming things.” Ex. G at 33; Tr. Pt. 3 at 169–70. According to Ms. Maestas, Mr.

⁴ Mr. Ramirez had previously been counseled by Mr. Martinez concerning his interactions with coworkers and customers. Tr. Pt. 1 at 283. However, a performance review issued to Mr. Ramirez in January 2023 indicated that he had demonstrated “marked improvement in [his] interaction[s] with fellow technicians and customers.” Ex. 1 at 4.

⁵ Mr. Monsalve-Jones denied recollection of that meeting. Tr. Pt. 2 at 54. However, considering that both Mr. Ramirez and Mr. Martinez recalled Mr. Monsalve-Jones being present, I conclude that he was even if he did not recall it when he testified at the hearing.

Ramirez's behavior was creating a "hostile work environment."⁶ Ex. G at 33. Minutes later, Mr. Martinez forwarded Ms. Maestas' message to Mr. Garcia, saying "[l]ooks like we need to issue [Mr. Ramirez] a [Memorandum of Expectations (MOE)]." *Id.* at 32. Mr. Garcia in turn forwarded the message to Triad HR representatives. *Id.* However, the HR representatives pointed out that in Mr. Ramirez's FY 23 performance review he was credited for his "marked improvement" in his interactions with coworkers and clients and questioned "how much opportunity [Mr. Ramirez] ha[d] been given [] to address behavior concerns" *Id.*

Later that day, Mr. Garcia, Mr. Martinez, and Ms. Archuleta met with Mr. Ramirez regarding Ms. Maestas' complaint. Ex. 3; Tr. Pt. 2 at 201, 263. The management officials advised Mr. Ramirez to adhere to Triad's Respectful Workplace Policy, refrain from making disparaging, disrespectful, or threatening remarks, and mentor less experienced RCTs consistent with their expectations for him as an RCT-4. Tr. Pt. 2 at 201–03. Mr. Ramirez denied having made the remarks and asserted that he was shouldering a disproportionate burden of the workload. *Id.* The management officials also recommended to Mr. Ramirez that he attend courses on emotional intelligence offered by Triad. *Id.* at 203.

Mr. Garcia, Mr. Martinez, and Mr. Monsalve-Jones met with Triad HR representatives on February 22, 2024, concerning Mr. Ramirez's workplace behavior. Ex. 4 at 8. The HR representatives recommended that Mr. Ramirez's management update Mr. Ramirez's annual performance goals to include mentorship of other RCTs, that Mr. Ramirez participate in mediation with Mr. Jones and Ms. Maestas, and that Mr. Ramirez complete a course on emotional intelligence. *Id.* Mr. Ramirez declined to participate in mediation with Ms. Maestas and sent an email notifying his management of the same on March 4, 2024, wherein he alleged that Ms. Maestas was lying about his conduct and threatened to "contact HR and Ethics" regarding Ms. Maestas' allegations. Ex. 5 at 9. At some point during this period, Mr. Ramirez had a negative interaction with Mr. Garcia wherein Mr. Garcia attempted to convey a message about teamwork based on his service in the U.S. Navy, Mr. Ramirez expressed a contrary opinion, and Mr. Garcia yelled at Mr. Ramirez. *Compare* Tr. Pt. 1 at 62–63 (Mr. Ramirez testifying that Mr. Garcia expressed that his Navy training had provided him with better discipline than Mr. Ramirez, he communicated disagreement with Mr. Garcia, and Mr. Garcia then started "ranting and yelling and pointing and cussing") *with* Tr. Pt. 2 at 271 (Mr. Garcia recounting a story about his Navy experience that he testified he told to Mr. Ramirez to show the importance of teamwork, alleging that Mr. Ramirez responded by saying "I don't believe in any of that Navy BS," and admitting that he yelled at Mr. Ramirez because he "couldn't believe" Mr. Ramirez's response).

According to Ms. Archuleta, management continued to receive negative feedback regarding Mr. Ramirez's workplace conduct. Tr. Pt. 2 at 207; *see also* Ex. 4 at 12 (March 7, 2024, e-mail from Mr. Monsalve-Jones to Mr. Garcia indicating that Mr. Jones had complained of Mr. Ramirez "belittling [Mr. Jones] and talking down on the rest of the team here"); Tr. Pt. 2 at 265–66 (Mr. Garcia testifying that an RCT told him that Mr. Ramirez had told her that she was "worthless" and that "she ended up out in the parking lot crying"). In light of the continued complaints and Mr.

⁶ Ms. Maestas was ultimately transferred to another work location to resolve interpersonal issues between her and Mr. Ramirez. Tr. Pt. 2 at 63, 265.

Ramirez's refusal to participate in mediation, Mr. Ramirez's management and Triad HR decided to issue him an MOE. Tr. Pt. 2 at 207, 229, 266; Tr. Pt. 3 at 86.

Triad issued Mr. Ramirez an MOE on March 14, 2024. Ex. 9 at 16–17; *see also* Tr. Pt. 1 at 64 (Mr. Ramirez alleging that Mr. Garcia yelled at him during the meeting in which he was issued the MOE); Tr. Pt. 1 at 292 (Mr. Martinez, who was present at the meeting, denying that Mr. Garcia yelled at Mr. Ramirez). The MOE indicated that Mr. Ramirez had demonstrated “a communication style that is demeaning, disrespectful, and condescending,” had failed to “foster respectful and productive working relationships,” had not demonstrated “the leadership behaviors expected of a level 4 [RCT],” and had shown an “[u]nwillingness to reflect on [his] behavior and take suggested feedback [.]” *Id.* at 16. The MOE provided Mr. Ramirez with behavioral expectations which cumulatively amounted to demonstrating civility and respect, refraining from “engaging in and/or spreading rumors and gossip,” and constructively accepting feedback, as well as requiring him to complete five online courses related to behavior modification on or before July 31, 2024. *Id.* at 16–17. The MOE cautioned Mr. Ramirez that “failure to meet expectations could result in disciplinary action and/or placement on a Performance Action Track (PAT).” *Id.* at 17.

On March 18, 2024, Mr. Ramirez contacted two Triad HR representatives by email. Ex. K at 39–40. Therein, he reported that he believed that Mr. Garcia was “retaliating against [him] because he refused to have a mediated conversation . . . with Amy Maestas” and asked whether he had an “HR complaint.” *Id.* Mr. Ramirez subsequently spoke to Triad HR representatives about Mr. Garcia's handling of Ms. Maestas' complaint. Tr. Pt. 1 at 65–66; *see also* Ex. K at 39 (reflecting the scheduling of a call between Mr. Ramirez and an HR representative).

5. June 2024 Contamination Incident and Related Alleged Disclosures

On June 7, 2024, there was a contamination incident in the Sigma facility for which Mr. Ramirez was not present. Tr. Pt. 1 at 69. According to Mr. Ramirez, on June 10, 2024, he observed a female coworker (Female Coworker) say to two workers involved in the June 7 contamination incident that she “believed that they had been radioactively contaminated internally.” *Id.* According to Mr. Ramirez, he advised the Female Coworker that she should not be speculating about private health information, and she responded in a “very disrespectful” manner because “[s]he was very upset that [he] would insert [his] opinion in there.” *Id.* at 69, 71; *but see* Tr. Pt. 2 at 109–10 (Female Coworker denying recollection of speaking to two workers about the contamination incident or Mr. Ramirez having interrupted a conversation related to the incident).

According to Mr. Ramirez, another RCT, Ms. Lozano, told him on June 19, 2024, that Mr. Monsalve-Jones had personally performed decontamination related to the June 7, 2024, contamination incident without first having obtained or briefed an RWP. Tr. Pt. 1 at 73–74, 144; *but see* Tr. Pt. 2 at 64–65 (Mr. Monsalve-Jones testifying that an RWP was not required for the work in question); *see also* ex. JJ at 236 (Technical Procedure-200 describing when RWP's are required). Mr. Ramirez believed that, pursuant to 10 C.F.R. §§ 835.1101–1102, a work permit was required before hazardous work, such as decontamination, could occur. Tr. Pt. 1 at 76. According to Mr. Ramirez, during the course of this conversation, Ms. Lozano told him that Mr. Monsalve-Jones had walked into the room, retrieved an item, and exited without Mr. Ramirez having noticed. *Id.* at 74–75. Mr. Ramirez did not “know if he heard any of the conversation we had at all”

Id. at 145. Mr. Monsalve-Jones denied recollection of overhearing a conversation between Mr. Ramirez and Ms. Lozano about whether an RWP should have been obtained. Tr. Pt. 2 at 61–62.

6. *Female Coworker’s Allegations and Triad Investigation*

Beginning in April 2024, Mr. Ramirez shared an office with two employees he had responsibility for mentoring, Joseph Rodriguez and the Female Coworker. Tr. Pt. 2 at 113, 125. On June 13, 2024, Triad HR received a report from Ms. Lozano indicating that Mr. Ramirez was spreading rumors that the Female Coworker was sexually promiscuous. Ex. 12 at 55–57; *see also* Ex. 10 at 23 (Female Coworker telling Mr. Monsalve-Jones in an email that she was “oblivious that [Mr. Ramirez] was apparently saying inappropriate [things] about [her]” until she was notified by Triad HR and had believed until that time that she and Mr. Ramirez “had a professional working relationship”);⁷ Tr. Pt. 2 at 90 (Female Coworker testifying that Mr. Monsalve-Jones had told her to contact HR after learning of Mr. Ramirez’s alleged remarks).

Triad HR placed Mr. Ramirez on leave on June 26, 2024, at the direction of Ms. Archuleta, and initiated an investigation of the allegations that Mr. Ramirez made inappropriate remarks regarding the Female Coworker.⁸ Ex. L at 57; Tr. Pt. 2 at 219; *see also* Ex. OO at 445. Ms. Natasha Olander, a Triad HR employee, was assigned to investigate the allegations. Ex. 12 at 55; Tr. Pt. 2 at 132; Tr. Pt. 3 at 84. From July 2024 to October 2024, Ms. Olander conducted interviews of six individuals:

- The Female Coworker (Interviewed June 24, 2024)
- Mr. Rodriguez (Interviewed July 3, 2024)
- Ms. Lozano (Interviewed August 8, 2024)
- Mr. Jones (Interviewed August 8, 2024)
- Jordan Janusz (Interviewed August 19, 2024)
- Mr. Ramirez (Interviewed October 7, 2024)

Ex. 12 at 26–27, 33, 38, 44, 48, 51. Following each interview, Ms. Olander prepared a statement summarizing the relevant information provided by the interviewee for the interviewee’s review, revisions, and, ultimately, signature or adoption. Tr. Pt. 2 at 135, 139, 141. The interviews established that on or about June 12, 2024, Mr. Ramirez perceived that the Female Coworker, with whom he and Mr. Rodriguez, a fellow RCT, shared an office, was ill and he inquired of her whether she had contracted COVID-19. Ex. 12 at 28, 34–35, 53. Mr. Rodriguez and the Female Coworker had a conversation about their activities the prior weekend during which the Female Coworker mentioned she had gone on a date with a man she met on Facebook. *Id.* at 34–35. According to Mr. Rodriguez, Mr. Ramirez overheard the conversation and later, when the Female Coworker was not present, said to Mr. Rodriguez that the Female Coworker had likely contracted “COVID

⁷ As discussed *infra* pp. 17–18, the Female Coworker provided inconsistent, unreliable accounts of how she learned of Mr. Ramirez’s alleged inappropriate remarks about her. While I take these inconsistencies into account in assessing the Female Coworker’s credibility, I need not make a factual conclusion as to how she learned of Mr. Ramirez’s alleged remarks and do not do so herein.

⁸ According to Ms. Archuleta, she was unaware of Mr. Ramirez’s alleged disclosures concerning Mr. Monsalve-Jones when she decided to place Mr. Ramirez on leave. Tr. Pt. 2 at 219–20.

from one of the 15 guys that she's talking to on Facebook," which Mr. Rodriguez perceived to be an attempt by Mr. Ramirez at making a joke. *Id.* at 35. According to Mr. Rodriguez, he later told the Female Coworker of Mr. Ramirez's "joke" because, according to him, he believed that telling her would "get ahead of it and help explain what happened." *Id.* at 36; *see also* Tr. Pt. 1 at 235 (testifying that he believed Mr. Ramirez's "joke" was referencing the number of contestants on a television show about which the Female Coworker had been speaking with Mr. Rodriguez). Mr. Rodriguez indicated that, prior to this remark by Mr. Ramirez, he had "never had concerns about the way he interact[ed] with" the Female Coworker. Ex. 12 at 36.

The Female Coworker told Ms. Olander that Mr. Ramirez had made a comment about contracting COVID-19 "from the 15 guys [she] was dating" directly to her. *Id.* at 28; *see also* Tr. Pt. 2 at 105–06 (reiterating at the hearing her allegation that Mr. Ramirez made the comment to her directly). The Female Coworker indicated that the comment made her "feel uncomfortable," but that she "brushed it off" until Mr. Rodriguez relayed Mr. Ramirez's alleged "joke" to her and Ms. Lozano and Mr. Jones told her that that they had heard that Mr. Ramirez perceived the Female Coworker to be "flirting" with him. Ex. 12 at 29. According to Ms. Lozano, Mr. Ramirez had told her that the Female Coworker was flirting with him but that he had no romantic interest in her because he perceived her to be too promiscuous. *Id.* at 41. Mr. Jones reported that Mr. Ramirez had made similar remarks to him. *Id.* at 45.

Mr. Jones and Ms. Lozano alleged to Ms. Olander that Mr. Ramirez had previously misconstrued interactions with a coworker, Ms. Janusz, as romantic interest. *Id.* at 39, 47. They alleged that Mr. Ramirez had communicated his romantic interest in Ms. Janusz to them, offered to buy her gifts, and caused her to feel uncomfortable. *Id.* Ms. Janusz confirmed that Mr. Ramirez had asked her out to lunch and offered to buy her a gift, which she had declined. *Id.* at 48–49. Ms. Janusz indicated that Mr. Ramirez had communicated his interest in her in a "respectful" manner, had accepted her rejection without "being pushy or persistent," and "never . . . made [her] feel uncomfortable." *Id.* at 48–50. Mr. Ramirez's account of his romantic pursuit of Ms. Janusz mirrored her account. *Id.* at 51–52.

With respect to his alleged remarks regarding the Female Coworker, Mr. Ramirez acknowledged that he had communicated uncertainty to Ms. Lozano as to whether the Female Coworker was flirting with him and had asked her advice. *Id.* at 52. According to Mr. Ramirez, after Ms. Lozano shared her opinion that the Female Coworker was not being flirtatious with him, he did not pursue the matter further. *Id.* Mr. Ramirez denied that he made the alleged statements regarding the Female Coworker's promiscuity and asserted that the allegations were fabricated by his coworkers because they personally disliked him. *Id.* at 53. He further alleged that on June 10, 2024, he had observed the Female Coworker discussing with two construction workers "that they received radioactive uptake" and that he "interrupted the conversation." *Id.* at 54. Mr. Ramirez claimed that the Female Coworker was "angry at [him] for interrupting" and stating that "her claims were incorrect," and that he believed that she "brought these false allegations against [him] because of this incident." *Id.*

On September 6, 2024, Mr. Ramirez filed a complaint with Triad's employee concerns program (ECP) alleging that Mr. Monsalve-Jones and Mr. Martinez failed to respond in a timely manner to a radiation contamination incident on January 10, 2024, in violation of TP-201, that the Female

Coworker had “discussed protected health information with two construction employees in a public setting,” and that he had been retaliated against by his management. Ex. T at 86–88. Mr. Ramirez provided as examples of alleged management retaliation, among other things, Mr. Garcia having yelled and cursed at him and Mr. Ramirez having been subjected to a “suspicious” drug test. *Id.* at 87.

Mr. Ramirez’s complaint was referred to Triad HR for investigation. Ex. S. Berlin Madison, an employee relations specialist, was assigned to investigate. Tr. Pt. 3 at 98. Additionally, Ms. Archuleta assigned Senior Technical Advisor Gary Schramm to assess whether Mr. Ramirez’s allegations presented policy violations. Ex. GG at 151–52; Tr. Pt. 2 at 182–83; *see also* Ex. JJ at 156 (identifying Mr. Schramm as a “Document Owner/Subject Matter Expert” for TP-201). In an opinion that Mr. Schramm provided to Mr. Madison, albeit one that he qualified with multiple caveats, he opined that Mr. Monsalve-Jones not immediately responding to the scene of the January 10, 2024, contamination incident was reasonable. Ex. V at 93–94 (stating that this opinion was limited because, among other things, he lacked “all the specific details” and “[a]ssum[ed] there were not any elevated hazards associated with that event for the spread of contamination or exposure of individuals”); *see also* Tr. Pt. 3 at 141–42 (Mr. Schramm testifying that, based on what he knew about the contamination incident, “for an RCT who has achieved the Level 4, [] I would expect that they would be able to execute . . . their knowledge and experience in contamination control should afford them the skill set and the knowledge to execute a response as occurred on that day”).

Mr. Madison interviewed Mr. Ramirez, Mr. Schramm, Mr. Monsalve-Jones, and Mr. Garcia. Ex. S at 83–85; Ex. V; Ex. W; Ex. X; Ex. MM at 420. Ms. Olander was present for Mr. Madison’s interview of Mr. Ramirez wherein he provided information related to his allegations that Mr. Monsalve-Jones failed to respond to the January 10, 2024, contamination incident as required. Tr. Pt. 1 at 97; Ex. S at 84–85.

On December 23, 2024, Mr. Madison sent an email to Maura Shuttleworth, the Group Leader for Triad HR, indicating that his investigation had concluded that Mr. Monsalve-Jones and Mr. Martinez “responded correctly” to the January 10, 2024, contamination incident and that there was “no violation of policy in regard to this incident.” Ex. MM at 420–21. Mr. Madison further indicated that Mr. Ramirez’s allegations regarding Mr. Garcia’s statements “would not rise to the level of a policy violation” if they occurred as Mr. Ramirez alleged. *Id.*; *see also* Tr. Pt. 3 at 228–29 (testifying that this was because Mr. Garcia’s use of obscenity was not directed at Mr. Ramirez personally).

Following completion of Ms. Olander’s investigation, Ms. Olander, Ms. Shuttleworth, and Triad legal counsel prepared a report of the investigative findings. Tr. Pt. 2 at 132, 134; Ex. Z; Tr. Pt. 3 at 84, 86. The report concluded that Mr. Ramirez had made “inappropriate comments of a sexual nature about [the Female Coworker] and spread[] such comments as gossip and rumors to multiple individuals.” Ex. Z at 107. The report further concluded that these behaviors violated Triad’s *Sexual Harassment* and *Respectful Workplace and Prohibition Against Harassment* policies. *Id.* at 106–07. The report cited three “Past Similar Cases” in which employees were found to have made inappropriate comments of a sexual nature. *Id.* at 107. None of the comparator employees

noted in the report were terminated as a result of their conduct; however, the report noted that none of the comparator employees had a “prior disciplinary history.” *Id.*

On February 13, 2025, a case review board (CRB) convened to review the HR report concerning Mr. Ramirez and determine whether to take any action based on the findings. Ex. 12 at 25; Ex. Z at 103. The Associate Laboratory Director for Environment, Safety, Health, and Quality, Mr. Coleman, exercised final decision-making authority over the CRB convened concerning Mr. Ramirez. Tr. Pt. 1 at 172–73. After reviewing the CRB binder, the contents of which were prepared by Ms. Olander, Mr. Coleman determined that Mr. Ramirez’s employment should be terminated. Tr. Pt. 1 at 173; *see also id.* at 174 (testifying that he did not rely on any materials outside of the CRB binder); *id.* at 205 (testifying that he was not the decision maker in any of the comparator cases cited in the CRB binder); Tr. Pt. 2 at 132 (Ms. Olander testifying that she prepared the materials included in the CRB binder); Tr. Pt. 3 at 89 (Ms. Shuttleworth testifying that, in her experience attending CRBs, Mr. Coleman has “pretty much zero tolerance for sexual harassment in the workplace” and “is very likely to go to termination” in such cases).

On February 18, 2025, Triad issued Mr. Ramirez a letter notifying him that his employment was terminated, citing the policies referenced in the report and the conclusion from the report that Mr. Ramirez had made “inappropriate comments of a sexual nature about a coworker and spread[] such comments as rumors and gossip” despite being previously issued the MOE wherein he was instructed “to refrain from gossip and spreading rumors.” Ex. MM at 411.

C. Procedural History

Mr. Ramirez filed the Complaint on May 16, 2025. Ex. LL. In the Complaint, Mr. Ramirez alleged that he engaged in activity protected under Part 708 when he:

- (1) Disclosed to Mr. Monsalve-Jones and Mr. Martinez on January 10, 2024, that they had failed to immediately respond to and properly supervise the response to the January 10, 2024, contamination incident in violation of DOE-STD-1098-2017;⁹
- (2) Disclosed to Mr. Monsalve-Jones and Mr. Martinez on January 25, 2024, that they had failed to ensure that Room B-100 was decontaminated following the January 10, 2024, incident, that their failure to do so contributed to the second contamination incident, and that their conduct violated DOE-STD-1098-2017, TP-201, and 10 C.F.R. Part 835;
- (3) Repeated his second disclosure to Mr. Monsalve-Jones and Mr. Martinez on January 29, 2024;
- (4) Told Ms. Lozano on June 19, 2024, that Mr. Monsalve-Jones failed to obtain an RWP before directing the cleanup of a room following a contamination incident, which disclosure Mr. Ramirez alleged that Mr. Monsalve-Jones overheard, and that this conduct violated 10 C.F.R. Part 835; and,
- (5) Disclosed to Ms. Olander on October 7, 2024, that on June 7, 2024, the Female Coworker had discussed the private health information of two workers in a public setting in violation of the Health Insurance Portability and Accountability Act and DOE-STD-1098-2017.

⁹ The Complaint does not allege that this disclosure concerned TP-201. Ex. LL at 324. However, considering that TP-201 was obviously relevant to this alleged disclosure and the Complaint cited TP-201 as applicable to the second and third disclosures, I have construed the Complaint to allege that TP-201 was a basis for the first alleged disclosure.

Id. at 323–26. Mr. Ramirez alleged that Triad retaliated against him for his disclosures by placing him on administrative leave on June 26, 2024, and terminating his employment on February 18, 2025. *Id.* at 326.

An OHA investigator conducted an investigation concerning the matters alleged in the Complaint and, on January 7, 2026, issued a report of investigation. Ex. OO at 427. On January 7, 2026, the OHA Director appointed me as the Administrative Judge for this case. Triad filed a motion for summary judgment on February 6, 2026, which, following briefing by the parties, was denied on March 3, 2026. I held a hearing concerning this matter April 27–29, 2026. Mr. Ramirez offered forty-one exhibits (Ex. A–OO) and Triad offered twenty-one exhibits (Ex. 1–21), all of which were received into the record. Tr. Pt. 1 at 6. Seventeen witnesses, including Mr. Ramirez, testified at the hearing. Tr. Pt. 1 at 3; Tr. Pt. 2 at 3; Tr. Pt. 3 at 3–4. I invited the parties to submit written closing arguments following receipt of the Hearing Transcript and, upon receipt of each party’s closing arguments (Ramirez Closing Brief and Triad Closing Brief), closed the record.

D. Standard of Review

The complainant bears the initial burden of proof to establish, by a preponderance of the evidence, that he or she engaged in protected activity under Part 708 and that the protected activity “was a contributing factor in one or more alleged acts of retaliation against the complainant by the contractor.” 10 C.F.R. § 708.29. If the complainant meets this test, 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 disclosure, participation, or refusal.”¹⁰ *Id.*

A complainant may demonstrate that his or her protected activity was a contributing factor in an act of retaliation through direct or circumstantial evidence. A complainant can demonstrate that a protected disclosure was a contributing factor to an alleged act of retaliation through circumstantial evidence by showing “that the official taking the action knew (or had constructive knowledge) of the disclosure and acted within such a period of time that a reasonable person could conclude that the disclosure was a factor in the personnel action.” *Ronald Sorri*, OHA Case No. LWA-0001 at 3–4 (1993) (quoting 135 Cong. Rec. H749 (Mar. 21, 1989)); *see also Dr. Shou-Yuan Zhang*, OHA Case No. WBH-17-0011 at 13 (2019) (summarizing OHA decisions concerning the period of time within which a reasonable person could conclude that a disclosure was a contributing factor in a personnel action and noting that such period is usually less than one year).¹¹

In evaluating whether a contractor would have taken an adverse action against a complainant, regardless of the complainant’s protected disclosures, OHA considers, among other things: “(1) the strength of the [contractor’s] reason for the personnel action excluding the whistleblowing, (2)

¹⁰ The clear and convincing evidence standard requires a party to demonstrate that a conclusion is highly probable, which is a heavier burden of proof than the preponderance of the evidence standard but a lighter burden than the beyond a reasonable doubt standard. *Koszola v. FDIC*, 393 F.3d 1294, 1300 (D.C. Cir. 2005) (citing *Addington v. Texas*, 441 U.S. 418, 425 (1979)).

¹¹ Decisions issued by OHA are available on the OHA website located at <http://www.energy.gov/OHA>.

the strength of any motive to retaliate for the whistleblowing, and (3) any evidence of similar action against similarly situated employees.” *Dean P. Dennis*, OHA Case No. TBH-0072 at 5 (2009) (quoting *Kalil v. Dep’t of Agriculture*, 479 F.3d 821, 824 (Fed. Cir. 2007)) (listing factors considered in cases interpreting the Whistleblower Protection Act); *see also Carr v. Soc. Sec. Admin.*, 185 F.3d 1318, 1323 (Fed. Cir. 1999) (adopting the three-factor test to determine whether an employer would have taken a personnel action but for an employee’s disclosure under the Whistleblower Protection Act).

II. Analysis

A. Mr. Ramirez’s Alleged Protected Disclosures

1. Disclosures Concerning Mr. Monsalve-Jones Failing to Appear Immediately at the Scene of the January 10, 2024, Contamination Incident

The parties hotly contest whether Mr. Ramirez actually made an oral disclosure to Mr. Monsalve-Jones and Mr. Martinez on January 10, 2024, that they should have responded immediately to the scene of the contamination incident. *See* Triad Closing Brief at 1–2 (arguing that there is no affirmative evidence that Mr. Ramirez made such a disclosure and noting that Mr. Monsalve-Jones and Mr. Martinez denied recollection of Mr. Ramirez having made one); Ramirez Closing Brief at 1, 5 (arguing that “[t]he disclosures are not genuinely disputed” and that professed lack of memory by Mr. Ramirez’s management should be assigned less weight than Mr. Ramirez’s positive testimony). As explained below, I find as a matter of fact that Mr. Ramirez did not make the disclosure he claimed to have made to Mr. Monsalve-Jones and Mr. Martinez.

An important reason for my conclusion is the testimony of Mr. Jones. TP-201 does not contain any provisions directing the HPFC or management officials to respond to an alarm, and Mr. Ramirez, as a highly trained RCT-4, surely knew that. What TP-201 does indicate is that assistance should be requested “as needed.” A critical component of Mr. Ramirez’s alleged disclosure is his claim that Mr. Jones asked Mr. Monsalve-Jones to come to the scene immediately and that Mr. Jones told Mr. Ramirez that Mr. Monsalve-Jones refused to do so. If true, this would have provided a basis for a reasonable belief that Mr. Monsalve-Jones did not provide assistance “as needed” pursuant to TP-201. However, Mr. Jones flatly denied that he asked Mr. Monsalve-Jones to respond immediately.¹² If Mr. Jones never asked Mr. Monsalve-Jones to respond to the room immediately, then it is improbable that he would have told Mr. Ramirez that he did and consequentially improbable that Mr. Ramirez would have told Mr. Monsalve-Jones and Mr. Martinez on January 10, 2024, that Mr. Monsalve-Jones failed to report to the scene immediately.¹³

¹² Mr. Jones was asked “when you spoke to Mr. Monsalve-Jones, did you tell him that you needed immediate assistance in the room?” Mr. Jones responded, “No.” Tr. Pt. 2 at 36.

¹³ I do not discount the possibility that Mr. Jones might have been motivated to lie about the events of January 10, 2024, due to his personal antipathy for Mr. Ramirez. However, Mr. Ramirez’s account of the events of January 10, 2024, also conflicted with that of the contaminated worker in that Mr. Ramirez represented that the contaminated worker was “incredibly stressed” while the contaminated worker presented a substantially more sanguine account of his perception of the event. *Supra* pp. 3–4. My interpretation of Mr. Ramirez’s account of the contaminated worker’s state of mind as compared to the state of mind to which the contaminated worker testified is that Mr. Ramirez

Another relevant consideration is that the first documented occasion on which Mr. Ramirez alleged that Mr. Monsalve-Jones failed to respond appropriately to the January 10, 2024, contamination incident was when he filed the September 6, 2024, complaint with Triad ECP after he was suspended. Following the January 10, 2024, contamination incident, he participated in both the fact finding and the Learning Team review of the contamination incident without raising any concerns. He met with Mr. Garcia and Ms. Archuleta to whom he complained about unfairly shouldering a disproportionate amount of work. He repeatedly contacted Triad HR to complain about Ms. Maestas' conduct and allege that Mr. Garcia was retaliating against him. At no point in the nearly eight-month period between January 10, 2024, and his September 6, 2024, complaint to Triad HR did he claim to have raised his concern regarding the management response to the January 10, 2024, contamination incident again. Considering that Mr. Ramirez was not afraid to repeatedly complain of Mr. Garcia's conduct to HR, despite Mr. Garcia outranking both Mr. Monsalve-Jones and Mr. Martinez, and Mr. Ramirez claiming that Mr. Garcia was actively retaliating against him, I do not believe that Mr. Ramirez was intimidated into holding back his disclosures related to January 10, 2024. Nor, as the record demonstrates, was Mr. Ramirez reticent to come forward with concerns. Rather, I think it more probable that Mr. Ramirez never made any such disclosure until after his suspension when he feared termination. *See* Ex. T at 88 (indicating in the intake of Mr. Ramirez's complaint that he said that he "fears he will lose his job . . .").

For the aforementioned reasons, I conclude as a matter of fact that Mr. Jones did not ask Mr. Monsalve-Jones to report to the scene of the contamination incident immediately. I further conclude that Mr. Ramirez did not make a disclosure to Mr. Monsalve-Jones and Mr. Martinez on January 10, 2024, related to Mr. Monsalve-Jones' failure to immediately report to the scene of the contamination incident. However, even if Mr. Ramirez did make such a disclosure, I would find it unreasonable in light of my factual finding that Mr. Jones did not ask Mr. Monsalve-Jones to immediately report to the scene of the incident since no reasonable RCT-4 with Mr. Ramirez's knowledge and training would have believed that TP-201 required the HPFC to report to the scene of a contamination incident without having been asked to assist.¹⁴

With respect to DOE-STD-1098-2017, there is nothing in section 125 that any reasonable person could conclude would have required Mr. Monsalve-Jones to respond immediately to the contamination incident on January 10, 2024, prompted or unprompted. Rather, the language cited by Mr. Ramirez in the Complaint is general, aspirational language that provides no specific guidance to management on how to respond to specific situations. Accordingly, even if Mr. Ramirez had made a disclosure that Mr. Monsalve-Jones' failure to respond immediately to the contamination incident on January 10, 2024, violated DOE-STD-1098-2017, I would conclude that it was unreasonable since no reasonable RCT with Mr. Ramirez's training and experience

exaggerated the contaminated worker's reaction. This is consistent with Mr. Ramirez representing that Mr. Jones was panicked while Mr. Jones denied that this was the case. *Supra* p. 3. Taken together, Mr. Jones and the contaminated worker presented a consistent picture of Mr. Ramirez exaggerating and unreliably describing the events of January 10, 2024, that undermines Mr. Ramirez's reliability.

¹⁴ I note that Mr. Ramirez himself admitted in his testimony that, prior to January 2024, an HPFC or manager had not always responded to his requests for assistance, immediately or otherwise, due to conflicting obligations. Tr. Pt. 1 at 161-62. The fact that Mr. Ramirez's own experience indicated that HPFCs and managers did not always respond to requests for assistance further undercuts the reasonableness of his belief.

could believe that the general language of DOE-STD-1098-2017 imposed any specific duty on Mr. Monsalve-Jones in that instance.

2. Disclosure Concerning Failure to Adequately Clean Room B-100

Mr. Ramirez's alleged January 25, 2024, disclosure concerning Mr. Monsalve-Jones' failure to adequately clean Room B-100 suffers from many of the same defects as his alleged January 10, 2024, disclosure: No witnesses corroborate him having made the disclosure, Mr. Monsalve-Jones denied recollection of it occurring, and Mr. Ramirez did not raise it to Ms. Archuleta, Mr. Garcia, or Triad HR. More fatally, Mr. Ramirez did not even make the alleged disclosure in his September 6, 2024, complaint to Triad ECP. Although he alleged generally that "we" failed to adequately decontaminate Room B-100, and that this failure was determined through the fact finding to be a cause of the subsequent contamination incident, there is no allegation that Mr. Monsalve-Jones was at fault or that he made a disclosure related to the decontamination on January 25, 2024, as he alleged in the Complaint. Accordingly, as there is no affirmative evidence beyond Mr. Ramirez's own testimony that he made a disclosure on January 25, 2024, and there is strong contextual evidence that he did not, I find that Mr. Ramirez did not demonstrate that he made a protected disclosure on January 25, 2024, as alleged in the Complaint.

3. June 19, 2024, Disclosures

In order for a disclosure to be protected under Part 708, it must be made "to a DOE official, a member of Congress, any other government official who has responsibility for the oversight of the conduct of operations at a DOE site, the employer, or any higher tier contractor." 10 C.F.R. § 708.5(a). OHA has interpreted a disclosure to "the employer" to mean a disclosure made to a manager or an employee with formal responsibilities for receiving the disclosure, such as a safety official, but not one made to a coworker. *Dalena Tripplet*, OHA Case No. WBH-23-0003 at 8 (2024); *Frederick L. Higgs*, OHA Case No. TBH-0057 at 8–9 (2006). Mr. Ramirez admitted that Ms. Lozano was not his supervisor. Tr. Pt. 1 at 146. Nor is there any information in the record suggesting that Ms. Lozano had responsibility for receiving concerns related to safety. Accordingly, I find that Ms. Lozano was not a proper recipient of a Part 708 disclosure.¹⁵

Mr. Ramirez further alleged in the Complaint that Mr. Monsalve-Jones "overheard" Mr. Ramirez's alleged disclosure to Ms. Lozano. Ex. LL at 326. However, in his hearing testimony Mr. Ramirez admitted that he "did not notice Mr. Monsalve-Jones' presence" and did not "know if he heard any of the conversation we had at all" Tr. Pt. 1 at 145. Considering that Mr. Ramirez could only guess as to whether Mr. Monsalve-Jones heard his remarks, and Mr. Monsalve-Jones denied recollection of hearing them, I find that the facts do not demonstrate that Mr. Ramirez made a disclosure to Mr. Monsalve-Jones.

¹⁵ In his testimony, Mr. Ramirez pointed out that Ms. Lozano was "a senior level technician above [him]." Tr. Pt. 1 at 146; *see also* Ex. MM at 359 (indicating that Ms. Lozano was an RCT-5 in the statement she provided in connection with Ms. Olander's investigation). The fact that Ms. Lozano had greater seniority than Mr. Ramirez did not mean that she had the authority or responsibility to act on his disclosure as would have been the case if she were a management official or had formal workplace responsibilities for receiving safety-related concerns; thus, I do not consider Ms. Lozano's greater seniority sufficient to establish that she was an appropriate recipient of a Part 708 disclosure.

4. Disclosure Related to Female Coworker's Dissemination of Confidential Health Information

In order for Mr. Ramirez's disclosure concerning the Female Coworker to have been reasonable, he must have actually observed the events underlying the disclosure. Mr. Ramirez alleged that he witnessed the Female Coworker having discussed health information of construction workers in a public setting. The Female Coworker denied recollection of the event having occurred.¹⁶ Neither witness is impartial. Mr. Ramirez has an interest in portraying the facts to support his alleged protected disclosure. The Female Coworker has an interest in hiding conduct in which she might have allegedly violated a rule.

There are other indications in the record that neither witness is entirely reliable. As previously discussed, Mr. Ramirez exaggerated Mr. Jones' and the contaminated worker's reactions to the January 10, 2024, contamination incident to support his alleged disclosures. Moreover, Mr. Ramirez denied having threatened to kick an employee down the stairs despite a text message he sent to Ms. Lozano in February 2024 wherein he said that he did exactly that.¹⁷ Considering that Mr. Ramirez said in a text message that he threatened to kick an employee down the stairs within days of employees complaining that he had made similar threats in nearly identical terms, I find Mr. Ramirez's testimony denying that he engaged in that conduct completely unreliable. If Mr. Ramirez was willing to exaggerate events to support his alleged disclosures and almost certainly make false statements denying having made threats to other employees, I find it highly likely that he would falsely claim that the Female Coworker engaged in conduct underlying his alleged protected disclosure. On the other hand, the Female Coworker's account of Mr. Ramirez's conduct appears to have grown in the telling. When the Female Coworker initially complained about Mr. Ramirez's conduct to Mr. Monsalve-Jones, she represented that she only learned of the conduct through others but later alleged that Mr. Ramirez had made a comment directly to her about being with fifteen men. This suggests that she would not have been above stretching the truth to bolster her version of events.

¹⁶ Mr. Ramirez argued that his "positive testimony" that he did make a disclosure "outweighs negative testimony" denying recollection of his having made a disclosure. Ramirez Closing Brief at 5. Mr. Ramirez offers two citations in support of this proposition. One cited case provides factors for consideration in making credibility determinations but does not hold that positive testimony should necessarily be credited over negative testimony. *Hillen v. Dep't of the Army*, 35 M.S.P.R. 453 (M.S.P.B. 1987); see also *id.* at 460 ("merely because a witness is not contradicted, it does not necessarily mean that his or her testimony is to be credited") (citing *Glenroy Construction Co., Inc. v. NLRB*, 527 F.2d 465 (7th Cir. 1975)). The other, concerning an appeal of an OHA determination granting relief to a complainant under Part 708, also does not state the claimed proposition. *Whitestone Grp., Inc. v. U.S. DOE*, 2017 U.S. Dist. LEXIS 50656 (S.D. Ohio 2017). Nor could it have done so considering that, in the underlying proceeding, one of the complainant's alleged disclosures, which management officials with the contractor denied recollection of her having made, was corroborated by multiple witnesses. *Denise Hunter*, OHA Case No. WBH-12-0004 at 4 (2013).

¹⁷ In his hearing testimony, Mr. Ramirez claimed that he "was venting" to Ms. Lozano when he sent the text message and that he never actually threatened to throw or kick someone down the stairs. Tr. Pt. 1 at 113, 149. The idea that Mr. Ramirez's text message indicating that he threatened to kick another employee down the stairs, which was sent only one day after Ms. Archuleta met with him regarding similar allegations from other employees, was merely a coincidence is simply unbelievable. See Ex. 13 at 76 (indicating that Mr. Ramirez sent the text messages on February 16, 2024); Tr. Pt. 2 at 202 (Ms. Archuleta testifying that she spoke to Mr. Ramirez on February 15, 2024, about him "making statements like '[g]et out of my office or I'm going to throw you down the stairs']"). Mr. Ramirez's unconvincing explanation for the text message only reinforces my perspective that he is not a reliable witness.

Considering the information before me, I think it more probable that Mr. Ramirez made a false allegation concerning the Female Coworker than that he observed her discussing the health information of the workers as he alleged. In reaching this finding, I am guided primarily by the context in which Mr. Ramirez made the alleged disclosure. Mr. Ramirez had been on leave for approximately three months pending the investigation of the Female Employee's allegations. By this time, he was in substantial fear for his job, and his decision to file the complaint with Triad ECP was influenced by the suspension. *See* Ex. OO at 452 (indicating that Mr. Ramirez told the OHA investigator that he filed the complaint "to possibly learn why he was placed on leave"). Considering Mr. Ramirez's documented unreliability, and his interest in September 2024 in taking any action necessary to save his job, I find his account less reliable than that of the Female Coworker. I therefore find as a matter of fact that Mr. Ramirez did not observe the Female Coworker publicly disclosing radiation exposure of construction workers as he claimed. Thus, his disclosure that he had done so cannot have been based on a reasonable belief that he was revealing a violation of a law, rule, or regulation.

5. Disclosure in Triad ECP Complaint

The Complaint did not allege that Mr. Ramirez's accounts to Triad's ECP and HR representatives of Mr. Monsalve-Jones failing to report promptly to the scene of the January 10, 2024, contamination incident constituted protected disclosures. Ex. LL; *see also* Ex. OO at 448 (ROI listing Mr. Ramirez's alleged protected disclosures, none of which included statements to Triad ECP or Mr. Madison regarding Mr. Monsalve-Jones). Accordingly, I do not deem them alleged protected disclosures. Even if I did, I would find that Mr. Ramirez did not reasonably believe he was making a protected disclosure in light of my finding that Mr. Jones neither asked Mr. Monsalve-Jones to report to the scene immediately nor told Mr. Ramirez that he had done so, and therefore that nothing in TP-201 or DOE-STD-1098-2017 would have supported Mr. Ramirez's claimed belief.

Mr. Ramirez failed to establish that he made a protected disclosure under Part 708, and therefore cannot meet his burden to demonstrate that such a disclosure was a contributing factor in one or more acts of alleged retaliation by Triad. *Id.* § 708.29. Therefore, the burden of proof does not shift to Triad, and I will not consider whether Triad would have terminated Mr. Ramirez's employment regardless of his alleged disclosures.

III. Conclusion

For the aforementioned reasons, I determined that Mr. Ramirez has not established that his alleged disclosures were protected conduct under Part 708. Thus, he cannot demonstrate that one or more protected acts contributed to the alleged acts of retaliation by Triad.

It Is Therefore Ordered That:

- (1) The Complaint filed by Micheal Ramirez on May 16, 2025, OHA Case No. WBH-25-0006 is hereby: DENIED.

- (2) This is an Initial Agency Decision, which shall become the Final Decision of the Department of Energy unless a party files a notice of appeal by the fifteenth day after the party's receipt of the Initial Agency Decision, in accordance with 10 C.F.R. § 708.32.

Phillip Harmonick
Administrative Judge
Office of Hearings and Appeals