

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

In the Matter of:	Contessa Shannon	)	
		)	
Filing Date:	July 22, 2026	)	Case No.: WBH-26-0007
		)	
		)	

Issued: October 8, 2026

**Motion for Summary Judgment
Initial Agency Decision**

This Decision considers a motion filed by Mission Support Test Services, LLC (MSTS) on September 11, 2026 (Motion), concerning the complaint (Complaint) filed by Ms. Contessa Shannon against MSTS 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). The Motion seeks summary judgment dismissing the complaint. For the reasons set forth below, I will grant the Motion.

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.* at §§ 708.5(c), 708.7(a). Available relief includes reinstatement, back pay, transfer preference, and such other relief as may be appropriate. *Id.* at § 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.* at § 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.* at §§ 708.22, 708.25, 708.32.

B. Factual Background¹

MSTS is the managing and operating contractor for DOE's Nevada National Security Site (NNSS). MSTS Exhibit (Ex.) A at 3.² Ms. Shannon was employed by MSTS as a supervisor managing the supply chain for the contractor's protective force. MSTS Ex. C at 38.

In 2023, Ms. Shannon raised concerns about disparate treatment on the basis of sex to her supervisor, Mr. Jeremy Cantrell. MSTS Ex. I at 98. In January 2024, Ms. Shannon told a Labor Relations manager at MSTS that she felt targeted when she was subject to discipline for sending text messages to her subordinates that included a racial slur and sexual epithets. MSTS Ex. B at 30.

In the weeks prior to July 20, 2025, Mr. Cantrell learned that Ms. Shannon's husband, who was also an MSTS employee, had submitted a foreign travel request for a cruise he was taking. *Id.* at 18. Mr. Cantrell asked Ms. Shannon to complete a foreign travel request if she planned to engage in foreign travel. *Id.* Ms. Shannon told Mr. Cantrell that she was not going on a cruise and was not leaving the country. *Id.*; MSTS Ex. C at 54 (screenshot of text messages between Mr. Cantrell and Ms. Shannon).

Ms. Shannon did ultimately go on the cruise, which left California on July 20, 2025, and returned on July 24, 2025. MSTS Ex. B at 21; MSTS Ex. C at 39. This cruise included a port of call in Mexico. MSTS Ex. B at 24. Between July 14, 2025, and July 27, 2025, Ms. Shannon claimed forty-eight hours worked. MSTS Ex. C at 40. Ms. Shannon claimed that while she was on leave, she had been working from looseleaf binders, taking phone calls, and texting regarding work-related issues. *Id.*; MSTS Ex. B at 19. MSTS's Cyber Security team performed a forensic review of Ms. Shannon's "logon/logoff network activity and sent emails." MSTS Ex. C at 51 (digital forensic evidence report completed on October 7, 2025).³ This review indicated that Ms. Shannon had logged into her work computer for "limited" activity between July 15, 2025 and July 17, 2025, and there was no

¹ As explained *infra*, Ms. Shannon failed to respond to the majority of the facts alleged and supported by MSTS and I have accordingly deemed MSTS's alleged facts accepted as undisputed except as otherwise noted herein.

² MSTS submitted the exhibits to its Motion as one single PDF file. I cite any references to its exhibits using the exhibit letter and a pin cite to the relevant PDF page.

³ Although the digital signature on the digital forensic evidence report indicates that report was completed in October 2025, the internal audit report that discusses Ms. Shannon's log in data and references the relevant digital forensic evidence was digitally signed by Mr. Mark Yonemoto, an internal audit manager at MSTS, in September 2025. Compare MSTS Ex. C at 48 with *id.* at 53. For the purposes of this Decision, I assume that the digital forensic evidence report provided to OHA is the formalized copy of an earlier Cyber Security investigation into Ms. Shannon's computer activity.

indication she had logged into her work computer between July 20, 2025 and July 26, 2025. *Id.* MSTS's internal audit also reviewed Ms. Shannon's personal phone records because of Ms. Shannon's statements that she had been using that device to complete work. *Id.* at 40. The records reviewed by MSTS's internal audit indicated that Ms. Shannon had completed some work between July 15, 2025 and July 24, 2025, but fewer hours than she had charged. *Id.* at 47. Ms. Shannon also told MSTS investigators that she had worked nine hours between July 25, 2025 and July 26, 2025 catching up on her emails and processing orders in the system. *Id.* However, forensic analysis completed by MSTS showed that Ms. Shannon did not log on or perform email activity for those two days. *Id.* at 40, 47. Ms. Shannon stated that she worked from "printed binders" on these two days, but these statements contradict earlier statements she provided Employee Relations (ER) investigators about replying to emails and processing orders "in the system." *Compare* MSTS Ex. I at 93 *with* MSTS Ex. C at 39–40. At no point has Ms. Shannon disputed that she told ER she was replying to emails and working "in the system" on those two days. MSTS policy states that "MSTS employees may not charge for work not performed or a service not provided." MSTS Ex. K at 148. Another MSTS policy states that "[e]mployees are advised that disciplinary action, up to and including termination, will result from deliberate mischarging." MSTS Ex. J at 113.

On July 31, 2025, Ms. Shannon's husband mentioned to his supervisor that his wife had been working during the cruise that they took to Mexico. MSTS Ex. C at 38. This information triggered an "incident of security concern" (IOSC) because there was concern that government equipment may have been taken to a foreign country. *Id.*; MSTS Ex. B at 18. There is no indication in the record who conducted this IOSC investigation. During the IOSC investigation, Ms. Shannon told investigators that she "didn't even go on foreign travel." MSTS Ex. C at 38. The IOSC investigation found that no government equipment was taken to a foreign country, but it raised additional concerns about failure to report foreign travel and timecard fraud that were referred to MSTS's ER group for further investigation. *Id.* Ms. Blaire Storme, a Human Resources generalist at MSTS, led the ER investigation into Ms. Shannon's conduct, and Mr. Yonemoto was responsible for examining Ms. Shannon's timecards for the relevant period and determining if they were valid. MSTS Ex. B at 18–19.

In an interview with MSTS Cyber Security, Ms. Shannon stated that she had not gone on the cruise. *Id.* at 20. Ms. Shannon did not dispute that she provided this inaccurate information to Cyber Security, and, in fact, she told the OHA investigator that she had said this because her "emotional intelligence just was not there and [she] was very upset" about the ER investigation. *Id.* On September 8, 2025, Ms. Storme and Mr. Yonemoto interviewed Ms. Shannon as a part of the ER investigation. *Id.* In that interview, Ms. Shannon told Ms. Storme and Mr. Yonemoto that she had decided to go to Catalina Island, California, with her children instead of going on the cruise. *Id.* When subsequently asked why MSTS had discovered pictures of Ms. Shannon on the cruise on social media, Ms. Shannon stated that she had not initially intended to go on the cruise and had boarded late on Catalina Island. *Id.* ER's review of the cruise line's policies indicated that Ms. Shannon boarding the ship on Catalina Island would have violated U.S. law and, thus, would not have been permitted. MSTS Ex. C at 39. According to ER, Ms. Shannon also stated that she "forgot" to turn her foreign travel request form in to MSTS. *Id.* This statement is contradicted by the text messages Ms. Shannon sent Mr. Cantrell before her trip. *Id.* at 54. When interviewed by the OHA investigator, Ms. Shannon stated that during this interview she told Ms. Storme that she had been given "conflicting guidance" on how to enter her hours. MSTS Ex. B at 29. Ms. Shannon also stated that during the ER investigation, she disclosed that she had been told by someone in the

personnel security office that it was not uncommon for foreign travel request forms to be completed after returning from a foreign trip. MSTs Ex. N at 210.

While investigating the concerns about Ms. Shannon's foreign travel and potential timecard fraud, Ms. Storme discovered that Ms. Shannon had failed to report outside employment as a real estate agent. *Id.* at 40. When asked if she was aware of MSTs's ethics policy requiring the reporting of outside employment, Ms. Shannon stated that she was not aware of any such requirement. *Id.* She also stated that MSTs had not provided her with any training on that topic. *Id.* This statement was contradicted by records that indicated Ms. Shannon had completed ethics training in 2023 and 2024. *See id.* at 40–41 (indicating Ms. Shannon had completed the training and indicating proof of that completion was provided in attachment 4, which was not included in the exhibits attached to the Motion). Ms. Shannon stated that she had not had to complete an ethics disclosure form as part of an annual briefing since she had obtained her real estate license. *Id.* at 40. MSTs policy states that "[e]mployees may engage in Outside Activities only with the written authorization of the MSTs Ethics Officer (or ethics delegee) and their direct supervisor." MSTs Ex. K at 141. Ms. Shannon told the ER investigators that she would complete the outside activity form later that day, and MSTs's records indicate that the form was submitted. MSTs Ex. C at 40.

On September 11, 2025, Ms. Shannon was informed that she was being placed on suspension pending an investigation effective September 12, 2025. MSTs Ex. L at 198. The notice stated that the suspension was not considered disciplinary and that she retained access to her benefits during the suspension. *Id.*

In addition to the MSTs policies discussed above, MSTs's Standards of Conduct for employees notes that, among other things, "[l]ack of candor during an internal investigation" "may result in disciplinary action, including suspension, demotion, or termination of employment." MSTs Ex. H at 68–69.

Sometime after the completion of the ER investigation,⁴ a Disciplinary Action Review Board (DARB) was convened to determine how and whether Ms. Shannon should be disciplined. MSTs Ex. B at 21. Ms. Storme prepared a packet, which consisted of a summary of charges against Ms. Shannon and several attachments supporting those charges. *Id.*; MSTs Ex. C (DARB Packet). Specifically, the DARB packet explained that MSTs was concerned with (1) Ms. Shannon's failure to report foreign travel; (2) potential timecard fraud; (3) Ms. Shannon's failure to report outside employment activities; and (4) her lack of candor during a company investigation. MSTs Ex. C at 38. The DARB packet also outlined Ms. Shannon's performance and disciplinary history at MSTs. *Id.* at 42–43. Attached to the DARB packet was a copy of the internal audit of Ms. Shannon's timekeeping completed by Mr. Yonemoto, a digital evidence forensic report outlining Ms. Shannon's use of government devices during her vacation, and a copy of the aforementioned text messages between Ms. Shannon and Mr. Cantrell. *Id.* at 44, 50, 54. Ms. Storme presented this packet to the DARB, and the DARB's five members unanimously voted to recommend terminating Ms. Shannon's employment. MSTs Ex. B at 22. There appears to be no documentation of this vote or of the reasoning of the DARB members for their votes. This recommendation and a copy of the DARB packet was then provided to Mr. Anthony Mendez, Senior Director of MSTs Security and Emergency Services, who then made the decision to terminate Ms. Shannon's employment. *Id.* Mr.

⁴ The precise timeline of the ER investigation is unclear from the record.

Mendez told the OHA investigator that he had decided to terminate Ms. Shannon because of her lack of candor during the foreign travel investigation and because of the results of the timecard fraud investigation. *Id.* These statements are consistent with the information provided to Ms. Shannon in her termination letter, which stated that she had been terminated for violating a number of company policies, including violating standards of conduct and mischarging time. MSTs Ex. M at 200. Ms. Shannon was informed that her employment with MSTs was terminated on November 3, 2025. *Id.*

C. Procedural History

On November 21, 2025, Ms. Shannon sent an email to the NNSS Employee Concerns Program (ECP), stating that she wanted to file a complaint under 10 C.F.R. Part 708 and providing a broad summary of her alleged protected conduct and the alleged retaliation taken against her. MSTs Ex. A at 9–10. That same day, Mr. Michael Wilson, the ECP Manager at NNSS, responded and provided Ms. Shannon guidance about the Part 708 process. *Id.* at 8–9. Ms. Shannon sent an email that ECP called the Complaint on February 1, 2026. *Id.* at 2. She filed an addendum to her Complaint on February 3, 2026. MSTs Ex. I. Based on the Complaint, the addendum to her Complaint, the OHA report of investigation (ROI), and Ms. Shannon’s responses to interrogatories, I accept Ms. Shannon’s alleged protected conduct as follows:⁵

1. She informed Ms. Storme that she had been given conflicting guidance on labor charging during MSTs’s investigation into her conduct;
2. She informed MSTs investigators during the investigation into her conduct that the Personnel Security Office had told her that employees commonly submitted a foreign travel form after returning from that travel rather than before;
3. Between June and September 2025, she emailed Ms. Jacqueline Crossley, a senior procurement specialist at MSTs, to inform her that there was no assigned approver for an invoice from Nevada Linen, which made it impossible for Ms. Shannon to properly process invoices;
4. In November 2023, she asked Mr. Cantrell “why another manager was asking other employees where she was that day”;
5. In October and November 2025, she raised concerns about the “accuracy and completeness” of the investigation into her conduct in October 2025;
6. In January 2024, during the 2025 ER investigation, and after she was terminated, Ms. Shannon told a Labor Relations manager at MSTs that she felt targeted when she was disciplined for using a racial slur and sexually explicit language in a text message to subordinates because those subordinates had not been disciplined for sending similar messages.

⁵ After the completion of the OHA investigation, in her responses to discovery requests, Ms. Shannon disclaimed several of the alleged protected disclosures as described in the ROI. MSTs Ex. N at 209–15. The list of alleged protected disclosures below does not include the ones she subsequently disclaimed.

MSTS Ex. B at 29–30; MSTS Ex. N at 209–15. The specifics of these alleged protected disclosures are not material to my resolution of the present Motion, and, as such, I do not discuss them in detail.

In her initial email to NNSS ECP, Ms. Shannon stated that she was terminated as a result of her alleged protected disclosures. MSTS Ex. A at 9–10. In the February 2026 Complaint, Ms. Shannon asserted that “[e]scalating scrutiny/undermining” and her suspension in September 2025 were also retaliatory. *Id.* at 4–5; *see also* MSTS Ex. I at 88–89 (addendum to the Complaint reiterating allegations about disparate treatment and scrutiny).

Ms. Shannon’s Complaint was subsequently referred to OHA, whereupon an OHA investigator conducted an investigation and, on July 22, 2026, issued the ROI. MSTS Ex. B at 15. On July 22, 2026, the OHA Director appointed me as the Administrative Judge for this case.

On September 11, 2026, MSTS submitted the instant Motion. In the Motion, MSTS asserted that Ms. Shannon brought several claims that were untimely, that she did not establish that she made a protected disclosure under 10 C.F.R. § 708.5(a), that she did not establish the required elements of causation, and that MSTS would have taken the alleged acts of retaliation regardless of Ms. Shannon’s alleged protected activity. Motion at 11–13.

Ms. Shannon submitted her response to the Motion on September 22, 2026 (Response).⁶ In the Response, Ms. Shannon took issue with some facts asserted by MSTS regarding the nature and timing of her disclosures, claimed that there were factual errors in MSTS’s investigation into her conduct, and argued that the conclusions found in MSTS’s investigation were erroneous because MSTS had not considered all of the facts surrounding her conduct. Response at 1–4. The Response failed to address the majority of the facts alleged by MSTS, instead taking issue with MSTS’s view of those facts. Accordingly, I am exercising my discretion to accept as true all facts alleged by MSTS in its Motion which Ms. Shannon failed to address in her Response except as otherwise noted. *See John Smallman*, OHA Case No WBH-17-0007 at 5 (2017) (citing Fed. R. Civ. Pro. 56(e)(2) as persuasive precedent for the authority of the Administrative Judge to accept as undisputed assertions of fact by one party which the other party failed to address).

MSTS submitted a reply on September 28, 2026 (Reply). In the Reply, MSTS reiterated the arguments made in the Motion.

D. Standard of Review

The Motion seeks summary judgment in favor of MSTS. Motion at 1. Part 708 does not establish a standard of review for procedural motions. OHA has consistently resolved such motions in a manner consistent with the Federal Rules of Civil Procedure. *E.g., Edward G. Gallrein, III*, OHA Case No. WBA-13-0017 at 5 (2014).⁷ A party is entitled to summary judgment “if the movant

⁶ Ms. Shannon initially submitted her Response on September 18, 2026, but the file she submitted was corrupted and would not open. Email from Contessa Shannon to Lisa McClane and Erin Weinstock (Sept. 18, 2026). At my request, she resubmitted her Response on September 22, 2026. Email from Contessa Shannon to Lisa McClane and Erin Weinstock (Sept. 22, 2026).

⁷ Decisions issued by OHA are available on the OHA website located at <http://www.energy.gov/OHA>.

shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986) (holding that the moving party in a summary judgment motion is entitled to judgment as a matter of law if “the nonmoving party has failed to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof”). In Part 708 proceedings, summary judgment may be entered, upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case and on which the party will bear the burden of proof. *Mary Ravage*, OHA Case No. TBH-0102 at 11 (2011). In such cases, there can be “no genuine issue as to any material fact,” since the non-moving party’s complete failure of proof concerning an essential, threshold element of its case necessarily renders all other facts immaterial. *Id.* The moving party is then “entitled to a judgment as a matter of law.” *Id.*

II. ANALYSIS

A. Jurisdictional Issues

MSTS argues that Ms. Shannon did not file her Complaint until February 1, 2026,⁸ and, therefore, it was not timely filed as to any alleged retaliatory actions taken prior to November 3, 2025. *Id.* Ms. Shannon did not specifically respond to this assertion.

Part 708 provides that a complaint “must be filed by the 90th day after the date the employee knew, or reasonably should have known, of the alleged retaliation.” 10 C.F.R. § 708.15(a). The parties do not dispute that Ms. Shannon’s Complaint was timely filed as to her termination, which she was notified of on November 3, 2025. Further, the parties agree that Ms. Shannon was informed that she was suspended from her position at MSTS on September 11, 2025. MSTS Ex. L at 198. Therefore, any complaint related to this suspension would have needed to be filed by December 10, 2025. Motion at 11. Ms. Shannon contacted NNSS ECP on November 21, 2025, stating that she wanted to file a complaint, describing alleged protected activities, and alleging that MSTS had taken adverse action against her in response to her alleged protected activities. MSTS Ex. A at 9–10. The email Ms. Shannon sent in November 2025 was a complaint. *See* 10 C.F.R. § 708.13 (explaining a “complaint does not need to be in any specific form,” but must describe the alleged protected activities and alleged retaliation, among other requirements); *cf. Guobin Hu*, OHA Case No. WBU-25-0002 (finding that a site’s ECP erred when it dismissed a complaint filed by a pro se litigant for failure to allow the litigant to resolve jurisdictional deficiencies). I find that Ms. Shannon’s complaint was filed on November 21, 2025, and, therefore, it was timely as to both her suspension and termination.

B. MSTS’s Burden

Once a Part 708 complainant has met their burden to establish protected activity that was a contributing factor to an act of alleged retaliation, the burden shifts to the contractor to prove by clear and convincing evidence that it would have taken the same action without the employee’s

⁸ MSTS relies on the “findings” set out in the ROI to support this fact. Motion at 11. However, I am not bound by any findings set forth in the ROI. *See* 10 C.F.R. § 708.31(b) (providing that “the Administrative Judge may rely upon, but is not bound by, the report of investigation”).

alleged protected disclosure. 10 C.F.R. § 708.29. Clear and convincing evidence is that measure or degree of proof that produces in the mind of the trier of fact a firm belief as to the allegations sought to be established. *David L. Moses*, OHA Case No. TBH-066 (2008). If the contractor meets this burden, the allegation of retaliation for whistleblowing is defeated despite evidence that the alleged protected disclosure was a contributing factor to the alleged retaliation. *Denise Hunter*, OHA Case No. WBH-12-0004 (2012). In evaluating whether a contractor would have taken an 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) 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).

As noted above, I do not discuss whether summary judgment is warranted with respect to Ms. Shannon's burden, because even assuming *arguendo* Ms. Shannon has proven that she made a protected disclosure that contributed to an act of retaliation, I find the contractor has met its burden to demonstrate it would have terminated her employment notwithstanding her protected activity.

In the Motion, MSTs argues that it has proven by clear and convincing evidence that it would have terminated⁹ Ms. Shannon regardless of any disclosure. Motion at 13. First, MSTs asserts that Ms. Shannon was terminated because she lied during MSTs's investigation into her conduct and because she had mischarged her labor. *Id.* Specifically, Ms. Shannon provided several different accounts about whether she went on the cruise to Mexico and when she boarded that cruise. *See* Section I.B. She also provided inaccurate information about the time she spent working during the relevant period. *Id.* While the ER investigation validated some of the time Ms. Shannon charged,¹⁰ the records indicated that she had not logged into her work computer at all on a day where she had stated that she used her work email and processed procurement orders "in the system." *Id.* There is no dispute that both of these actions directly violate MSTs policies, and MSTs's written employee

⁹ To the extent Ms. Shannon argues that the "[e]scalating scrutiny/undermining" she experienced was retaliation, she has not established any specific "action . . . taken with respect to [her] employment" that occurred after any of her alleged protected disclosures. 10 C.F.R. § 708.2. Therefore, I conclude that any disparate treatment she allegedly experienced was not an act of "retaliation" as defined in Part 708 and will not be analyzed as a basis for her Part 708 Complaint.

As to Ms. Shannon's suspension, that personnel decision was taken as part of the investigation into the conduct that led to her ultimate termination. As such, I do not separately analyze that alleged act of retaliation in considering whether MSTs has met its burden. *See Anthony R. Rivera*, OHA Case No. WBH-14-0006 (2017) (finding that a complainant was not entitled to relief under Part 708 for his suspension and termination from a contractor when the contractor proved by clear and convincing evidence that it would have terminated him regardless of any protected activity).

¹⁰ Ms. Shannon asserts that the ER investigation did not consider that some of the time she charged was validated, and, therefore, there is a material dispute of fact. Response at 4. I disagree with this characterization. The internal audit report attached to the DARB packet specifically notes that MSTs was able to validate some of the hours Ms. Shannon charged, and it goes on to explain why there remained concerns about improper charging. MSTs Ex. C at 47-49. Ms. Shannon has not, at any point, shown there was evidence of her completing work that MSTs had not considered.

conduct policy explains that this conduct can result in termination. *Id.*; MSTs Ex. J at 113; MSTs Ex. K at 152–53. Further, Mr. Mendez’s statement to the OHA investigator that he made the decision to terminate Ms. Shannon based on her lack of candor in the foreign travel investigation and the results of the timecard fraud investigation supports this argument. Motion at 8, 12 (citing MSTs Ex. B at 22). Ms. Shannon does not dispute that she gave MSTs an “inaccurate” answer when she was asked if she had boarded the cruise or that she had submitted foreign travel and outside employment paperwork late. Response at 3–4. Therefore, the first “*Carr* factor” – the strength of the rationale for terminating Ms. Shannon’s employment – weighs heavily in favor of MSTs. *See generally Thomas T. Tiller*, OHA Case No. VWA-0018 at *40–41 (1998) (finding that misconduct is a strong reason for a contractor to take personnel action).

With regard to the second *Carr* factor – the strength of any motive to retaliate – Ms. Shannon has not raised any motive that MSTs would have to retaliate against her for her alleged whistleblowing. Motion at 13. I cannot find any evidence in the record supporting an inference that Mr. Mendez, or any other employee at MSTs, possessed a motive to retaliate against Ms. Shannon for any alleged protected conduct. Ms. Shannon’s alleged protected disclosures, to the extent that they may be protected under Part 708, are of the type or magnitude that would be likely to reflect poorly on MSTs on an organizational level or on its leaders such that it would create a motive to retaliate. Further, the only one of her alleged protected disclosures that implicated anyone involved in her ultimate termination was her email raising questions about the accuracy of the investigation. It is likely quite common that an employee who is being investigated for misconduct would take issue with the investigation, and I do not believe that such an issue would create a motive for retaliation. Ms. Shannon has not presented any facts to the contrary. Accordingly, I find that the absence of a motive to retaliate against Ms. Shannon weighs in favor of MSTs. *See Leslie Smith*, OHA Case No. WBH-20-0006 at *35 (2021) (finding that lack of record evidence on this factor supported a finding in favor of the contractor).

Finally, with regard to the third *Carr* factor, MSTs argues that it provided a list of comparator employees that showed nine out of ten employees who had been found to lack candor in an internal investigation were terminated or resigned in lieu of termination. *Id.* at 13. However, MSTs did not attach the list of comparator employees to its Motion,¹¹ and, as such, I do not have sufficient information to consider its assertions. Therefore, I find this factor to be neutral. Even if I were to accept Ms. Shannon’s argument that the comparator list itself lacked sufficient detail to lead to a finding for MSTs on this issue, and therefore find that MSTs has produced no valid comparators, I would come to the same conclusion. *See Jon B. Sharpe*, OHA Case No. WBA-23-0002 at *19 (2024) (finding that the absence of a direct comparator “does not automatically lead to a finding that the contractor failed to prove by clear and convincing evidence that it would have taken the same actions”).

I find that Ms. Shannon’s factual disputes about MSTs’s decision to terminate her employment are not material given her admission that she provided false information to MSTs when it was investigating her conduct and her inconsistent accounts of her own conduct. Particularly given the other concerns raised by the ER investigation, it is clear that MSTs had strong reasons to terminate Ms. Shannon’s employment. Therefore, after considering the above-mentioned factors, I conclude

¹¹ The comparator list is appended to the ROI as an exhibit, but as MSTs only included the ROI itself as an exhibit on its Motion, I do not have sufficient detail to make a finding here.

that MSTS has carried its burden to establish, as a matter of law, that it would have terminated Ms. Shannon's employment irrespective of her disclosures. Accordingly, the motion for summary judgment is granted.

III. CONCLUSION

For the aforementioned reasons, I have determined that MSTS has established by clear and convincing evidence that it would have terminated Ms. Shannon's employment even without her disclosures.

(1) The Motion for Summary Judgment filed by Mission Support Test Services, LLC on September 11, 2026, OHA Case No. WBH-26-0007, is hereby: GRANTED.

(2) The Complaint filed by Ms. Shannon on November 21, 2025, OHA Case No. WBH-26-0007 is hereby: DENIED.

(3) 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.

Erin C. Weinstock
Administrative Judge
Office of Hearings and Appeals