

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

In the Matter of Anthony T. Rivera)		
)		
Filing Date: October 24, 2014)	Case No.:	WBA-14-0006
)		
_____)		

Issued: March 9, 2015

Decision and Order

This Decision considers an Appeal of a Dismissal, issued by the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) on September 15, 2014, of a Complaint filed by Anthony T. Rivera (the Appellant or Rivera) against his former employers, Lawrence Livermore National Security (LLNS) under the DOE’s Contractor Employee Protection Program, 10 C.F.R. Part 708.¹ In his Complaint, the Appellant alleges that LLNS terminated his employment after he reported fraud, gross mismanagement, gross waste of funds, and abuse of authority. As set forth in this Decision, we find that the Appeal must be denied.

I. Background

A. The DOE Contractor Employee Protection Program

The 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. 57 Fed. Reg. 7533 (March 2, 1992). Its primary purpose is to encourage contractor employees to disclose information that they believe exhibits unsafe, illegal, fraudulent, or wasteful practices and to protect those “whistleblowers” from consequential reprisals by their employers.

The Part 708 regulations prohibit retaliation by a DOE contractor against an employee because the employee has engaged in certain protected activity, including “disclosing to a DOE official, . . . any other government official who has responsibility for the oversight of the conduct

¹ LLNS operates the DOE’s Lawrence Livermore National Laboratory (LLNL) in Livermore, California.

of operations at a DOE site, your employer, or any high tier contractor, information that [the employee] reasonably believes reveals (1) a substantial violation of a law, rule, or regulation; (2) a substantial and specific danger to employees or to public health or safety; or (3) fraud, gross mismanagement, gross waste of funds, or abuse of authority.” 10 C.F.R. § 708.5(a).

Part 708 sets forth the procedures for considering complaints of retaliation. OHA is responsible for investigating complaints, holding hearings, and considering appeals. 10 C.F.R. Part 708, Subpart C. According to the Part 708 regulations, a complaint must include a “statement specifically describing the alleged retaliation” and “the disclosure, participation, or refusal that [the complainant believes] gave rise to the retaliation.” 10 C.F.R. § 708.12.

B. Factual and Procedural Background

Rivera was hired to work at the Lawrence Livermore National Laboratory in 1984. August 12, 2014, LLNS Request for Dismissal to Shiwali Patel, OHA Investigator (Dismissal Request) at 2. In 2007, LLNS promoted Rivera to “senior engineering associate (339.2)” and assigned him to the LLNS’s Laser Systems Engineering Operations Department (LSEO).

On June 3, 2011, Rivera filed a complaint (June 2011, Complaint) with the Office of Federal Contract Compliance Programs (OFCCP) alleging that LLNS had discriminated against him and other similarly situated individuals because of race in employment decisions, specifically job assignments and promotions. Dismissal Request at 2; Dismissal Request Exhibit (Ex.) B.²

Over the next two years, Rivera and his management had a significant number of disputes. These disputes centered on Rivera’s annual performance reviews, his alleged sending of E-mails to inappropriate personnel, his removal from his Laser Diagnostics position supporting LSEO’s National Ignition Facility (NIF), his alleged conduct towards his supervisors, and the receipt of various progressive employee disciplines by LLNS, including a Letter of Warning (LW), and a five-day suspension.³

On October 17, 2013, LLNS terminated Rivera from his position. Dismissal Request at 9; Dismissal Request, Ex. J. LLNS’s stated rationale for Rivera’s dismissal referenced a demonstrated pattern of insubordination and disobedience towards his supervisors’ instructions,

² In March 2013, the DOL’s Office of the Secretary issued its “Notification of Results of Investigation” (ROI) regarding Rivera’s June 2011 Complaint. Dismissal Request at 2, Dismissal Request Ex. C. The ROI concluded that Rivera’s and other similarly situated employees’ claims of discrimination regarding employment and promotions at LLNS were without merit. *Id.* However, the ROI found that LLNS did not fully implement its policies regarding providing notice to employees regarding the availability of an Acting Supervisor position. Dismissal Request, Ex. C at 3.

³ Rivera filed another complaint with the OFCCP on October 17, 2012 (October 2012 Complaint). Dismissal Complaint, Ex. F at 1. In this complaint Rivera alleged that he had been discriminated against for filing the June 2011 Complaint. Rivera alleged that LLNS had failed to consider him for other positions after he was removed from his NIF position and had retaliated against him by placing him in EIT status, among other alleged retaliatory acts. In its June 23, 2013, Results of Investigation report regarding this complaint, the OFCCP found insufficient evidence that LLNS violated its obligations under the nondiscrimination or affirmative action provisions of Executive Order 11246 or under the nondiscrimination provisions of Title VII. Dismissal Request, Ex. F at 6.

repeatedly failing to perform his duties as instructed, failing to meet with his supervisors, and disrupting others' work. Dismissal Request, Ex. J.

On January 14, 2014, Rivera filed a Part 708 Complaint with Michelle Rodriguez de Varela (Rodriguez de Varela), National Nuclear Security Administration (NNSA) Employee Concerns Manager. In his Complaint, Rivera alleged that he had been subject to various retaliations because of various disclosures he had made to LLNS officials regarding fraud, gross mismanagement, and abuse of authority. E-mail from Anthony Rivera to Cleamonce Heard, NNSA, (January 14, 2014), Attachment at 3.

On March 28, 2014, Rodriguez de Varela forwarded Rivera's Part 708 Complaint to OHA for an investigation and hearing. The OHA Director assigned OHA staff attorney Shiwali Patel (OHA Investigator) to investigate Rivera's Complaint. In her review of Rivera's Part 708 Complaint, Rivera stated that he had made protected disclosures in five E-mails/documents - Reference Nos. 2, 6, 10, 23, and 24.⁴

On September 15, 2014, the OHA Investigator dismissed Rivera's Part 708 Complaint. In the Dismissal Letter, the OHA Investigator determined that, even assuming Rivera's allegations in the disclosures were true, none of the disclosures would qualify as a protected disclosure for Part 708 purposes. Dismissal Letter at 7.

II. Appeal

In his Appeal, Rivera makes several arguments. Rivera argues that the Part 708 regulations do not give an OHA investigator or the Director of OHA (OHA Director) the authority to dismiss a complaint when a complainant makes an election for an "investigation followed by a hearing" under Part 708's section 708.21(2). Appeal at 1. Rivera also argues that the OHA Investigator failed to comprehensively review the allegations he made in his disclosures and did not collect sufficient witness testimony to support his allegations. Appeal at 1.

Rivera also challenges the OHA Investigator's determination that his disclosures were not protected under Part 708. Rivera asserts that he discussed his concerns with the OHA Investigator in telephone interviews lasting over 10 hours and that he believes the OHA Investigator failed to comprehend adequately the "dozens" of case documents he had sent her. Appeal at 2. Further, Rivera challenges the OHA Investigator's finding that Rivera's disclosures in the March 8, 2013, Response consisted of "numerous speculative accusations against LLNS with no apparent basis." Appeal at 2; Dismissal Letter at 5. Rivera asserts that the basis for these disclosures was provided to the OHA Investigator and that the OHA Investigator did not collect corroborating evidence or testimony to confirm the factual basis for his concerns. Appeal at 2. In this regard, Rivera asserts that, if his Complaint had not been dismissed, additional relevant evidence would have been obtained in the discovery phase of the proceeding to establish a causal link between his disclosures and his termination. Appeal at 2.

⁴ Rivera sent Michelle Rodriguez de Varela, NNSA Employee Concerns Program Manager, a number of documents to support his Part 708 claim. Rivera numbered each document as "Reference [number]." We will refer to these documents in the same manner.

Rivera also argues that the OHA Investigator dismissed his Complaint despite the fact that she knew Rivera had made a request under the Freedom of Information Act to obtain documents relevant to his case. Further, Rivera asserts that the OHA Investigator did not attempt to inquire into the status of Rivera's work computer or attempt to obtain the records of the Disciplinary Review Board that recommended his termination. Rivera notes that the records the OHA Investigator obtained from LLNS were the same records upon which a California Unemployment Appeals Judge allegedly found that Rivera had not been discharged for misconduct. Appeal at 8.

III. Analysis

A. Appellant's Arguments

1. OHA Investigator's Authority to Dismiss

Appellant's initial argument is that neither the OHA Director nor the OHA Investigator has authority to dismiss a Part 708 complaint once a complainant elects, pursuant to section 708.21(a)(2), to request an investigation followed by a hearing. We find this argument to be without merit.

The DOE's authority to institute proceedings under Part 708 originates from the authority granted to the Secretary of Energy's predecessors pursuant to the Atomic Energy Act, Pub. L. 83-703, 42 U.S.C. 2011 *et seq.*, and the Department of Energy Organization Act, Pub. L. 95-91, 42 U.S.C. 7132(b)). *See* 57 Fed. Reg. 7533-02 (March 3, 1992). DOE Order No. 00-002.16 delegates to the OHA Director the authority to "[c]onduct investigatory and adjudicatory proceedings, and issue reports of investigation and initial and appellate agency decisions, pursuant to 10 C.F.R. Part 708, the Criteria and Procedures for DOE Contractor Employee Protection Program, and make initial jurisdictional determinations, conduct investigatory proceedings, issue reports of investigation, and issue orders for remedial action pursuant to the Whistleblower Protection Program in section 3164 of the National Defense Authorization Act for Fiscal Year 2000." DOE Order No. 00-002.16 at ¶ 1.12 (November 17, 2014). Further, DOE Order No. 00-002.16 provides "[e]xcept as expressly prohibited by law, regulation, or this Order, the Director of the Office of Hearings and Appeals may delegate this authority further, in whole or in part." DOE Order No. 00-002.16 at ¶ 4.1 (November 17, 2014).

The OHA Director delegated his authority to investigate Rivera's Part 708 Complaint to the OHA Investigator in this matter. Notice of Appointment to Shiwali Patel (OHA Investigator), Case No. WBI-14-0006 (July 11, 2014) (Notice of Appointment). In the Notice of Appointment, the OHA Director also specifically delegated his power to decide non-merit issues to the OHA Investigator:

If during the course of investigation the Investigator believes the matter should be disposed of on grounds other than the merits of the case, the Investigator may dismiss or remand the matter as deemed appropriate.

Notice of Appointment at 1. Consequently, the OHA Director and the OHA Investigator had the authority to dismiss Rivera's Part 708 Complaint on the jurisdictional (non-merit) grounds that his alleged disclosures were not protected pursuant to Part 708.

2. Appellant's Other Arguments

The remaining arguments asserted by Rivera are inapplicable to the stated grounds upon which the OHA Investigator dismissed his Appeal. In the Dismissal Letter, the OHA Investigator found that a disinterested person would not understand that Rivera's purported disclosures referenced "[f]raud, gross mismanagement, gross waste of funds, or abuse of authority" as interpreted under Part 708. § 708.5(a)(1), (3). Dismissal Letter at 2. In making this finding regarding the various disclosures, the OHA Investigator reviewed the purported disclosures and assumed that the substance of the disclosures was true. Dismissal Letter at 4-7. Consequently, because the OHA Investigator viewed Rivera's disclosures as true, arguments regarding the level of investigation the OHA Investigator made regarding the validity of the disclosures are irrelevant with regard to the OHA Investigator's determination regarding the adequacy of the disclosures under Part 708. In sum, the OHA Investigator did not dismiss the disclosures because they were not substantiated but rather because the nature of the disclosures themselves failed, as a matter of law, to adequately reference fraud, gross mismanagement, gross waste of funds, or abuse of authority.⁵ Nonetheless, we have reviewed Rivera's purported disclosures described in References 2, 6, 10, 23, and 24 set forth in Rivera's Complaint. As discussed below, our review finds that the OHA Investigator did not err in dismissing Rivera's Part 708 complaint.

B. Review of Appellant's Alleged Disclosures

1. Reference 2: November 14, 2012, Complaint

Reference 2 is a November 14, 2012, Memorandum that Rivera sent to Robert Perko (Perko), LLNS Staff Relations Division. In the memo, Rivera asserts that he was retaliated against because he filed the June 2011, OFCCP complaint. Rivera complained that on September 27, 2012, he was informed by his LSEO supervisor, Ron Darbee (Darbee), Division Superintendent that his NIF funding "went away" and that he had no warning or input about the matter. Rivera also complained that LLNS did not consider him for other positions at LLNS. Rivera asserted that, in October 2012, he was instructed to report to LLNS' Materials Engineering Division (MED) for an assignment but was never given an assignment description and that his employment with MED "never materialized." Rivera also complained about an October 6, 2012, letter he received from Mark Newton (Newton), LSEO Division Leader which made false accusations and informed him that a temporary "access denial order" had been placed in his file. In Reference 2, Rivera states that he sent Newton a letter on October 7, 2012, highlighting alleged misinformation contained in Newton's October 6, 2012, letter. Rivera also recounted in Reference 2 that when he went to LLNL on October 8, 2012, for a scheduled meeting, he was stopped at the gate and made to turn in his badge in exchange for a one day temporary badge. Rivera asserted that the badging incident constituted retaliation. Rivera also complained about his subsequent receipt of the LW and alleged that this LW would make it harder to find a funded

⁵ Because we assume that the facts alleged by Rivera are true, Rivera's arguments regarding the findings of the California Unemployment Appeals Judge are moot.

assignment at LLNS. Rivera also complained that the LW “effectively lowered” the threshold for his dismissal. Further, Rivera asserts that, at an October 19, 2012, meeting with Randy Pico (Pico), Engineering Senior Superintendent, and Darbee regarding his transitional employee resources, he was questioned about his “intent” and questioned about his past sick leave, vacation, and leave without pay, despite the fact that all of the leave usage had been signed for by his former group leader Steve Telford (Telford). Lastly, Rivera complained that the LW was factually unsupported and that it would make it very difficult for him to find other employment at LLNS within the period specified for transitional employees to find other employment.

Rivera asserts that the revelations listed in Reference 2 disclose instances of abuse of authority. For the purposes of Part 708, OHA has defined “abuse of authority” as the “arbitrary or capricious exercise of power by an official or employee that adversely affects the rights of any person or that results in personal gain or advantage to himself or to preferred other persons.” *Sherrie Walker*, Case No. WBA-13-0015 (2014) (*Walker*); *Thomas L. Townsend*, Case No. TBU-0082 (2008). A review of the disclosures fails to indicate that any of the disclosures in Reference 2 referenced an arbitrary or capricious action taken by Darbee, Newton, or Pico, such that the action they took would have resulted in personal gain to them or any other LLNS or LLNL employee. Each of the actions complained of consisted of operational human resource management decisions resulting from the loss of funding for the NIF area where Rivera was employed or Rivera’s conduct after being informed that his NIF position was being terminated. *See Walker slip op*, at 8 (“Part 708 was adopted by DOE, like other whistleblower protections by the federal government, to address situations where those acting under the color of public authority use such authority for improper means. Part 708 is not intended to permit DOE to manage the day-to-day decisions and human resource management of a DOE contractor.”); *see also, McCollum v. Department of Veterans Affairs*, 75 M.S.P.R. 449, 458-59 (1997) (Whistleblower Protection Act case holding that the employee failed to show that his rights were adversely affected by the issuance of a new performance appraisal plan or a progress review, or that these actions resulted in personal gain or advantage to another.); *Downing v. Department of Labor*, 98 M.S.P.R. 64, ¶ 12 (2004) (Whistleblower Protection Act case holding that there was no allegation that particular individuals’ rights were affected or that the office closure was for personal gain). As such, we affirm the OHA Investigator’s findings concerning the disclosures referenced in Reference 2.

2. Reference 6: December 13, 2012, Complaint to Perko

Reference 6 is a December 13, 2013, Memorandum from Rivera to Perko requesting a formal review regarding alleged retaliation he experienced as described in two attached memoranda. Reference 6; *see* References 3, 4. Reference 6 and the attached memoranda (References 3, and 4) describe Rivera’s complaints that he did not get to review his 2012 LSEO performance appraisal until November 28, 2012. Rivera asserts that his 2012 LSEO performance appraisal omitted some of his SKAs (Skills, Knowledge, and Abilities) and made unfavorable comments about him. Rivera also asserts that Reference 6 discloses his allegation that Darbee deliberately skipped a draft appraisal meeting where Rivera could have discovered the errors in the 2012 LSEO performance appraisal. Reference 6 also includes Rivera’s December 5, 2012, written response to the performance appraisal (Reference 3). Rivera asserts that Reference 6 discloses the fact that when contractor supplemental labor positions opened up in LLNL, Rivera failed to receive

notices indicating that the positions were available. Rivera alleges that Reference 6 disclosed gross mismanagement, gross waste of funds, and abuse of authority.

Our review indicates that none of the matters asserted in Reference 6 rises to the level of a disclosure protected pursuant to Part 708. OHA, for purposes of Part 708, defines “gross mismanagement” as

more than a *de minimis* wrongdoing or negligence. It does not include management decisions that are merely debatable, nor does it mean action or inaction which constitutes simple negligence or wrongdoing. There must be an element of blatancy. Therefore, gross mismanagement means a management action or inaction that creates a substantial risk of significant adverse impact upon the agency's ability to accomplish its mission.

Walker; Fred Hua, Case No. TBU-0078 (2008) (*Hua*). With regard to Reference 6, the disclosure of Rivera's personal complaint regarding his 2012 LSEO performance appraisal or any of the other improper personnel procedures do not implicate any matter that could create a substantial risk of a significant adverse impact on LSEO or LLNL's ability to accomplish its missions.

Nor can we find that any of the matters raised in Reference 6 qualifies as a “gross waste of funds” under Part 708. In deciding whether an alleged disclosure is protected under Part 708, OHA has held that a “gross waste of funds” constitutes “a more-than-debatable expenditure that is significantly out of proportion to the benefit reasonably expected to accrue to the government.” *Hua* at *slip op.* at 3. None of the issues raised by Rivera discuss anything that could be considered a “more than debatable” expenditure of funds assuming his disclosures are accurate. We also do not find that Reference 6 discusses any matter that could be considered as an “abuse of authority.” Further, we agree with the OHA Investigator's findings that Reference 6 does not reference any arbitrary or capricious action that illegally deprived Rivera of his rights in order to confer a personal gain to another. While Rivera disagreed with Darbee's evaluation, such a disagreement does not rise to the level of illegality.

3. Reference 10: March 8, 2013, Memorandum

Reference 10 is Rivera's March 8, 2013, Memoranda responding to a March 5, 2013, Notice of Intent that was issued to him explaining LLNS's intention to suspend Rivera from his position for five days. Rivera claims that Reference 10 contains his revelation about “abuse of authority” at LLNS and LLNL. Rivera asserts that in Reference 10 he revealed that Darbee and Newton were not working in good faith with Rivera to find Rivera a funded position at LLNS, that Newton and Darbee failed to attend a required Strategic Human Resource Management draft appraisal meeting (concerning Rivera's 2012 LSEO draft performance appraisal), and that Newton and Darbee deleted prior SKAs in his 2012 LSEO draft performance evaluation. Rivera asserts that in Reference 10 he disclosed that Newton and Darbee harassed Rivera in making comparisons with him versus other comparable employees, and that Darbee did not explain how the funding from Rivera's position was no longer available. Rivera also asserted that, in an attempt to resolve his appeal of the LW, he had selected the option to have an independent

review officer (IRO) review his complaints. However, the IRO resigned and LLNS failed to appoint another IRO.⁶ Rivera also asserts that in Reference 10 he disclosed that he was not informed that another position in LSEO was available despite his being qualified for the position.

We find that Part 708 does not protect the disclosures contained in Reference 10. The disclosures concerning Rivera's complaints regarding the loss of funding for his position, the failure of LLNS to provide another IRO and the harassment he received do not constitute an abuse of authority for Part 710 purposes. The disclosures do not reference arbitrary or capricious actions taken by Bailey (the IRO), or by Newton and Darbee, or that the actions complained of benefited another employee. At best, Rivera's disclosures point out violations of LLNS or LLNL personnel procedures and do not rise to the level of an abuse of authority disclosure protected by Part 708.

4. Reference 23: September 12, 2013, E-mail to Voloshin

Reference 23 is an E-mail message from Rivera to Dmitri Voloshin, a lead electrical engineer at LLNS's High Explosives Application Facility (HEAF) regarding failures of a 10 kg tank port glass. In Reference 23, Rivera states:

If the 10kg tank port glass failure was due to an over pressure/fatigue:

How often is the 10kg tank port glass inspected and what triggers its replacement, age, x number of high pressure experiments, pot marks, etc.?

Is the life cycle of the port glass tracked at all . . . or is it a go, no go, spot check on any given experiment? Maybe you need to formalize a weighted metric by which to track the life and replacement threshold of the port glass.

If the 10kg tank port glass failure was due to shot "debris":

By* default are the 10kg tank cameras looking through port glass optically directed with a set of 45 turning mirrors to the area of interest so that a sacrificial debris shield can be placed in front of the port glass inside the tank?

*default meaning the experimenter must request an "opt out" of the debris shield requirement with material justification and per review long before the shot is scheduled.

Just some thoughts.

Anthony

Reference 23 at 1.

⁶ On December 26, 2012, Rivera appealed the LLNS decision affirming the issuance of the LW and asked that an independent party review be utilized to review his appeal. Dismissal Request, Ex. W at 5.

Rivera claims that this message expressed a safety concern regarding a recent breach in a “10kg. Spherical Tank.” July 29, 2014, Statement at 6; *see also* Reference 22. Part 708 does protect disclosures that reveal a “substantial and specific danger to employees or to public health and safety.” 10 C.F.R. 705(a)(2). However, Reference 23 itself does not raise any apparent substantial safety concerns or threats to public health or safety. Reference 23 instead merely suggests a methodology to monitor the 10 kg tank port glass to prevent its failure. Nor does Reference 23 sufficiently refer to a protected Part 708 disclosure regarding an “abuse of authority,” “fraud,” “gross mismanagement,” or a “gross waste of funds.”

4. Reference 24: September 17, 2013, E-mail

Reference 24 is an E-mail sent to Kimberley Davis, NNSA Livermore Site Office Manager, and Monya Lane (Lane), LLNS Associate Director for Engineering, with the subject line “A request for EIT Point of Contact Change and a Request to the NNSA LSO Field Office Manager.” In this e-mail, Rivera complains that his previous requests to obtain a “detailed list of all attempts made by Ron Darbee, my ‘transitional employee’ point of contact, showing material efforts to identify, acquire, or negotiate terms leading to ‘securing a fully funded position’ within the LSEO Organization or elsewhere on my behalf dating back to 10-8-12.” Reference 24. Rivera also requested “a logical and constructive reason to provide weekly assignment search reports to Ron Darbee if he cannot produce the list described in [requested list above] that would demonstrate a reciprocating job search effort as my LSEO Superintendent and transitional employee point of contact.” Rivera also again expressed his complaints regarding the manner in which his 2012 LSEO draft performance appraisal was issued, the deletions of specific SKAs in the draft 2012 LSEOs and that his final 2012 LSEO performance appraisal was a “significant departure” from his previous performance appraisals. Rivera also stated that in a September 16, 2013, meeting with Darbee and Newton he shared “a few HEAF safety related actions/requests” but instead of acting on these “safety concerns and suggestions” LSEO and Staff Relations used them to express further dissatisfaction with his performance. Rivera also stated that “[m]y attempts to use the LLNS Internal Grievance Process reveal a structural breakdown of our stated employment, non-retaliation, and Strategic Human Resources Management policies that NNSA LSO should promptly look into and evaluate.” In Reference 24, Rivera asked questions regarding how employee input is collected and reviewed for purposes of the LLNL contract renewal process. Rivera claims that, in Reference 24, his disclosures revealed an “abuse of authority” by LLNS officials. July 29, 2014 Rivera Statement. Specifically, Rivera asserts that Reference 24 discloses that he wanted an electronic version of his draft 2013 performance appraisal as well as a third party present during the review of the draft.⁷ Rivera also asserts that Reference 24 revealed that he had: (1) made various HEAF safety concerns which were subsequently cited by LSEO and Staff Relations officials to raise doubts about his performance; (2) had made complaints regarding the “structural breakdown” of LLNS’s employment, non-retaliation, and SHRM (Strategic Human Relations Management) policies; and (3) that he had made suggestions as to

⁷ Our review of Reference 24 indicates that the document did not explicitly reference a complaint regarding the failure to permit a third party to be present during a review of Rivera’s draft 2013 performance review. Nonetheless, we will assume that Reference 24 could be interpreted as raising the issue for purposes of this Appeal. *See* References 28, 29 (E-mail to Lane complaining of lack of opportunity to attend a meeting without the presence of the IRO or another third-party).

how employee input is collected and reviewed. Dismissal Letter at 6-7; July 29, 2014, Rivera Statement at 7.

After reviewing Reference 24, we find no grounds to conclude that any of the topics discussed therein can be found to reference an “abuse of authority.” There is no indication that the errors referenced by Rivera concerning his 2013 draft performance review or the other irregularities and errors he identified benefited any specific LLNS or LLNL employee. Consequently, the OHA Investigator correctly determined that Reference 24 does not reveal an abuse of authority that qualifies for Part 708 protection. Nor do we find that Reference 24 reveals any gross mismanagement or gross waste of funds.⁸

IV. Conclusion

In the end, the OHA Investigator correctly determined that Rivera’s disclosures were inadequate to qualify for Part 708 protection. Accordingly, we must deny the instant Appeal.

It Is Therefore Ordered That:

- (1) The Appeal filed by Anthony T. Rivera (Case No. WBA-14-0006) is hereby denied.
- (2) This Appeal Decision shall become a Final Agency Decision unless a party files a petition for Secretarial review with the Office of Hearings and Appeals within 30 days after receiving this decision. 10 C.F.R. § 708.18(d).

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: March 9, 2015

⁸ Rivera has sent us documents and additional arguments regarding his Appeal past the deadline OHA set for submissions in this Appeal. Nonetheless, we have reviewed Rivera’s submissions and find that they do not change our opinion regarding the merits of his Appeal.