

August 29, 2007

DECISION AND ORDER OF
THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: Curtis Broaddus

Date of Filing: November 22, 2006

Case Number: TBA-0030

Curtis Broaddus filed a complaint of retaliation under the Department of Energy (DOE) Contractor Employee Protection Program. See 10 C.F.R. Part 708. Mr. Broaddus alleged that he engaged in protected activity and that his employer, BWXT Pantex (BWXT), retaliated by not giving his working group a proposed salary increase. An Office of Hearings and Appeals (OHA) Hearing Officer denied relief, and Mr. Broaddus filed the instant appeal. In a companion case involving Mr. Broaddus' subordinate, Clint Olson, I held that BWXT's failure to grant the proposed salary increase was not retaliatory. That holding governs this case. Accordingly, Mr. Broaddus' request for relief - a retroactive salary increase - is denied.

I. Background

Mr. Broaddus was BWXT's senior counter-intelligence officer. Mr. Broaddus' subordinate, Mr. Olson, was also a counter-intelligence officer.

In 2002, Mr. Broaddus and Mr. Olson raised security concerns about the protection of classified information. Thereafter, BWXT did not implement a DOE proposal to give their working group a fifteen percent "comparative" salary increase, i.e., an increase to bring their salaries more in line with those of others doing comparable work.

In 2004, Mr. Broaddus and Mr. Olson filed retaliation complaints. See 10 C.F.R. Part 708. They alleged that, when they raised their security concerns, they made "protected disclosures" and that BWXT retaliated by failing to grant the

fifteen percent comparative salary increase. Mr. Broaddus also alleged other retaliations specific to him.

The Broaddus and Olson complaints were referred to OHA. An OHA attorney investigated the complaints and issued a separate Report of Investigation (ROI) for each. See 10 C.F.R. §§ 708.22, 708.23. Upon the issuance of the ROIs, two Hearing Officers were appointed - one for each complaint. The Hearing Officers held a joint hearing on the issues common to the complaints, and then the Broaddus Hearing Officer held a further hearing on issues specific to the Broaddus complaint.

Each Hearing Officer issued an Initial Agency Decision (IAD). The IADs reached opposite results. The Hearing Officer for the Olson complaint held that Mr. Olson was entitled to relief. *Clint Olson (Case No. TBH-0027)*, 29 DOE ¶ 87,007 (2005) (the Olson IAD). The Hearing Officer for the Broaddus complaint held that Mr. Broaddus was not entitled to relief. *Curtis Broaddus (Case No. TBH-0030)*, 29 DOE ¶ 87,015 (2006) (the Broaddus IAD). BWXT appealed the Olson IAD, and Mr. Broaddus appealed the Broaddus IAD.

In May 2007, I reversed the Olson IAD. *Clint Olson (Case No. TBA-0027)*, 29 DOE ¶ 87,023 (2007) (the Olson Appeal Decision). I held that BWXT had demonstrated, by clear and convincing evidence, that its failure to grant the comparative salary was not retaliatory. Because that holding precluded the grant of relief to Mr. Olson, I did not address BWXT's other challenges to the Olson IAD.

In the instant appeal, Mr. Broaddus requests that I reverse the Broaddus IAD and grant him relief. As explained below, Mr. Broaddus' request is denied.

II. Applicable Standards

The DOE Contractor Employee Protection Program sets forth the standards governing the program. The contractor employee has the burden of showing, by a preponderance of the evidence, that the employee engaged in protected activity and that the protected activity was a contributing factor to an alleged retaliation. 10 C.F.R. § 710.29. If the employee meets that burden, the contractor has the burden of showing, by clear and convincing evidence, that it would have taken the same action in the absence of the protected activity. *Id.*

III. Analysis

I need not address the issue of whether Mr. Broaddus engaged in protected activity or whether such a disclosure was a contributing factor to the alleged retaliations. I have concluded that no Part 708 retaliation occurred.

In the Olson Appeal Decision, I considered whether BWXT's failure to grant a fifteen percent comparative increase to Mr. Broaddus' working group was retaliatory. I discussed the extensive evidence in the proceeding, which indicated that the salaries of individual contractor employees are based on the contractor's internal processes, consistent with the contract with DOE. *Olson*, 29 DOE at 89,126. Contrary to that policy, a DOE official proposed a fifteen percent comparative salary increase and related funding for Mr. Broaddus' working group, and BWXT referred the "highly unusual" proposal to DOE. *Id.* at 89,125. The DOE site manager informed BWXT that the DOE official lacked the authority to direct or fund such an increase. *Id.* BWXT lacked the funds for such an increase. *Id.* at 89,126. Accordingly, I held that BWXT had demonstrated, by clear and convincing evidence, that its failure to grant the fifteen percent salary increase was not retaliatory.

I have reviewed the Olson Appeal Decision and continue to believe that it was correct. Accordingly, consistent with the Olson Appeal Decision, Mr. Broaddus' claim concerning the fifteen percent comparative salary increase should be denied.

The Broaddus Hearing Officer agreed to consider other alleged retaliations. See *Broaddus IAD*, 29 DOE at 89,065. Mr. Broaddus devoted little or no attention to those allegations at the hearing.

The first alleged retaliation was the former plant manager's statement "I don't know what I'm going to do to you, Curtis, but I am doing to do something." Mr. Broaddus conceded that this statement followed a DOE-sponsored audit that criticized aspects of Mr. Broaddus' operations. *Tr.* at 652-71.

The second alleged retaliation was a purported "reprimand" for a traffic violation. During the investigation, the manager stated that he had counseled, but not reprimanded, Mr. Broaddus. See ROI at 26. The ROI invited Mr. Broaddus to produce evidence of a reprimand, *id.*, but Mr. Broaddus did not do so.

The third alleged retaliation concerned Mr. Broaddus' supervisory responsibilities for the Human Reliability Program (HRP), see 10 C.F.R. Part 712. The deputy plant manager assumed Mr. Broaddus' responsibilities. During the investigation, the deputy plant manager stated that Mr. Broaddus did not support the HRP program. See ROI at 26-27. Mr. Broaddus did not challenge that statement.

The fourth alleged retaliation was a supervisory change. The current plant manager reassigned Mr. Broaddus to his deputy. Although the ROI invited Mr. Broaddus to explain how this change may have harmed him, see ROI 27-28, 33, Mr. Broaddus did not do so.

The fifth alleged retaliation concerned a Personnel Assurance Program meeting at which a BWXT psychologist discussed a psychiatric evaluation of Mr. Broaddus. Mr. Broaddus alleged that the disclosure of that information was improper. The information gathered in the investigation indicated that the attendees consisted of authorized BWXT personnel and two of Mr. Broaddus' invitees. See ROI at 16; Interviews of Roxanne Steward (3/7/05), Sharon Armatrout (3/9/05), John Bovey, MD (3/28/05). Mr. Broaddus presented no testimony to the contrary.

As the foregoing indicates, Mr. Broaddus has not met his burden of showing, by a preponderance of the evidence, that a potential retaliation occurred. In fact, Mr. Broaddus did not request any specific relief for these alleged retaliations. Instead, they were apparently intended to establish BWXT animus and, therefore, bolster Mr. Broaddus' contention that BWXT's failure to grant the fifteen percent salary increase was retaliatory. As indicated above, I have rejected that contention.

IV. Conclusion

BWXT's failure to grant a fifteen percent comparative salary increase for Mr. Broaddus' working group was not retaliatory. Mr. Broaddus has not shown, by a preponderance of the evidence, that the other five alleged retaliations were potential retaliations.

It Is Therefore Ordered That:

(1) The Appeal filed by Curtis Broaddus on November 22, 2006 (Case No. TBA-0030), of the Initial Agency Decision issued on November 7, 2006, be and hereby is 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. § 708.35.

Fred L. Brown
Acting Director
Office of Hearings and Appeals

Date: August 29, 2007