

United States Department of Energy
Office of Hearings and Appeals

In the Matter of Tony P. Quillen)
)
Filing Date: August 26, 2014) Case No.: WBU-14-0009
_____)

Issued: September 11, 2014

Decision and Order

Tony P. Quillen appeals the dismissal of his complaint of retaliation (the Complaint) filed under 10 C.F.R. Part 708, the Department of Energy (DOE) Contractor Employee Protection Program.¹ The DOE's Employee Concerns Manager (Manager) at the Portsmouth/Paducah Project Office (PPPO) dismissed Mr. Quillen's Complaint on August 7, 2014. As explained below, we will deny the Appeal.

I. Background

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 the DOE's government-owned, contractor-operated facilities. 57 Fed. Reg. 7533 (Mar. 3, 1992). Its primary purposes are to encourage contractor employees to disclose information which they believe exhibits unsafe, illegal, fraudulent, or wasteful practices, and to protect those "whistleblowers" from consequential reprisals by their employers. The regulations governing the DOE's Contractor Employee Protection Program are set forth at Title 10, Part 708, of the Code of Federal Regulations.

Until his termination in February 2014, Mr. Quillen had worked at the site of the former Portsmouth Gaseous Diffusion Plant for over 23 years. He alleges that his most recent employer, Fluor-B&W Portsmouth (FBP), retaliated against him for disclosing safety and quality control issues in his work unit that he believed violated regulatory and contractual requirements. Appeal Letter at 1.

¹ The OHA reviews jurisdictional appeals under Part 708 based upon the pleadings and other information submitted by the Appellant. See 10 C.F.R. § 708.18(b) (appeal must include a copy of the notice of dismissal, and state the reasons why the Appellant thinks the dismissal was erroneous).

On May 8, 2014, Mr. Quillen filed a complaint of retaliation under Part 708 with PPPO's Employee Concerns Manager. In the Complaint and in an Amended Complaint he submitted on June 10, 2014, Mr. Quillen enumerated his disclosures of safety, quality control, and fraudulent matters to managers in his unit; his refusals to comply with instructions that he believed violated established procedures; and activities in which he participated, including a pro-union activity on February 18, 2014. Complaint at 1-2; Amended Complaint at 1. He asserted that FBP retaliated against him by creating "an intimidating, hostile, offensive work environment" and by terminating his employment on February 24, 2014. Complaint at 1.

In a letter dated August 7, 2014 (Dismissal Letter), the Manager dismissed Mr. Quillen's Part 708 Complaint for lack of jurisdiction, citing to 10 C.F.R. § 708.17(c)(6). The Manager found that the National Labor Relations Board (NLRB) and FBP had reached a settlement agreement regarding a complaint Mr. Quillen filed with the NLRB, in which FBP offered Mr. Quillen reinstatement to his former position and reimbursed him for lost income and benefits since his February 24, 2014, termination.² The Manager therefore concluded that Mr. Quillen had received an offer of settlement that provided a remedy that the DOE considers to be equivalent to what could be provided under Part 708. Dismissal Letter at 1.

In his Appeal, the Appellant contends that the Complaint was erroneously dismissed. He specifically contends that he did not file a complaint with the NLRB, but rather the union local had done so. Furthermore, he asserts that the settlement agreement provided a remedy to only a small portion of his Part 708 Complaint in that it did not address the safety, quality control, and mismanagement allegations he raised in that Complaint. Appeal at 1.

Because Mr. Quillen had not previously described the relief he sought pursuant to Part 708, this Office requested that he provide such information. Letter from William M. Schwartz, OHA, to Mr. Quillen, September 4, 2014. In his response, Mr. Quillen explained that he seeks no "personal" relief beyond that contained in the settlement agreement. E-mail from Mr. Quillen to Mr. Schwartz, September 9, 2014. He went on to state, however, that the settlement agreement addressed only his dismissal, and the additional relief he seeks is "the complete investigation of the safety and quality issues outlined" in his Complaint. *Id.*

II. Analysis

As indicated above, under Part 708, a DOE office may dismiss a whistleblower complaint for lack of jurisdiction if the employer has made a formal offer to provide the remedy requested in the complaint, or a remedy that DOE considers to be equivalent to what could be provided as a remedy under this regulation. 10 C.F.R. § 708.17(c)(6). After reviewing the record in this case, we find that the grounds for dismissal cited by the Manager comply with that provision. In our view, the settlement agreement between the Union and FBP provided Mr. Quillen with relief that is equivalent to what he could receive under Part 708.

² The parties to the settlement agreement were the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 689 (Union), and FBP. The attorneys representing each of those parties signed the agreement, which was then approved by the Regional Director of the NLRB. FBP Motion to Dismiss, filed with PPPO on July 31, 2014, Attachment 4.

The forms of relief that may be ordered in a Part 708 proceeding are set forth in the regulations:

If the initial or final agency decision determines that an action of retaliation has occurred, it may order (1) Reinstatement; (2) Transfer preference; (3) Back pay; (4) Reimbursement of your reasonable costs and expenses, including attorney and expert-witness fees . . .; or (5) Such other remedies as are deemed necessary to abate the violation and provide you with relief.

10 C.F.R. § 708.36(a). The settlement agreement provides Mr. Quillen with reinstatement and back pay, and the remaining forms of relief available under Section 708.36 do not apply under the facts of this case. When considering whether the Complaint should be dismissed under Section 708.17(c)(6), the Manager could not consider the first clause of that section—whether the settlement provided the remedy requested in his Complaint—as Mr. Quillen had not requested any. However, considering the second clause, the Manager reasonably determined that the settlement agreement provided Mr. Quillen with relief equivalent to what he could receive under Part 708. Moreover, in response to our inquiry, Mr. Quillen stated that he seeks no relief on behalf of himself beyond that provided in the settlement agreement. E-mail from Mr. Quillen to Mr. Schwartz, September 9, 2014.

As he explained in his E-mail, the remaining relief Mr. Quillen seeks at this juncture is “the complete investigation of the safety and quality issues outlined” in his Complaint. *Id.* Mr. Quillen is not entitled to this type of relief. Relief granted under Section 708.36 does not extend to directing the DOE or its contractors to conduct investigations into the facts underlying protected disclosures alleged in complaints. The purpose of the relief available under Section 708.36 is rather to make a complainant whole. Accordingly, even if Mr. Quillen had prevailed in a Part 708 proceeding, an OHA Administrative Judge would lack the authority to grant his request to order an investigation into his claims of safety and quality control issues. *See Fredrick Abbott*, Case No. TBU-0062 (2007) at 4.³ For these reasons, we uphold the dismissal.

III. Conclusion

As indicated by the foregoing, we find that PPPO correctly dismissed the Complaint filed by Mr. Quillen. As clearly proscribed by the jurisdictional provisions of Part 708, the Complaint cannot be accepted for further consideration at this time.

It Is Therefore Ordered That:

(1) The Appeal filed by Tony P. Quillen, Case No. WBU-14-0009, is hereby denied.

³ Decisions issued by the DOE Office of Hearings and Appeals (OHA) are available on the OHA website at <http://energy.gov/oha>.

(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: September 11, 2014