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**HELEN GAIDINE OGLESBEE, Complainant**

**v.**

**WESTINGHOUSE HANFORD COMPANY, Respondent.**

OHA Case No.LWA-0006

**FINAL DECISION AND ORDER**

This is an appeal by complainant Helen Gaidine Oglesbee of an Initial Agency Decision by an Office of Hearings and Appeals ("OHA") Hearing Officer. Following two days of hearings, the Hearing Officer found that the complainant had not established a claim that she suffered unlawful reprisal in response to her making of protected health and safety disclosures.

The Hearing Officer first held that the complainant had failed to meet her burden of establishing that certain of the communications she made to her employer, Westinghouse Hanford Company ("WHC"), the management and operating contractor at the Department of Energy's Hanford site in Richland, Washington, were protected health and safety disclosures. Second, in those instances in which the Hearing Officer found that protected disclosures had been made, the Hearing Officer held that WHC had shown by clear and convincing evidence that the challenged personnel action would have been taken even absent her disclosures. Finally, the Hearing Officer found that the contractor's withdrawal of certain eprimands from the complainant's personnel files had rendered her remaining claims concerning those matters moot and unredressable.

On appeal, the complainant challenges the Hearing Officer's rejection of her claims based on findings that the evidence failed to support her allegations that she made protected health or safety disclosures. The complainant similarly challenges the Hearing Officer's determination that WHC established by clear and convincing evidence that the challenged personnel actions were unrelated to protected disclosures.

It is well settled that factual findings of these types are subject to being overturned only if they can be deemed to be clearly erroneous, giving due regard to the trier of fact to judge the credibility of witnesses. *Compare, Pullman Standard v. Swint*, 456 U.S. 273 (1982), with *Amadeo v. Zant*, 486 U.S. 214, 223 (1988), quoting Federal Rule of Civil Procedure 52(a). Measured against this standard, my review of this matter discloses no basis for overturning OHA's fact-based determinations as "clearly erroneous."

With respect to the complainant's challenge to the Hearing Officer's finding of mootness regarding the letters of reprimand that were removed from the complainant's file, OHA's decision is consistent with analogous federal employment law precedents. *See, e.g., County of Los Angeles v. Davis*, 440 U.S. 625 (1979); *Frazier v. MSPB*, 672 F.2d 150 (D.C. Cir. 1982).

For the reasons set forth above, the Initial Agency Decision is affirmed and hereby adopted as the Final Agency Decision in this case.

Dated: April 14, 1995

William H. White

Deputy Secretary