

Case No. VBA-0011

July 28, 2000

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Appeal

Names of Petitioner: Diane E. Meier

Date of Filing: January 11, 2000

Case Number: VBA-0011

On January 11, 2000, Diane E. Meier (Meier) filed a Notice of Appeal from an Initial Agency Decision by a Hearing Officer from the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The Decision denied the relief which Meier seeks in her complaint against Lawrence Livermore National Laboratory (LLNL) under the DOE's Contractor Employee Protection Program, 10 C.F.R. Part 708. [Diane E. Meier](#), 27 DOE ¶ 87,545 (1999) (Meier). In her Appeal, Meier challenges several aspects of the Initial Agency Decision and requests that her complaint be granted. As set forth in this decision, I have determined that Meier's 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 3, 1992). Its primary purposes are 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. Contractors found to have discriminated against an employee for making such a disclosure, or for participating in a related proceeding, will be directed by DOE to provide relief to the complainant.

The regulations governing DOE's Contractor Employee Protection Program are set forth at 10 C.F.R. Part 708 and became effective on April 2, 1992. They establish administrative procedures for the processing of complaints. As initially formulated, these procedures typically included independent fact-finding by the DOE Office of Inspector General (IG), followed by the issuance of a Report of Inquiry setting forth the IG's findings and recommendations on the merits of the complaint. Thereafter, the complainant could request a hearing before an OHA Hearing Officer, who would render an Initial Agency Decision, from which an appeal could be taken to the Secretary of Energy or his designee.

On March 15, 1999, DOE amended Part 708, effective April 14, 1999, setting forth procedural revisions and substantive clarifications that "apply prospectively in any complaint proceeding pending on the effective date of this part." 10 C.F.R. § 708.8; see 64 Fed. Reg. 12,862 (March 15, 1999). Under the revised regulations, review of an Initial Agency Decision, as requested by Meier, is performed by the Director of OHA. 10 C.F.R. § 708.32.

B. Factual Background(1)

Meier was employed by LLNL beginning in September 1992 at LLNL's Washington Operations Office (WASHOP) located in Germantown, Maryland. In March 1994, Meier changed jobs and accepted a position working under Thomas Crites (Crites), who in early 1995 became an Associate Program Leader (APL) for Environmental Safety and Health (ES&H). (2) When Meier came under Crites supervision, Crites' wife, Linda Rahm-Crites (Rahm-Crites), worked as an employee performing technical editing and writing for a LLNL subcontractor at WASHOP. In early 1996, under a reorganization, Crites assumed the position as WASHOP APL in charge of general office management.(3)

However, in the Fall of 1997, the relationship between Meier and Crites began to change, when both took on new work assignments as a result of impending budget restrictions imposed by DOE and consequential changes in WASHOP's project priorities. WASHOP managers anticipated that in fiscal year 1998 (beginning October 1997), DOE would significantly cut defense program projects, previously a leading source of WASHOP funding. It appeared, however, that there would be ample funding for an emerging project administered by WASHOP, the Highly Enriched Uranium (HEU) Transparency Program (HEU Project). (4) From January 1996 until September 1997, the WASHOP project manager for the HEU Project was Joe Glazer (Glazer).

In August 1997, Meier completed a project assignment that had previously accounted for a major portion of her time, and Glazer appointed Meier as Training Coordinator for monitor training under the HEU Project. Although Crites, as APL, agreed to the assignment of Meier as Training Coordinator, he expressed reservations since the complainant had no previous training experience. Crites also had reservations about the handling of the HEU Project in general, since during this time frame he had received complaints from the DOE sponsors about Glazer's performance in administering the program. On August 25, 1997, a meeting was held to discuss a proposed HEU Project training plan prepared by a member of Glazer's staff (not Meier). During this meeting, attended by Crites, Meier, Glazer and Rahm-Crites, Crites was caustically critical of the training plan and suggested that his wife, Rahm-Crites, should perhaps rewrite it. Meier states that following the meeting, she telephoned Loquist to complain about Crites' behavior at the meeting as well as his attempt to insert his wife in the HEU Project. Meier asserts that she also expressed these concerns to Crites.

Continuing to be concerned with Glazer's performance, however, Crites decided in late September 1997 that he would assume the position as Program Manager of the HEU Project in place of Glazer, and relinquish his position as APL. Crites assigned his wife, Rahm-Crites, to be the editor of the quarterly report. Subsequently, Meier stated her concerns to Crites in a voice mail message that having Rahm-Crites working directly for him created an improper appearance to DOE sponsors and might cause problems for WASHOP. However, almost immediately after making the appointment, Crites recognized that due to LLNL policy, he could not have his wife working directly under him and consequently removed Rahm-Crites from the HEU Project.

Beginning in October 1997, Pete Prassinis (Prassinis) assumed the position of Acting APL, replacing Crites as manager and director of WASHOP. Following the removal of Rahm-Crites from the HEU Project, Prassinis became increasingly concerned that there was insufficient work to justify retaining Rahm-Crites as an employee in view of the diminishing work and budget available for other WASHOP projects. Prassinis discussed this matter with Meier, who continued to serve as Deputy APL, besides holding the position of HEU Project training coordinator. Prassinis also discussed the matter with WASHOP officials, and LLNL management officials at Livermore. (5) Based upon these discussions, Prassinis recommended that Rahm-Crites be released. LLNL management officials subsequently decided to terminate Rahm-Crites. Prassinis informed Rahm-Crites that she would be laid off effective November 26, 1997.

Meier maintained that once Crites became aware of the determination to terminate his wife, he became

distant and withdrawn in his relations with her and began take various retaliatory actions. First, Meier asserts that in October 1997, Crites informed her that her billable working hours on HEU Project training were being cut to half time. Meier further claimed that when she complained about this training cutback, Crites reminded her that he “had been” intending to recommend Meier as his replacement as APL. Meier states that she took this comment as a threat that Crites no longer intended to do so. In November 1997, Meier asserts that Crites became enraged over a minor disagreement concerning the graphics to be used on the cover of the HEU Annual Report. Specifically, Meier alleges that Crites yelled at her with his hands raised in clenched fists and stormed out of the office. According to Meier, Crites took these actions in retaliation against her because Crites held the complainant responsible for the termination of his wife. Meier maintained that on separate occasions in late 1997, she complained to Loquist and Chou about Crites’ behavior.

Meier asserts that during January 1998, Crites continued to exert subtle pressure to undermine her position as HEU Project Training Coordinator. According to Meier, the most egregious example of this occurred on January 30, 1998, when Crites improperly issued an HEU training solicitation letter (training letter incident). At the time the letter was issued, Meier was away in Oak Ridge, Tennessee (Oak Ridge). The January 30, 1998, letter issued by Crites concerned proposed training on the use of specialized uranium testing equipment, referred to as NDA. Upon seeing the letter after returning from Oak Ridge, Meier felt strongly that Crites had transgressed proper procedures by not getting approval from Jamie Benton, the DOE employee responsible for oversight of HEU training, to proceed with the NDA training. Meier was also disturbed that Crites had not discussed the matter with her. According to Meier, Crites refused to discuss the training letter incident with her in private and she therefore confronted Crites with the matter on February 13, 1998, at the monthly HEU Project staff meeting held to discuss action items. Meier states that Crites again attempted to avoid discussing the NDA training letter, stating that it was not an appropriate agenda item for the staff meeting. The complainant states that when she refused to drop the matter, Crites became enraged and told Meier with a hostile expression on his face that he had not involved her in NDA training since she was not competent to conduct training in this technical area, whereupon the complainant left the meeting.

On February 17, 1998, Meier telephoned Strauch and emotionally voiced her concerns that Crites was out of control and destroying the HEU Project, citing the NDA training letter and their confrontation at the February 13, 1998, meeting as examples. The complainant further claimed that Crites was physically threatening to her and was retaliating against the complainant for her involvement in having Rahm-Crites terminated. The complainant insisted that Crites be removed from the HEU Project and warned Strauch that if Crites were not removed, she would go to the DOE Inspector General (IG). In response to this phone call, Livermore officials dispatched a crisis management team to ascertain the causes of the conflict in WASHOP and the legitimacy of Meier’s charge that Crites had physically threatened her. The next day, on February 18, 1998, Meier had a private meeting with DOE sponsors overseeing the HEU Project, including Edward Mastel (Mastel), HEU Project Director. Mastel stated that during that meeting, the complainant expressed her discontent with how the HEU Project was being run by Crites, and stated the operational and staffing changes that she would make if she were placed in charge of the project.

The next day, on February 19, 1998, Meier participated in a conference call with LLNL management personnel including Chou and Strauch, in which she vociferously restated her charges against Crites, claiming that she feared for her personal safety. The complainant again threatened that she would go to the IG if Crites were not removed from the HEU Project. Strauch indicated that he would get back to Meier with his decision within a few days.

In the interim, on February 24, 1998, the crisis management team issued a written report of its findings with regard to Meier’s allegations, based upon its interviews with employees including those present at the February 13, 1998 meeting. The crisis management team found no basis for the complainant’s allegation of “physical threats” by Crites. The report stated that while staff members noted a change in Crites’ behavior toward Meier, perhaps attributable to the termination of his wife, “[o]f greater concern to several interviewed is recent behavior by [Meier]” and “[s]everal indicated that they feel she is overreacting to

events and on the edge of losing control.” On February 27, 1998, Strauch called Meier and informed her that she would be removed from the HEU Project because of “irreconcilable differences” with Crites. Subsequently, in a letter dated the same day, LLNL removed Meier from the HEU Project stating that: it did not find any significant basis to remove Crites in light of the fact that DOE believed that performance of the HEU Project was improving; Meier’s interaction with the DOE sponsors was inappropriate; and Meier’s approach conveying her demands to LLNL management that Crites be removed was also inappropriate. (6) At issue in this case are the allegations that Crites and LLNL each retaliated against Meier. Part 708 protects Meier against retaliation based on protected activities.

C. Procedural Background

Meier filed a complaint under Part 708 with the DOE’s Office of Inspector General on April 22, 1998. Subsequently, this complaint was transferred to OHA which assigned an investigator to the complaint. The OHA investigator issued a Report of Investigation on June 14, 1999. The investigator found that Meier had arguably made protected disclosures under Part 708 and that there was sufficient temporal proximity between the disclosures and the retaliations alleged by Meier to permit the inference that the disclosures were a contributing factor to the alleged retaliations.

Meier then requested a hearing regarding her complaint.(7) The hearing was duly held, and the Hearing Officer rendered an Initial Agency Decision on December 22, 1999. In this Decision, the Hearing Officer found in favor of LLNL. The Hearing Officer found that Meier made protected disclosures in August and September 1997, when she expressed her concern to LLNL officials about Crites assigning Rahm-Crites, his wife, to perform work on the HEU project. However, the Hearing Officer also found that Meier’s February 1998 disclosures to LLNL management officials demanding that Crites be removed from the HEU project were not protected disclosures. The Hearing Officer went on to find that the closeness in time between the August and September 1997 disclosures and the alleged acts of retaliation by Crites beginning in October 1997, and ending with Meier’s removal by LLNL from the HEU project in February 1998, supported a finding that Meier’s protected disclosures were a contributing factor to the alleged acts of retaliation.

The Hearing Officer then analyzed Meier’s claims of retaliation. In his opinion, the Hearing Officer concluded that Meier had failed to prove that Crites had taken any retaliatory action against Meier. With regard to LLNL, the Hearing Officer closely examined the circumstances of Meier’s removal and determined that LLNL’s action in removing Meier from the HEU project in February 1998 was not in any way related to Meier’s disclosures concerning Crites’ wife. He also concluded that LLNL had shown clearly and convincingly that Meier’s removal was justifiable.

After filing her Notice of Appeal, Meier filed a statement outlining the issues she sought the OHA Director to review. 10 C.F.R. § 708.33(a). LLNL filed a response to the Meier statement. Meier has identified two issues regarding the Hearing Officer’s conclusions in his Decision. These two issues are discussed in Section II below.

II. Analysis

In her Statement of Issues, Meier raises two specific grounds for Appeal.(8) First, Meier argues that the Hearing Officer erred in finding that Meier’s February 1998 statements, informing LLNL officials that if they did not remove Crites from the workplace she would have to file a complaint with the IG, were not protected disclosures. Second, Meier asserts that the Hearing Officer erred in concluding that LLNL would have taken the same personnel action against Meier absent Meier’s protected disclosures. I will discuss these two arguments next. (9)

A. February 1998 Statements

Meier asserts that in her February 1998 conversations with LLNL management, she sought to inform LLNL management that she feared for her physical safety and that she could no longer work with Crites because of his various alleged acts of retaliation. In these conversations, she stated that if Crites were not removed from the workplace, she would have to report Crites' violation of the "near relative" policy and his subsequent retaliation to the IG. Meier argues that these disclosures should be considered a protected disclosure for Part 708 purposes. Meier asserts that her February 1998 statements complained about Crites' prior violation of the "near relative" policy and the alleged continuing retaliation she experienced as a result of her disclosures in August and September 1997 concerning his violation of the near-relative policy. Meier also points out that nothing in the language of 10 C.F.R. § 708.5 indicates that because she had previously pointed out Crites' violation of the "near relative" policy in August and September 1997, her disclosures in February 1998 would not also be protected. I need not address these arguments, since my review of the Hearing Officer's analysis reveals that it is flawed for the reasons discussed below.

In making the determination regarding the February 1998 disclosures, the Hearing Officer essentially concluded that these disclosures were not protected on the following grounds: (1) since Meier's intention was to coerce LLNL to replace Crites on the HEU Project, she could not have been attempting to reveal "reasonably and in good faith" an abuse of authority by Crites; and (2) the subject matters that were at the heart of the February 1998 disclosures, the training letter incident and the alleged physical threats by Crites, did not meet the regulatory criteria defining protected disclosures under Part 708.

The Hearing Officer's first rationale is not correct. I have recently held that in evaluating whether a person has made a disclosure in good faith, the person's motivations for making the disclosure are irrelevant. Beckham; see [Howard W. Spaletta](#), 24 DOE ¶ 87,511 at 89,051 (1995) (Spaletta) (whether the Complainant was motivated to protect his reputation is irrelevant to the question whether the disclosures come within the ambit of Part 708 protection). Consequently, Meier's purpose in making the February 1998 communications could not be used as a criterion to determine if she had made the communication "in good faith" as that term is used in the Part 708 regulations. The Hearing Officer improperly used Meier's motivation in determining that the February 1998 disclosures were not protected under Part 708. (10)

Nevertheless, despite my finding that this aspect of the Hearing Officer's analysis regarding the February 1998 disclosures was erroneous, I find that this error is harmless since I find, as described below, that LLNL has met its evidentiary burden and has shown by clear and convincing evidence that it would have removed Meier from the HEU project in the absence of her protected disclosures.

B. Whether LLNL would have taken the same action toward Meier in the absence of the protected disclosures

As discussed above, I find that the only remaining act of retaliation at issue in this case is LLNL's removal of Meier from the HEU Project. Because Meier's protected disclosures were a contributing factor in her removal from the HEU Project, LLNL can avoid liability only if it shows clearly and convincingly that it would have removed Meier from the HEU Project in the absence of her protected disclosures. Three of the reasons cited by LLNL for its action were: (1) "irreconcilable differences" between Meier and Crites; (2) Meier's inappropriate conduct in lobbying DOE in an attempt to remove Crites; and (3) that in light of DOE's satisfaction with Crites' management of the HEU Project, there was no basis to remove Crites. See April 2, 1998 Complaint Exhibit 2, ¶ 42, and Exhibit 6 (February 27, 1998 memorandum from Strauch to Meier). (11)

Meier argues that the Hearing Officer erred in concluding that LLNL had demonstrated by clear and convincing evidence that it would have removed Meier from her position in the absence of her protected disclosures. Meier cites several OHA and federal court cases for the proposition that an employee cannot be subject to an adverse employment action for reasons rooted in her experience as a whistleblower. See [Ronald Sorri](#), 23 DOE ¶ 87,503 at 89,015 (1993); *Pogue v. Dept. of Labor*, 940 F.2d 1287 (9th Cir 1991); *Passic Valley Sewerage Comm'rs v. Dept. of Labor*, 992 F.2d 474 (3rd Cir 1993); *Mackowiak v.*

University Nuclear Systems, Inc., 735 F.2d 1159 (9th Cir. 1984) (Mackowiak). In the present case, Meier argues that all of the conduct which LLNL cited in its decision to remove her from the HEU project arose in whole or in part from her protected disclosures in August and September 1997, Crites' subsequent alleged retaliation against her, and from her February 1998 disclosures. Consequently, she claims LLNL can not rely on these reasons to justify her removal from the HEU Project. Meier argues and has cited authority for the proposition that an employer bears the risk of liability if the legal and illegal motives for an adverse action cannot be separated. See Mackowiak. (12)

I disagree with Meier's claim. As I will discuss below, very compelling evidence points to the conclusion that the primary conduct by Meier leading to LLNL's action removing her from the HEU Project had absolutely nothing to do with her protected disclosures. Thus, contrary to Meier's contention, the conduct causing the termination did not arise from those disclosures. As such, there is simply no basis for Meier's assumption that LLNL's "legal and illegal" motives cannot be separated. LLNL's legitimate motives for terminating her clearly form a separate basis for action, and I agree with the Hearing Officer that the separate basis was clearly sufficient to result in her removal, aside from any other factor that may have contributed to the decision.

First, LLNL was concerned about the existence of "irreconcilable differences" between Meier and Crites. The prime example of this conflict, a dispute between the two over the drafting of a training letter, was rooted in a disagreement over Meier's competence to perform and deal with the technical, subject matter aspects of the training letter. Although Meier implicitly argues that Crites' dissatisfaction with her was merely a pretext masking a retaliatory animus, the record strongly indicates instead that Meier and Crites had a genuine disagreement on this point and that the disagreement was in no way related to Meier's protected disclosures. Meier's conduct in the face of this disagreement with her superior is what ultimately led LLNL to remove Meier from the HEU Project. The core of the "irreconcilable differences" between Crites and Meier, the training letter dispute, came to a head during the February 13 meeting between Crites and other staff members concerning the HEU Project. At this meeting, Meier would not let Crites discuss the HEU Project agenda items but continued to press him for an explanation for his actions in issuing the training letter. Tr. at 639-42. Testimony from one of the participants confirms Meier's disruptive, angry behavior at the meeting in which she would not let the meeting participants discuss the HEU agenda items despite pleas from at least one other staff member for Meier to stop. Tr. at 642 (Meier's words to the effect of "No, I want to talk about it now and I want to talk about it here.") After Crites gave in to Meier's request and informed her that he did not consult her regarding the training letter because she was "incompetent" with regard to the technical issues involved, Meier left the meeting. Tr. at 642. In contrast to Meier's behavior, Crites remained calm and did not appear to be angry. Tr. at 643. While there is evidence that Crites' management style could produce stress, it was Meier's differences with Crites, her supervisor, and her conduct at the February 13 meeting that were critical factors in LLNL's decision to remove her from the HEU Project.

The second reason supporting LLNL's action was Meier's attempt to engineer Crites' removal from the HEU Project by going behind the back of LLNL management directly to the DOE sponsor. At her request, Meier met with Mastel, DOE Project Director, on February 18, and informed him of her dissatisfaction as to how the HEU project office was being run and offered her own suggestions as to personnel and operational changes that might be made if she were placed in charge. Tr. at 201-02. The DOE sponsor, Mastel, testified that Meier "was trying to get our support to put her into a position as the project manager . . ." Tr. at 210. Mastel's testimony is supported by Glazier's testimony that in mid-February 1998 Meier had told him that "she was going to take over, you know, the position that Tom [Crites] held, head of the office" and "she [Meier] was going to put me back down as program manager." Tr. at 292. Thus, Meier's communication with the DOE Sponsor was an attempt to obtain DOE support to replace Crites with herself. Additionally, there is no evidence that Meier's attempt to lobby DOE to replace Crites with herself was part of an attempt to communicate her protected disclosures.(13) Not surprisingly, Meier's attempt to circumvent LLNL management alarmed LLNL, and was so contrary to LLNL's position on how the HEU Project should be operated that it was insubordinate. In my view, these actions were entirely motivated by self-interest and would certainly have then resulted in Meier's removal from the HEU Project regardless

of her protected disclosures.

Lastly, DOE was clearly satisfied with Crites' performance. Mastel, the DOE sponsor, testified that "in terms of milestones being met and reported against, we saw marked improvement since [Crites] came on board and was doing the work." Tr. at 211. DOE's perception that Crites was doing a satisfactory job on the HEU Project was unaffected by Meier's disclosures. Meier's direct challenge to Crites' authority was a matter to where LLNL had to respond, and respond quickly.

Thus, given DOE's satisfaction with Crites' job performance, Meier's handling of the conflict with Crites, and Meier's attempt to circumvent LLNL management by talking to the DOE sponsor in order to get Crites' job, I find that LLNL has demonstrated by clear and convincing evidence that it would have removed Meier from the HEU Project in the absence of her protected disclosures. (14) Further, none of these reasons resulted from Meier's protected disclosures.

In sum, I find that the Hearing Officer erroneously determined that Meier's February 1988 communications were not a protected disclosure but that he correctly held that LLNL had shown by clear and convincing evidence that it would have removed Meier in the absence of her protected disclosures. Consequently, the Meier Appeal should be denied.

It Is Therefore Ordered That:

(1) The Appeal filed by Dianne E. Meier, on January 11, 2000, of the Initial Agency Decision issued on December 22, 1999 (Case No. VBA-0011), 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. § 708.35.

George B. Breznay

Director

Office of Hearings and Appeals

Date: July 28, 2000

(1)The Factual background is taken from the Hearing Officer's Decision in Meier.

(2)In the fall of 1995, Meier assumed the position of Deputy APL under Crites.

(3)LLNL management at Livermore was aware of the potential conflict of interest associated with Rahm-Crites working under her husband, Crites, and was concerned that this arrangement under the reorganization might constitute a violation of LLNL's "near relative" policy. This policy, as described in LLNL's Personnel Policies and Procedures Manual, prohibits employees from working under the supervision of near relatives. During 1996, an administrator responsible for WASHOP staffing matters, Shirley Loquist (Loquist), examined this matter and determined that there was no violation since Rahm-Crites was not supervised by Crites, and he was not responsible for her assignments, salary or appraisal.

(4)Under the HEU Project, DOE provides assistance to Russia in accounting for and disposing of highly enriched uranium. As part of the program, the United States sends individuals acting as monitors to Russia to ensure that highly enriched uranium from nuclear weapons is properly down-blended. Part of WASHOP's mission for DOE under the HEU Project is to design and conduct the training of these monitors.

(5)Among the LLNL management officials Prassinos discussed Rahm-Crites' future employment with

were Loquist, Mark Strauch (Strauch), LLNL's Fission Energy Systems and Safety Program (FESSP) Program Leader, and C.K. Chou (Chou), LLNL Associate Director in charge of FESSP. WASHOP was a satellite office of FESSP.

(6)Meier never returned to work at WASHOP, but went on medical disability leave, apparently on the basis that her workplace experiences had exacerbated a mental condition that prevented her from working. After a year's time, LLNL requested medical documentation of Meier's work restriction, which she refused to provide. Therefore, in a letter to Meier dated June 18, 1999, LLNL separated her from employment based upon Meier's inability to perform the essential functions of her position.

(7)During the pendency of the hearing, the new "whistleblower" regulations took effect. The Hearing Officer relied on the revised regulations in handling this proceeding, citing the new regulatory provisions in his Initial Agency Decision.

(8)Although an issue not expressly raised by Meier on appeal, I must comment on the Hearing Officer's analysis methodology regarding Meier's complaint. After the Hearing Officer determined that Meier made disclosures protected by Part 708, he then should have determined whether Meier had established by a preponderance of the evidence that Crites' or LLNL's alleged retaliatory acts in fact had occurred and whether the disclosures were a contributing factor in LLNL's decision to remove her from the HEU Project. In the Decision, the Hearing Officer did not expressly make any findings regarding whether Crites' alleged reprisals had in fact occurred until he analyzed LLNL's defense asserting that it would have removed Meier regardless of her disclosures. I have reviewed each of the Hearing Officer's findings regarding Crites' alleged retaliatory actions against Meier and I affirm the Hearing Officer's conclusion that the portion of Meier's complaint concerning Crites' alleged retaliatory acts should be dismissed. Specifically, with regard to all of Crites' alleged retaliatory acts except one, Meier failed to present sufficient evidence to establish that the alleged retaliatory act occurred. As to the remaining alleged retaliatory act- reducing Meier's billable training hours - I conclude that her August and September 1997 disclosures were not a factor contributing to her reduction in hours. Thus, the only remaining act of alleged retaliation at issue in this Appeal is LLNL's removal of Meier.

(9)The Hearing Officer cited the pre-revision Part 708 regulations in his Decision but in his analysis regarding the February 1998 disclosures made a finding apparently using the current Part 708 regulations. See Meier at 89,231-32 ("I find nothing to indicate that Meier was attempting to reveal, reasonably and in good faith, an 'abuse of authority' by Crites in February 1998."). The pre-revision regulations do not include a requirement that the disclosure be "reasonable"; instead they only require that the disclosure be in "good faith." See [Rosie L. Beckham](#), 27 DOE ¶ 87,557 (2000) (Beckham). The use of the revised regulations in this respect could cause prejudice to Meier since those regulations interpose a required element of reasonableness for a disclosure to be protected that arguably did not exist at the time she made her disclosures. See Beckham. Accordingly, in evaluating Meier's Appeal, I will use the regulations that existed at the time she communicated her concerns.

(10)Additionally, the Hearing Officer's erred in with respect to his second rationale for finding that the February 1998 disclosures were not protected. The Hearing Officer, after evaluating the factual circumstances surrounding the training letter issue, determined that Crites' actions did not constitute an "abuse of authority" or "mismanagement." The Hearing Officer also found that there was no evidence in the record to substantiate Meier's claims that Crites physically threatened her. However, for purposes of Part 708, it does not matter whether the information a putative whistleblower disclosed is ultimately factually substantiated. See [Beckham](#); [Thomas T. Tiller](#), 27 DOE ¶ 87,504 (1998), [affirmed](#), [Thomas T. Tiller v. Wackenhut Services, Inc.](#), 27 DOE ¶ 87,509 (1999); see also [Spaletta](#), 24 DOE at 89,051 (good faith clause is intended to relieve complainants of the burden of proving that their allegations are correct or accurate). Rather, the focus must be on the belief of the individual providing the information. In this case, the inquiry must focus on whether Meier had a good faith belief that Crites was violating a "law, rule or regulation" or was responsible for mismanagement. See 10 C.F.R. § 708.5(a)(i), (iii) (1992). The essential subject matter of Meier's February 1998 disclosures - Crites' handling of the training letter issue

and Meier's complaints that Crites physically threatened her - concern potential mismanagement as well as a potential violation of a "law, rule or regulation." Thus, if Meier had a good faith belief concerning her February 1998 disclosures, they are protected under the Part 708 regulation existing at the time of her disclosure.

(11) Because I find that LLNL has presented clear and convincing evidence that it would have removed Meier from the HEU Project based upon the three reasons discussed infra, I express no opinion as to the merit of the fourth reason LLNL cited in removing Meier, the inappropriateness of Meier's threat to LLNL management that either it remove Crites or she would go to the IG.

(12) LLNL argues that removing Meier from the HEU Project can not be considered an adverse personnel action under Part 708. However, I need not address this argument in light of my finding that LLNL would have removed Meier from the HEU project even in the absence of her protected disclosures.

(13) Mastel testified that he could not specifically recall Meier mentioning any personal difficulties with Crites. Tr. at 211-12.

(14) It should be noted that LLNL only removed Meier from the project and did not fire her from her position. The amount of justification required to establish that an employer would have removed a person from a project, protected disclosures notwithstanding, is less than the justification needed to demonstrate that an employer would have discharged an employee regardless of protected disclosures.