

Department of Energy

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(c) The OHA Director will issue a decision on your appeal and notify the parties of the decision by the 30th day after it is received.

(d) The OHA Director's decision, either upholding the dismissal by the Head of Field Element or EC Director or ordering further processing of your complaint, is the final decision on your appeal, unless a party files a petition for Secretarial review by the 30th day after receiving the appeal decision.

§ 708.19 How can a party obtain review by the Secretary of Energy of a decision on appeal of a dismissal?

(a) By the 30th day after receiving a decision on an appeal under § 708.18 from the OHA Director, any party may file a petition for Secretarial review of a dismissal with the Office of Hearings and Appeals.

(b) By the 15th day after filing the petition for Secretarial review, a party must file a statement setting forth the arguments in support of its position. A copy of the statement must be served on the other parties, who may file a response by the 20th day after receipt of the statement. Any response must also be served on the other parties.

(c) All submissions permitted under this section must be filed with the Office of Hearings and Appeals.

(d) After a petition for Secretarial review is filed, the Secretary (or his or her delegee) will issue the final agency decision on jurisdiction over the complaint. The Secretary will reverse or revise an appeal decision by the OHA Director only under extraordinary circumstances. In the event he or she determines that a revision in the appeal decision is appropriate, the Secretary will direct the OHA Director to issue an order either upholding the dismissal by the Head of Field Element or EC Director or ordering further processing of your complaint.

§ 708.20 Will DOE encourage the parties to resolve the complaint informally?

(a) Yes. The Head of Field Element or EC Director (as applicable) may recommend that the parties attempt to resolve the complaint informally, for example, through mediation.

(b) The period for attempting informal resolution of the complaint may not exceed 30 days from the date you filed your complaint, unless the parties agree to extend the time.

(c) The 30-day period permitted for informal resolution of the complaint stops running when a request to dismiss your complaint on jurisdictional grounds is filed with the Head of Field Element or EC Director, and begins to run again on the date the OHA Director returns the complaint to the Head of Field Element or EC Director for further processing.

(d) If the parties resolve the complaint informally, the Head of Field Element or EC Director (as applicable) must be given a copy of the settlement agreement or a written statement from you withdrawing the complaint.

Subpart C—Investigation, Hearing and Decision Process

§ 708.21 What are the employee's options if the complaint cannot be resolved informally?

(a) If the attempt at informal resolution is not successful, the Head of Field Element or EC Director (as applicable) will notify you in writing that you have the following options:

(1) Request that your complaint be referred to the Office of Hearings and Appeals for a hearing without an investigation; or

(2) Request that your complaint be referred to the Office of Hearings and Appeals for an investigation followed by a hearing.

(b) You must notify the Head of Field Element or EC Director (as applicable), in writing, by the 20th day after receiving notice of your options, whether you request referral of your complaint to the Office of Hearings and Appeals for a hearing without an investigation, or an investigation followed by a hearing.

(c) If the Head of Field Element or EC Director does not receive your response to the notice of options by the 20th day after your receipt of that notice, DOE will consider your complaint withdrawn.

(d) If you timely request referral to the Office of Hearings and Appeals, the Head of Field Element or EC Director

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(as applicable) will forward your complaint to the OHA Director by the 5th day after receipt of your request.

(e) The Head of the Field Element or EC Director (as applicable) will notify all parties that the complaint has been referred to the Office of Hearings and Appeals, and state whether you have requested a hearing without an investigation or requested an investigation followed by a hearing.

§ 708.22 What process does the Office of Hearings and Appeals use to conduct an investigation of the complaint?

(a) If you request a hearing without an investigation, the OHA Director will not initiate an investigation even if another party requests one.

(b) If you request an investigation followed by a hearing, the OHA Director will appoint a person from the Office of Hearings and Appeals to conduct the investigation. The investigator may not participate or advise in the initial or final agency decision on your complaint.

(c) The investigator will determine the appropriate scope of investigation based on the circumstances of the complaint. The investigator may enter and inspect places and records; make copies of records; interview persons alleged to have been involved in retaliation and other employees of the charged contractor who may have relevant information; take sworn statements; and require the production of any documents or other evidence.

(d) A contractor must cooperate fully with the investigator by making employees and all pertinent evidence available upon request.

(e) A person being interviewed in an investigation has the right to be represented by a person of his or her choosing.

(f) Parties to the complaint are not entitled to be present at interviews conducted by an investigator.

(g) If a person other than the complainant requests that his or her identity be kept confidential, the investigator may grant confidentiality, but must advise such person that confidentiality means that the Office of Hearings and Appeals will not identify the person as a source of information to

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anyone outside the Office of Hearings and Appeals, except as required by statute or other law, or as determined by the OHA Director to be unavoidable.

§ 708.23 How does the Office of Hearings and Appeals issue a report of investigation?

(a) The investigator will complete the investigation and issue a report of investigation by the 60th day after the complaint is received by the Office of Hearings and Appeals, unless the OHA Director, for good cause, extends the investigation for no more than 30 days.

(b) The investigator will provide copies of the report of investigation to the parties. The investigation will not be reopened after the report of investigation is issued.

(c) If the parties informally resolve the complaint (e.g., through mediation) after an investigation is started, you must notify the OHA Director in writing of your decision to withdraw the complaint.

§ 708.24 Will there always be a hearing after a report of investigation is issued?

(a) No. An employee may withdraw a hearing request after the report of investigation is issued. However, the hearing may be canceled only if all parties agree that they do not want a hearing.

(b) If the hearing is canceled, the Hearing Officer will issue an initial agency decision pursuant to § 708.31 of this subpart.

§ 708.25 Who will conduct the hearing?

(a) The OHA Director will appoint a Hearing Officer from the Office of Hearings and Appeals to conduct a hearing.

(b) The Hearing Officer may not be subject to the supervision or direction of the investigator.

§ 708.26 When and where will the hearing be held?

(a) The Hearing Officer will schedule a hearing to be held by the 90th day after receipt of the complaint, or issuance of the report of investigation, whichever is later. Any extension of the hearing date must be approved by the OHA Director.