



Issue Date: 11 June 2008

Case No.: 2006-ERA-00029

In the Matter of:

WILLIAM VINNETT,
Complainant,
v.
MITSUBISHI POWER SYSTEMS,
Respondent.

**DECISION & ORDER DENYING COMPLAINANT'S MOTION FOR SUMMARY
DECISION and GRANTING RESPONDENT'S MOTION FOR SUMMARY
DECISION & DISMISSING COMPLAINT**

This case arises under the employee protection ("whistleblower") provisions of the Energy Reorganization Act ("ERA" or the "Act"), 42 U.S.C.A. § 5851, (West 2005). These provisions prohibit an employer from taking adverse actions against an employee for engaging in protected whistleblowing activity. 42 U.S.C. § 5851 (West 2005). The regulations for the Act are prescribed in Part 24 of Title 29 of the Code of Federal Regulations.

Procedural History

On July 26, 2005, William Vinnett, the pro se Complainant, filed ERA, Clean Air Act, Comprehensive Environmental Response, Compensation, and Liability Act, Federal Water Pollution Control Act, Safe Drinking Water Act, Solid Waste Disposal Act, and Toxic Substances Control Act claims against Respondent, Mitsubishi Power Systems. By letter dated July 25, 2006, the Occupational Safety and Health Administration ("OSHA") informed Complainant that his complaint was investigated and found to have no merit. Complainant filed his objections and requested a hearing by letter dated August 5, 2006.¹ The case was docketed with the Office of Administrative Law Judges on August 5, 2006. It was assigned to the undersigned on August 9, 2006.

By motion dated July 19, 2007, Respondent moved for summary decision. An Order Directing Complainant to Respond to Respondent's Motion for Summary Judgment On or Before September 28, 2007 was issued in August of 2007. On September 27, 2007, Complainant filed his response opposing Respondent's motion for summary decision and requesting summary

¹ In his letter objecting to OSHA's findings, Complainant stated that he "was engaged in protected activity while completing a nuclear outage report in December, 2004." He stated that "after informing the first level of management about violations during the nuclear outage was retaliated and eventually terminated....The OSHA investigation did not succeed on getting the facts and critical documentation because the company witnesses were not under oath and the agency does not have the power to subpoena the records."

decision in his favor. His response included two attached exhibits, which Respondent did not receive. After several months of unsuccessfully attempting to procure a copy of these exhibits from Complainant, Respondent asked this Office to provide it with copies. After these copies were provided, Respondent submitted its reply, dated March 31, 2008, which opposed Complainant's motion for summary decision and reiterated why it believed summary decision should be entered in its favor. On April 14, 2008, this Office received Complainant's response to Respondent's motion for summary decision.

Factual History

After receiving a computer science degree in 1992, Complainant began working for General Electric. In 2004, Complainant left his position with General Electric after being offered employment as a Field Project Manager with the Respondent, Mitsubishi Power Systems. Respondent's Operations Manager for Steam Turbine Services, John Daniels, hired Complainant. Complainant reported directly to Mr. Daniels during his employment.

Complainant was assigned to work at the Palisades Plant in Michigan during the Fall outage of 2004, which occurred between August and October. Complainant alleged that soon after arriving to the Palisades Plant, he noticed significant technical errors in the official procedure packages, which tell mechanics how to perform their jobs. Complainant alleged that he sent at least two emails to Mr. Daniels informing him of the problem. He also claimed to have informed Mr. Daniels in December of 2004 that inspection sheets were unfinished, and thus unreliable, that no list of spare parts recommended for the next outage was ever given to him, that component engineers failed to provide reports corresponding to the work they had carried out during the outage, and that component engineers often left the site without being released. Complainant further indicated that he noticed several deep cuts inside the wall of a pressurized vessel while he was inspecting a MSR-9B, but after he reported these findings during a meeting, he was told to refrain from reporting such failures in the future.

Complainant claimed that in December of 2004, he sent numerous meeting requests to Mr. Daniels, including a written request. According to Complainant, after he made a written request, human resources became involved and he was given a warning letter on January 6, 2005 for unacceptable job performance. Complainant indicated that he signed this letter under duress. He also indicated to Mr. Bailey Weaver, with human resources, that he did not understand the negative feedback in the letter, since his work at Palisades was limited to vibration engineering, and project decisions and responsibilities were assigned to other people. After this meeting on January 6, 2005, Complainant alleged that Respondent began discriminating, harassing, and retaliating against him for his whistleblower activity by giving him an over-abundance of assignments, failing to timely process his weekly expense accounts, providing him with conflicting management directions, and unfairly holding him responsible for the loss of an expensive missing instrument. On February 25, 2005, Complainant's employment with Mitsubishi Power Systems was terminated.

Respondent claimed that Complainant was terminated because he could not perform the basic functions of his position. Moreover, Complainant's attitude and demeanor allegedly caused problems with co-workers, superiors, and customers of Mitsubishi Power Systems.

Respondent further claimed that Complainant did not raise concerns about any safety issues prior to his termination. It was claimed that it was not until June 26, 2005, four months after his termination, that Complainant came forward with concerns relating to safety problems encountered during the autumn of 2004.

Respondent's Motion for Summary Decision

Respondent moved for summary decision on July 19, 2007. In this motion, Respondent stated that Complainant's complaint should be dismissed and summary judgment should be granted because Complainant raised no genuine issues of material fact and has been unable to make a prima facie showing that Respondent violated the Energy Reorganization Act or the Atomic Energy Act.

Respondent believed that Complainant has failed to establish that he engaged in protected activity while working for Mitsubishi Power Systems. Specifically, Respondent noted that there is no complaint of an alleged safety violation or any other violation of the law in the weekly reports Complainant completed while at the Palisades Plant, in Complainant's personal logs, or his time sheets. In fact, Complainant testified during his deposition that no documents reflect that he made any complaints about violations of the law to Respondent, excepting two emails he sent to Mr. Daniels. The first email, sent on September 9, 2004, stated that a millwright had received instructions to remove a fire protection system from equipment, but the equipment did not contain any such fire suppression system. In the second email, Complainant allegedly asked for some equipment to be installed for vibration data. Respondent argued that neither of these emails constitutes protected activity under the Energy Reorganization Act or the Atomic Energy Act. Moreover, Complainant does not have copies of these emails and Mr. Daniels' affidavit indicated that he does not have a record of receiving any such emails.

Moreover, Respondent indicated that Complainant never worked on the nuclear reactor side of any facility being serviced – he only worked on steam turbines. In fact, Mitsubishi Power Systems does not work with nuclear materials of any sort.

Nor has Complainant established that he was terminated in retaliation for the complaints that he allegedly made about safety violations at the Palisades Plant.

Complainant's Motion for Summary Decision

On September 27, 2007, this Office received Complainant's response to Respondent's motion for summary decision and request for summary decision in his favor. Complainant claimed that he performed his job well, that he engaged in protected whistleblower activity, and that Respondent retaliated against him for his whistleblower activities.

With regard to protected activity, Complainant stated that he noticed a significant number of technical errors on procedures that were ready to be implemented at the Palisades Plant. Complainant color-coded revised procedures he made and emailed these revised procedures to Mitsubishi Power Systems. Complainant also alleged that he found structural damages in a pressurized vessel that Respondent was trying to hide. Moreover, when drafting the outage

report, Complainant discovered other procedural violations, such as work packages being signed by individuals who did not work on those specific components, incomplete data sheets, and “hold point not signed at the time the components were worked.” Additionally, Complainant allegedly discovered that critical pieces of the nuclear turbine equipment, such as the main stop valves, were not assembled according to the Original Equipment Manufacturer (OEM) specifications. Complainant stated that he made sure that a manager for Mitsubishi Power Systems knew about all of these safety concerns.

Complainant further indicated that immediately following these whistleblower activities, he experienced discrimination and retaliatory behavior, which included treating him like an outcast, disrespectfully addressing him, giving him unreasonable deadlines for completing an outage report, and forcing him to write reports on components that he did not work.

Respondent’s Response to Complainant’s Motion for Summary Decision

Respondent’s reply to Complainant’s motion for summary decision, dated March 31, 2008, and received by this Office on April 1, 2008, opposed Complainant’s motion for summary decision and reiterated why summary decision should be entered in its favor.

Respondent indicated that because Complainant “is unable to make a showing to establish the existence of any element essential to his claim (a claim for which he carries the burden of proof at trial), his motion for summary judgment fails and his opposition to [Respondent’s] motion for summary judgment is wholly without any factual or legal basis.”

Respondent addressed a statement Complainant made in his motion for summary decision that he issued revised procedures after he noticed a significant number of technical errors on procedures that were about to be implemented at the Palisades Plant. Respondent claimed that Complainant provided

no date and no information on what technical errors he claims came to his attention. However, assuming for purposes of summary judgment alone that, in fact, [Complainant] identified revisions that needed to be made to procedures, this would be part of his job responsibilities and has nothing to do with reporting violations of the ERA. By his own admission, the procedures were revised prior to being implemented.

Respondent next addressed Complainant’s assertion that Mitsubishi Power Systems was attempting to hide structural damages that he found in a pressurized vessel. Respondent indicated that, to support his position, Complainant referenced Bates Stamp document 000101, but that this document is one page of an August 8, 2005 letter from Complainant to the OSHA investigator. Respondent contended that this is a self-serving document that was prepared after Complainant was terminated. Respondent noted that no other document referenced the alleged structural damage and that “even if [Complainant] did point out structural issues, the fact that he would have pointed them out is not protected activity; he would have to establish that [Respondent] failed to correct the structural issues and that the structural issues were direct violations of the ERA, and that he communicated such to [Respondent].”

Complainant's Response to Respondent's Response to Complainant's Motion for Summary
Decision

On April 14, 2008, this Office received Complainant's response. Complainant first stated that summary judgment should be granted in his favor, as Mitsubishi Power Systems has provided a false reason for his termination. Complainant stated that the Supreme Court ruled in a recent decision that a complainant can win by showing that an "employer provided a false reason for its employment decision. False reason allows the judge to infer that the real reason must have been discriminatory. Therefore, no evidence of actual discrimination needs to be shown, just evidence of falsity."

Moreover, Complainant alleged that the undisputed facts have established that Complainant engaged in protected activity, such as showing that specific procedures were in direct violation of NRC regulations. Complainant stated that some violations were revised before being implemented and others were completed in the middle or at the end of the outage. Complainant stated that he does not have this evidence, as it is Respondent's control. Complainant further alleged that "structural damage found in a pressurized vessel (MSR) at Palisades Nuclear Plant that Mitsubishi Power Systems America Manager was trying to hide was lodged in the Palisades Outage Report, Palisades Outage Log Book, and in the work packages filed for the actual union members "Boiler Maker" based in Michigan who performed the physical work as inspection as well, the latest is in position and control of Palisades Nuclear Power Plant."

Complainant then alleged that Respondent cannot disprove that he was wrongfully terminated.

Complainant then requested "sufficient time to prepare his brief for Motion to Compel Discovery since Mitsubishi Power Systems has indicated that Complainant does not have sufficient evidence or proof by the preponderance of the evidence in his case."

Discussion

The Energy Reorganization Act protects whistleblowers from retaliatory actions for engaging in protected activity related to atomic energy safety concerns. See Muino v. Florida Power & Light, ARB No. 06-092, ALJ No. 2006-ERA-2 (ARB Apr. 2, 2008). Section 211(a) of the Energy Reorganization Act provides, in pertinent part, that "[n]o employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee . . . notified his employer of an alleged violation of [the ERA] or the Atomic Energy Act." 42 U.S.C. § 2011 et seq. (2000). The Administrative Review Board has said that, to constitute protected activity under the ERA, an employee's acts must relate to safety "definitively and specifically." Kester v. Carolina Power & Light Co., ARB No. 02-007, ALJ No. 2000-ERA-031, slip op. at 4 (ARB Sept. 30, 2003). But the complainant need not prove an actual violation of a nuclear safety law or regulation. A reasonable belief of a violation is enough. In the present case, Complainant alleged

that he was discriminated against, and finally discharged, because he notified Mitsubishi Power Systems of certain problems that he believed constituted violations of the ERA.

After conducting discovery, Respondent filed a motion for summary decision. The rules governing motions for summary decision are set forth in the Rules of Practice and Procedure. 29 C.F.R. § 18.40(d) (2003). An administrative law judge may grant a motion for summary decision if the “pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact.” 29 C.F.R. § 18.40(d) (2003). A fact is considered to be material if proof of the fact could establish, or refute, one of the essential elements of a cause of action, or one of the essential elements of a defense. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). If an administrative law judge finds a fact to be material, he must then determine whether there is a genuine issue concerning the fact.

The party bringing the motion for summary decision bears the burden of proof. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Due to the fact that the burden is borne by the movant, an administrative law judge must view all evidence in the light most favorable to the non-movant. The non-movant in Respondent’s motion for summary decision the present case is the Complainant. Generally, to prevail on an ERA whistleblower complaint, a complainant must allege, and prove by a preponderance of the evidence, the following elements of a *prima facie* case: (1) that he was an employee who engaged in protected activity under the ERA, (2) that the employer knew about this activity and (3) took adverse action against him, and (4) that his protected activity was a contributing factor in the adverse action. Hibler v. Exelon Generation Co., ARB No. 05-035, ALJ No. 2003-ERA-009, slip op. at 19 (ARB Mar. 30, 2006). However, “[r]elief may not be ordered . . . if the employer demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of such behavior [i.e., the protected activity].” 42 U.S.C. § 5851(b)(3)(D) (2000). However, to prevail against a motion for summary decision, Complainant does not have to prove his *prima facie* case. He is only required to demonstrate that “a fact dispute concerning the elements of his claim entitles him to an evidentiary hearing.” Muino v. Florida Power & Light, ARB No.06-092, ALJ No. 2006-ERA-2 (ARB Apr. 2, 2008). In other words, once Respondent has carried its burden, Complainant must establish specific facts showing that there is a genuine issue for trial. 29 C.F.R. § 18.40(c) (2003). However, Complainant may not rest upon the mere allegations or denials of such pleading. Such response must set forth specific facts showing that there is a genuine issue of fact for the hearing. 29 C.F.R. § 18.40(c) (2006).

After Respondent filed a motion for summary decision in this case, Complainant filed his own motion for summary decision. The undersigned will first address Complainant’s motion for summary decision. In his motion for summary decision, Complainant claimed that he performed his job well, that he engaged in protected whistleblower activity, and that Respondent retaliated against him for his whistleblower activities. Complainant alleged that the undisputed facts have established that Complainant engaged in protected activity and that Respondent cannot disprove that Complainant was wrongfully terminated.

To grant Complainant’s motion for summary decision, the undersigned must find that there is no genuine issue as to any material fact. 29 C.F.R. § 18.40(d) (2003). Respondent has submitted evidence, including affidavits, that could refute one of the essential elements of a

cause of action. For example, Respondent submitted Mr. Daniel's affidavit, in which Mr. Daniels stated that Complainant's employment was terminated for legitimate reasons including gross performance problems and unprofessional behavior, which were unrelated to any alleged whistleblower activities. Thus, the undersigned finds that Complainant's motion for summary decision against Respondent should be denied.

Next, the undersigned will examine Respondent's motion for summary decision. Respondent argued that Complainant failed to establish that he engaged in protected activities under the Energy Reorganization Act or the Atomic Energy Act and failed to establish that Respondent terminated his employment because of alleged protected activity.

The undersigned finds that Complainant did not set forth specific facts on an issue upon which he would bear the ultimate burden of proof at trial: that he engaged in protected activities under the ERA or the AEA and then informed the Respondent about some violation of the ERA, and that Respondent took retaliatory action against him because of his protected activities. At summary decision, Complainant must produce affidavits or other admissible evidence that he suffered employment discrimination because of his alleged safety complaints. Muino v. Florida Power & Light, ARB No.06-092, ALJ No. 2006-ERA-2 (ARB Apr. 2, 2008). Allegations, denials and speculative theories are not enough to create a genuine issue of material fact. Id.

Alleged Protected Activities

In a document sent to the undersigned on January 3, 2007, Complainant discussed the history of the case. In this document, Complainant noted several problems he found with work performed at the Palisades Power Plant.

First, he stated that he noticed significant technical errors in the official procedure packages that instruct mechanics how to perform their jobs. Complainant thus revised procedures that had a direct impact on his job. Complainant alleged that he sent two emails to Mr. Daniels noting errors in his procedure packages. The undersigned notes that Complainant indicated that Respondent has a procedure called independent verification, which is a proactive approach to finding errors in employees' procedures. Thus, it appears that by Complainant's own admission Respondent either encourages or requires procedures to be updated, revised or verified in some way. Moreover, it appears that updating procedures is a part of Complainant's job responsibilities.

Next, Complainant claimed that "there not adequate inspection sheets to record inspection data, and not qualified skill set to work at the turbine from Mitsubishi Power Systems decision makers." However, Complainant never even indicated in this document that he reported any of these alleged problems to his employer, or to any other person or group. If Complainant did not report the alleged problem, he clearly could not have been retaliated against for reporting such activity.

While writing the outage report, Complainant noticed that inspection sheets were unfinished and unreliable, due to the fact that there was no traceability of the inspection records, which he claimed was a "NRC Violation of Title 10 CRF 50.65 – Requirements for Monitoring

the Effectiveness of Maintenance at Nuclear Power Plants.” He also discovered that there was no list of spare parts recommended for the next outage, which he also claimed was the same NRC Violation. He claimed that he reported both of these discoveries to Mr. Daniels in December of 2004.

On January 6, 2005, the date Complainant was told to sign a warning letter for unacceptable job performance, Complainant told Mr. Daniels and Mr. Weaver, who was with human resources, that component engineers failed to provide reports corresponding to their work performed during the outage and that some engineers left the site without being released. According to Complainant, the engineers’ actions made Mitsubishi Power Systems “liable since [it has] to rely only on the functional tests to close the work packages.” Again, even assuming that there was evidence that Complainant made these comments to Mr. Daniels and Mr. Weaver, Complainant would have reported this purported violation after an alleged retaliatory action (i.e., the warning letter) was taken.

Next, Complainant alleged that he reported several deep cuts that he noticed inside the wall of the pressurized vessel during the inspection of the MSR-9B. Complainant stated that he “was concerned about the safety, and integrity of the MSR (moisture separator reheated), and Mitsubishi Power Systems contractual liabilities in case of a failure during operation.” Therefore, he reported these findings during a turnover meeting. He stated that, “surprisingly after the meeting was finished Mr. John Daniels, Operations Manager, asked Complainant to stop reporting such failures.” Simply informing his superior that he found a problem with some equipment does not constitute a violation of the ERA. Mitsubishi Power Systems is a company that, in part, provides services for the maintenance and repair of steam and gas turbine generators. Examining the equipment in a plant appears to be a component of Complainant’s job, and reporting the problems he found with the vessel does not appear to constitute the type of safety concern that is protected by the ERA.²

Complainant also alleged that he was assigned to write a report concerning components that he did not work on himself. He stated, “How safe is this type of practice endorsed by Mitsubishi Power Systems? This situation alone compromised safety and business integrity.” He stated that to do this properly, he had to read approximately sixty work packages, so that he was able to understand the individual components and tasks associated with all component engineers. He reported this to Mr. Daniels and Mr. Weaver. The undersigned finds that having Complainant prepare this report appears, by Complainant’s own statements, to be a business practice endorsed by Mitsubishi Power Systems. Complainant cannot simply call any business practice “unsafe” and assume that it is protected activity under the ERA just because he labels the activity as being unsafe. The undersigned finds that Respondent made a business decision to have Complainant write a report concerning certain components, and this decision does not represent a violation of the ERA simply because Complainant disagrees with Respondent’s decision and labels it as being “unsafe.”

Complainant next filed his motion for summary decision and response to Respondent’s motion for summary decision.

² As Respondent’s job at the Palisades Plant was, at least in part, to examine equipment for possible safety problems, reporting a safety concern with a piece of equipment at the plant does not automatically constitute protected activity.

In this filing, Complainant again stated that he noticed a significant number of technical errors on procedures that were ready to be implemented at the Palisades Plant, that he found structural damages in a pressurized vessel that Mitsubishi Power Systems was attempting to hide, that some reports were not signed at the time the components “were worked,” that work packages were signed by individuals who had not worked on those specific components, and that some components engineers turned in incomplete datasheets.

Complainant also noted that critical pieces, such as the Main Stop Valves, of a nuclear turbine were not assembled according to the Original Equipment Manufacturer (OEM) specifications. Complainant stated that he made sure that Mitsubishi Power Systems knew of this safety concern. However, again, Complainant worked for a company that, in part, provides services for the maintenance and repair of steam and gas turbine generators. Examining the equipment, and notifying someone if problems are found, appears to be the reason Respondent was hired at Palisades Plant. Therefore, simply informing Respondent that he noticed an alleged safety problem with a piece of equipment does not constitute the type of safety concern that is protected by the ERA.

During his deposition, Complainant stated that, on September 9, 2004, he sent an email to Mr. Daniels discussing how a millwright had received instructions to remove components (specifically a fire protection system) that did not exist in the turbine. More specifically, Complainant stated that the engineers are supposed to write step-by-step procedures, and someone was given the wrong procedure, which told them to remove something that was not in the turbine. (Complainant’s Deposition, pg. 86) In the email, Complainant indicated that he was concerned because the procedures were incorrect. (Complainant’s Deposition, pg. 87) When asked how this constituted a violation of the ERA, Complainant stated, “Well, we are telling somebody to remove something that doesn’t exist in a nuclear power plant, it is a violation and it is safety as well. How can we, the expert engineer, tell somebody to do something that is not there.” (Complainant’s Deposition, pg. 89) Complainant did not have a copy of this email. However, regardless, the undersigned does not find that the activity described by Complainant constitutes protected activity under the ERA.

Complainant indicated that he sent another email to Mr. Daniels and Mr. Tidwell in September as well. When asked what was the content of this email, Complainant stated that “we were talking about reviewing vibration data and we didn’t have the equipment, so I had to ask to install the equipment. It was hydrosystem, which we asked the customer, we have two set of instrumentation there. We didn’t have that, so that’s also part of the quality of our job.” (Complainant’s Deposition, pg. 99) Complainant stated that he received the equipment at a later point in time. (Complainant’s Deposition, pg. 99) Complainant did not have a copy of this email. However, even if Complainant did have a copy of this email, the undersigned does not find that the activity described in Complainant’s email constitutes a violation of the ERA.

Respondent's Knowledge of Complainant's Alleged Protected Activities

Complainant offered no evidence, other than unsupported contentions, that Respondent was aware of his alleged protected activities.

Complainant pointed to several documents that he had previously filed with this Court to support his contentions that he informed his managers of safety violations. However, the undersigned finds that none of the documents Complainant pointed to suggests that Complainant informed Respondent that he was concerned about a safety violation, or any other ERA violation.

For example, in his extremely disjointed deposition, dated February 22, 2007, Complainant pointed to things that allegedly proved that he informed Respondent of safety violations or other violations of the ERA. For example, in a weekly report dated August 27, 2004, Complainant alleged that his sentence "reviewed sections include pre-outage instructions" should have alerted the reader that a violation of the law had occurred. (Complainant's Deposition, pgs. 129-130) In a report dated September 7, 2004, Complainant claimed that his statement that a new revision of a work package will be released soon should have indicated to the reader that Mitsubishi Power Systems was operating unsafely. (Complainant's Deposition, pgs. 131-134) Even reading these reports as generously as possible, the undersigned is still unable to conclude that the words written by Complainant would reasonably alert management that any violation of the ERA or AEA had been alleged.

Moreover, in his motion for summary decision and response to Respondent's motion for summary decision, Complainant pointed to numerous Bates Stamped documents. However, none of these documents discussed alleged violations of the ERA, except self-serving documents that were sent to OSHA after his termination, such as the document he included to show that Respondent was trying to hide structural damage to the pressurized vessel. None of the documents that Complainant referenced established that Complainant made such an allegation prior to his termination.

Complainant also alleged in this motion for summary decision that he contacted management several times to address "NRC Violation of Title 10 CFR 50.56 – Requirement for Monitoring the Effectiveness of Maintenance at Nuclear Power Plant. However, offered no evidence, other than unsupported allegations, to support this. (See Complainant's Deposition, pg. 180) Respondent submitted the affidavit of Mr. Daniels, which stated that Complainant never brought any violations of the ERA to his attention.

Moreover, the evidence suggests that Complainant never contacted the Nuclear Regulatory Commission to report any violation prior to his termination.

In the April 2008 response, the Complainant requested time for additional discovery. This request was general rather than specific in nature. Moreover, this request was filed almost three years after the filing of his complaint. The motion for further discovery is denied.

Whether Complainant's Protected Activity Was a Contributing Factor in the Adverse Actions

Complainant has failed to submit any evidence, such as progress reports indicating good performance, etc. to establish that Respondent fired him for his whistleblower activities, rather than for reasons related to his job performance. Once Respondent has carried its burden, to defeat summary decision Complainant must establish specific facts showing that there is a genuine issue for trial. 29 C.F.R. § 18.40(c) (2003). However, as is noted above, Complainant may not rest upon the mere allegations or denials of such pleading. Such response must set forth specific facts showing that there is a genuine issue of fact for the hearing. 29 C.F.R. § 18.40(c) (2006). In the present case, Complainant has offered nothing but conjecture and allegations as to why he received a warning letter or why his employment was terminated. Moreover, he has offered nothing other than conjecture and allegations to support his contention that Respondent harassed him in the work force by giving him a grueling workload, treated him like an outcast, or disrespectfully addressed him.

ORDER

IT IS ORDERED that Complainant's Motion for Summary Decision is DENIED.

IT IS FURTHER ORDERED that Respondent's Motion for Summary Decision is GRANTED & Complainant's complaint is therefore dismissed.

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RICHARD K. MALAMPHY
Administrative Law Judge

RKM/kbe
Newport News, Virginia

NOTICE OF APPEAL RIGHTS: This Decision and Order will become the final order of the Secretary of Labor unless a written petition for review is filed with the Administrative Review Board ("the Board") within 10 business days of the date of this decision. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing. If the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt.

The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Ave., NW., Washington, DC 20210.

At the same time that you file your petition with the Board, you must serve a copy of the petition on (1) all parties, (2) the Chief Administrative Law Judge, U.S. Dept. of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8001, (3) the Assistant Secretary, Occupational Safety and Health Administration, and (4) the Associate Solicitor, Division of Fair Labor Standards. Addresses for the parties, the Assistant Secretary for OSHA, and the Associate Solicitor are found on the service sheet accompanying this Decision and Order.

If the Board exercises its discretion to review this Decision and Order, it will specify the terms under which any briefs are to be filed. If a timely petition for review is not filed, or the Board denies review, this Decision and Order will become the final order of the Secretary of Labor. *See* 29 C.F.R. §§ 24.109(e) and 24.110, found at 72 Fed. Reg. 44956-44968 (Aug. 10, 2007).