UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS
400 MARYLAND AVENUE, S.W.
WASHINGTON, D.C. 20202
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[Complainant],
Complainant

v.

Parkland College,
Contractor/Grantee

Docket No.: 22-27-CP

Reprisal for Disclosure Proceeding

OIG: I22MID00158

Appearances: [Complainant] for self
Lorna K. Geiler, Esq., for Parkland College

Before: Robert G. Layton, Administrative Law Judge

ORDER

This decision and order address a complaint filed with the U.S. Department of Education's Office of the Inspector General (OIG) by [Complainant] against Parkland College. [Complainant's] complaint was filed pursuant to the protections provided to whistleblowers under the National Defense Authorization Act of FY 2013 (the NDAA), codified at 41 U.S.C. § 4712. Parkland is a public community college in the Champaign, Illinois which offers vocational-technical and academic instruction in over 100 degree and certificate programs.[1]

Parkland is a grantee in grant programs administered by the U.S. Department of Education

[1] *About,* Parkland College, *available at* https://www.parkland.edu/Main/About-Parkland (last visited on May 11, 2022)

(the Department). Parkland participates in the federal TRIO grant program and has operated a federally-funded TRIO program since 1997. TRIO is a set of federal grants designed to help students achieve success in higher education. Parkland notes:

> TRIO/Student Support Services is a grant-funded academic support program sponsored by the U.S. Department of Education. Parkland TRIO is funded to support 180 students each school year, and has served well over 3,000 students since its inception in 1997. TRIO students are more likely to stay enrolled and graduate than their peers, and many cite their TRIO participation as a primary factor in their success in four-year schools and the workplace.[2]

Parkland uses their TRIO funds to help program participants graduate from Parkland and plan their future, including a transition to the workforce or career or transferring to a four-year college.

On October 18, 2021, the OIG received [Complainant's] complaint. Her complaint asserts that she reported concerns to multiple Parkland employees while serving as a projects manager for TRIO. [Complainant] alleges she disclosed a TRIO grant violation – that Parkland was violating the terms of TRIO by not allowing her to supervise full-time staff in the TRIO office. [Complainant] also asserts reprisal against her by extending her probationary period, by the way a dispute with a co-worker was handled, and by the posting of a flyer encouraging wearing masks during the epidemic.[3] [Complainant] alleges she was forced out of her position as TRIO Project Manager at Parkland and resigned due to her "refusal to corroborate the institution's non-compliance status."[4]

The NDAA addresses retaliation by a federal grant recipient (grantee) against an employee for whistleblowing. The statute prohibits a grantee from retaliating against an employee by

[2] Id.
[3] OIG Report at 1.
[4] OIG Report at 3.

discharging, demoting, or otherwise discriminating against the employee for disclosing "information that the employee reasonably believes is evidence of gross mismanagement of a Federal . . . grant, a gross waste of Federal funds, an abuse of authority relating to a Federal . . . grant, . . or a violation of law, rule, or regulation related to a Federal . . . grant".[5] It protects employee's disclosures to seven groups of individuals, including a "management official or other employee of the . . . grantee who has the responsibility to investigate, discover, or address misconduct."[6]

In the context of grants administered by the Department, if an employee believes they have been subject to a reprisal in violation of the statute, the employee may submit a complaint to OIG within three years of the reprisal.[7] If OIG determines that the complaint is not frivolous, that it alleges a violation of the statute, and that it has not been previously addressed in another federal or state judicial or administrative proceeding initiated by the employee, then OIG will investigate the complaint and, upon completion of the investigation, submit a report of the findings of the investigation to the employee, the employer, and the Secretary of Education (the Secretary).[8]

Upon receipt of the OIG report, the Secretary or designee must issue the agency decision and order within 30 days.[9] The decision must address "whether there is sufficient basis to conclude that the . . . grantee concerned has subjected the complainant to a reprisal."[10] The statute provides that if there was a reprisal, the Secretary will order the entity to:

(1) "take affirmative action to abate the reprisal"

(2) reinstate the employee "to the position that the person held before the reprisal, together with compensatory damages (including back pay), employment benefits, and other terms

[5] 41 U.S.C. § 4712(a)(1).
[6] 41 U.S.C. § 4712(a).
[7] 41 U.S.C. § 4712(b).
[8] Id.
[9] 41 U.S.C. § 4712(c)(1).
[10] Id.

and conditions of employment that would apply to the person in that position if the reprisal had not been taken" or

(3) "pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the executive agency."[11]

The OIG's investigative report "did not substantiate [Complainant's] allegations of whistleblower reprisal."[12] It determined that Parkland provided clear and convincing evidence that it would have extended [Complainant's] probation in the absence of her disclosure and that the other incidents did not relate to the disclosures. OIG also found that [Complainant] did not meet her burden of showing that her protected disclosures were a contributing factor in the other incidents.[13]

On April 18, 2022, the undersigned held a telephonic prehearing conference, using Microsoft Teams, with [Complainant] and counsel for Parkland. During the prehearing conference, the undersigned asked the parties if they wanted a hearing or wished to proceed based only on written and other documentary submissions. The parties later decided to waive having a live hearing and submit written evidence and briefs. On May 6, 2022, the parties filed their briefs.

ISSUES

[Complainant's] complaint asserts that the decisions to extend her probationary period, to address a dispute [Complainant] had with another employee, and to post flyers encouraging wearing of facemasks during the pandemic were acts of reprisal. She alleges that these actions were taken to retaliate for protected disclosures that she made to Parkland employees.

[11] Id.
[12] OIG Report at 1.
[13] OIG Report at 1.

Parkland asserts that the employment action was not retaliatory. Parkland contends that [Complainant's] probationary period would have been extended in the absence of her disclosure.

The issues to be addressed are:

1. Did [Complainant] meet her initial burden of showing that (1) she was an employee of a grantee of a grant administered by the Department; (2) she made a disclosure or disclosures protected by 41 U.S.C. § 4712; and (3) the disclosures were "contributing factors" in the employment actions taken against her by Parkland?

2. If [Complainant] met her initial burden, did Parkland demonstrate, by clear and convincing evidence, that it would have taken the same employment actions in the absence of [Complainant's] disclosures?

SUMMARY OF ORDER

[Complainant] has failed to establish she had a reasonable belief that she made a protected disclosure that resulted in her probationary period being extended. Even assuming [Complainant] had established a reasonable belief that she made a protected disclosure, Parkland has provided clear and convincing evidence that it would have extended [Complainant's] probation in the absence of her disclosure and that the other incidents did not relate to the disclosure. For the other incidents, the reasonableness of her belief is not relevant because [Complainant] has not met her burden of showing that her protected disclosure was a contributing factor in those other incidents. Parkland did not subject [Complainant] to a reprisal in violation of the protections provided by the NDAA.

FINDINGS OF FACT

Parkland's 2015-2020 TRIO Grant Proposal, TRIO Award Number P042A150719, stated the TRIO "Project Director" would "Supervise SSS [Student Support Services] staff and [TRIO]

program as an administrative unit within the college and direct all operations relative to the SSS program."[14] A TRIO renewal grant for Parkland was approved by the Department for the period of 2020 through 2025 (TRIO Grant award number P042A200141).[15]

Julia Hawthorne (Hawthorne) is the Director of Counseling and Advising Office and manager of the TRIO program at Parkland. Previously, Hawthorne was the TRIO Project Director at Parkland from 2018 until her promotion in early 2021. On December 13, 2020, Hawthorne emailed Parkland's TRIO contact at the Department, Allysia Mompoint ("Mompoint"), to notify the Department of Parkland's reorganization efforts. "Parkland College has revised the SSS Project Director role to a Project Manager title. The former role was classified as administrative, and the latter is professional support staff."[16] On December 13, 2020, Hawthorne and Mompoint discussed via email the requirements to reclassify Parkland's TRIO Project Director position.[17] In the email exchange, Hawthorne informed Mompoint the TRIO Project Manager (identified as the "Director" and used interchangeably) would "continue to have full authority to administer the grant as outlined under the 2020 grant proposal, including the ability to make all purchasing and budget decisions, oversee project personnel, and set project expectations and programming." Hawthorne also informed Mompoint, "[t]he SSS [TRIO] Director will continue to have access to the VP as needed but will enjoy the additional support of the Counseling Services leadership, who have direct working relationships with Academic Services."

Hawthorne provided Mompoint with a document titled "Project Director/Manager," which outlined the updated role of Parkland's TRIO Project Manager.[18] In the document, the Project

[14] U.S. Dep't of Educ., Off. Inspect. Gen. Rep. Inv. No I22MID00158, (Apr. 6, 2022), Attach 14 at 51.
[15] *Id.* Attach. 15.
[16] *Id.* Attach. 16.
[17] *Id.* Attach. 16.
[18] *Id.* Attach. 17.

Manager's "essential job functions" were reported as: (1) "Plan, lead, and administer all programmatic aspects of the TRIO/Student Support Services grant"; (2) "Collaborate with project coordinators and advisors to hire, schedule, and provide supervision of project hourly staff"; and (3) "Work with the Director of Advising Services to perform grant management functions in accordance with college policies and procedures, grant guidelines, and appropriate collective bargaining agreements, including recommendations for personnel selection, training, evaluation, and development; ensuring departmental practices are complying with college policy; and analyzing and recommending appropriate staffing levels."

On January 28, 2021, the Department approved Parkland's reorganization[19] and soon thereafter, Parkland published a job posting for "TRIO Project Manager."[20] The essential job functions described in the job posting mirrored the information listed in the reorganization document provided to the Department, including notice that the TRIO Project Manager would only supervise part-time project personnel. Though not stated in the job posting, full-time employees in the Parkland TRIO office, including the TRIO Project Manager, were members of the Professional Support Staff (PSS) employees' union, and pursuant to the PSS Collective Bargaining Agreement, union members were not allowed to supervise other union members.

Complainant interviewed for the TRIO Program Manager position in January 2021 and was hired in March 2021. Hawthorne oversaw the hiring process and made the decision to hire Complainant. On June 7, 2021, Complainant started her employment with Parkland, and thereafter became a member of the PSS union. Initially Complainant was tasked with reading TRIO grant regulations, Parkland's TRIO program information, and other related documentation. Additionally, Complainant was sent to TRIO "New Director Training" in Las Vegas in late June

[19] *Id.* Attach. 18.
[20] U.S. Dep't of Educ., Off. Inspect. Gen. Rep. Inv. No I22MID00158, (Apr. 6, 2022), Attach. 19.

or early July 2021. After returning from New Director Training, Complainant completed online TRIO Manager and Compliance Training.

In late July 2021, Complainant suspected Parkland was not in compliance with their TRIO grant by not allowing her to supervise full-time TRIO employees and perform certain TRIO management duties. To verify her suspicions, Complainant retained Kimberly Washington, an auditor she met at the new TRIO director training, to conduct an "audit" of Parkland's TRIO program. Complainant used her personal funds and not Parkland's funds to commission this audit. The purpose of the audit was to develop a reasonable belief as to whether Parkland was in violation of a law, rule, or regulation related to their TRIO grant, and not related to the later claimed retaliatory actions by Parkland.

Complainant sent Hawthorne an email on July 29, 2021, relaying her concerns. "As a new Director (Project Manager) to the institution as well as to TRIO, I have concerns…Based on our discussion today, you recognize that we are not in compliance and have agreed to contact a COE representative to seek guidance as to how to proceed in regards to having a mock audit completed of the TRIO program at Parkland."[21] Complainant's email did not cite the specific non-compliance issue referenced by Complainant, but both Complainant and Hawthorne stated in their OIG interviews that Complainant's issues related to her not managing full-time TRIO staff.

On July 29, 2021, Hawthorne responded to Complainant in email, which stated "I also want to address the line 'Based on our discussion today, you recognize that we are not in compliance' – I assume you refer to the project manager/director distinction? I am not certain that we are out of compliance, but I recognize the value of getting an expert opinion."[22] After the initial email exchange, Complainant verbally discussed her disclosure with Hawthorne and Stephanie

[21] *Id.* Attach. 3.
[22] *Id.* Attach. 3.

Davingman ("Davingman"), Dean of Student Services at Parkland.

On August 6, 2021, Hawthorne updated Complainant regarding the allegation of Parkland's non-compliance. "A few weeks back I talked to Josh Birky, the program manager for grants and contracts, and he didn't see clear evidence that Parkland is out of compliance. Regardless, I have been discussing this with Stephanie and we are working on a solution to these concerns. She also wants to make sure that we do our due diligence for TRIO. Thank you again for looking out for the best interests of TRIO and our students!"[23]

Sometime in September 2021, Complainant discussed her concerns with Mompoint about the division with responsibility for managing the TRIO grant. Complainant could not recall when precisely in September 2021 the conversation occurred.[24] Mompoint confirmed that Complainant contacted her on September 7, 2021.[25]

Complainant alleged that after her disclosures on July 29, 2021, Parkland created a hostile work environment that forced her to resign. Complainant provided notice of her resignation from Parkland on October 5, 2021, and officially resigned from her position with Parkland on October 15, 2021.[26] Complainant alleged three incidents of reprisal that created a hostile work environment in retaliation for her July 29, 2021 protected disclosure.

Alleged Reprisal 1

Complainant alleged that on September 1, 2021, Hawthorne provided, by email, a draft copy of Complainant's 90-day employee review which they would review together in the evaluation meeting on September 3, 2021. Also in that email, Complainant was informed that Hawthorne intended to extend Complainant's 90-day new employee probationary period. The

[23] *Id.* Attach. 3.
[24] *Id.* Attach. 3 & 4.
[25] U.S. Dep't of Educ., Off. Inspect. Gen. Rep. Inv. No I22MID00158, (Apr. 6, 2022), Attach. 27.
[26] *Id.* Attach. 5.

probationary extension period would be an additional 60 days. Complainant believed that her probation was extended as a result of a dispute with another TRIO office staff member. However, the dispute occurred on September 2, 2021, a day after Hawthorne's decision to extend Complainant's probationary period.

Hawthorne explained in her OIG interview that Complainant's probation was extended because 90 days was not a sufficient period of time to evaluate Complainant due to the timing of her hire and complications and matters related to the COVID-19 pandemic. Complainant was hired in the summer when the TRIO program was less active, including significantly decreased opportunities to interact with students, which resulted in less evaluation opportunities for Complainant. Other Parkland employees were also working remotely due to COVID.[27] In addition to extending Complainant's probationary period, Parkland also extended other employees' probationary period as well because of the need for further job performance evaluation.[28] According to Parkland's counsel, the PSS employees' union representing Complainant approved her probation extension.

In her OIG interview, Hawthorne further explained Complainant's employment probation was also extended because she struggled to perform certain job duties. Instead of terminating Complainant's employment, Hawthorne provided Complainant additional time to demonstrate proficiency in her job. In the job duties Hawthorne could evaluate, she observed Complainant struggle to meet those job duties. Hawthorne noted in her OIG interview that Complainant was not proactive in learning how to advise students and that Complainant had trouble getting along with co-workers in the TRIO office. As a result of Complainant's interpersonal skills, there were several conflicts in the office. Hawthorne also noted that Complainant failed to completely

[27] *Id.* Attach. 6.
[28] *Id.* Attach. 9.

understand certain aspects of managing the TRIO budget. Hawthorne stated she could have terminated Complainant's employment at the time of Complainant's 90-day probationary evaluation, which was after Complainant's July 29, 2021 disclosure. However, instead of termination, Hawthorne stated that she provided Complainant additional time to learn the duties of TRIO Project Manager by extending Complainant's probationary period.

On September 10, 2021, Complainant responded to her 90-day employee evaluation. Complainant was critical of the evaluation, but did agree she did not have the opportunity to perform certain TRIO Project Manager job duties.[29] Complainant also acknowledged the impact of COVID on her ability to learn the job and stated in her OIG interview that she experienced some TRIO training delays because employees were working remotely and not coming into the office frequently due to COVID.[30]

Alleged Reprisal 2

Complainant states that on September 2, 2021, she and Katie Raisner ("Raisner"), Parkland's Retention Coordinator and Complainant, were involved in a verbal altercation, and that Raisner filed a false complaint against Complainant. This complaint resulted in Complainant being called into a meeting with Hawthorne and Davingman. Complainant alleges part of the reprisal against her is related to the argument between herself and Raisner on September 2, 2021. According to Complainant, Hawthorne held a counseling meeting with Complainant and Raisner after the argument and verbally admonished Complainant but not Raisner. Complainant believed she was treated unfairly, and her employment probation was extended as a result of the September 2, 2021 argument. However, as described in Complainant's interview with OIG, the dispute occurred after Hawthorne's decision to extend the employment probationary period. While

[29] *Id.* Attach. 8.
[30] *Id.* Attach. 2.

Raisner's complaint was handled by Hawthorne and Davingman who were aware of Complainant's disclosure, Complainant did not provide OIG any evidence that Raisner was aware of the July 29, 2021 disclosure.

The OIG also interviewed Hawthorne about the altercation between Complainant and Raisner. Hawthorne stated that the meetings with her and Davingman regarding the Complainant/Raisner altercation were a result of a hostile work environment complaint filed by Raisner against Complainant with the PSS employee union. Parkland provided Raisner's account of the incident as well as an email from another employee that corroborated Raisner's complaint that Complainant was the person who raised their voice.[31] Hawthorne states the meetings with Complainant and Raisner were separate from each other and Complainant would not have known what was said to Raisner, and vice-versa. The purpose of the meetings was to help improve Complainant and Raisner's relationship. The meetings were not a form of reprisal against Complainant for reporting a TRIO grant violation.[32] After this incident, Parkland provided an additional training and professional opportunity to Complainant by sending her to the National TRIO Conference in Atlanta later in September.[33] The emails show the argument between Complainant and Raisner could not have been a factor into Complainant's probation extension because the incident occurred on September 2, 2021, one day after Hawthorne provided Complainant with her draft employee evaluation and decision to extend Complainant's probation. The OIG determined that Parkland and Complainant and Raisner were treated equally, and no reprimands or formal punishments were issued to either party.

Alleged Reprisal 3

[31] U.S. Dep't of Educ., Off. Inspect. Gen. Rep. Inv. No I22MID00158, (Apr. 6, 2022), Attach. 10 & 11.
[32] *Id.* Attach. 12.
[33] *Id.* Attach. 2.

Complainant alleged that sometime after September 2, 2021, Raisner placed a COVID masking flyer that Complainant believed depicted "blackface" in the TRIO office space. Complainant believed the flyer was racist in nature because it depicted a black ghost with white eyes, which related to "blackface."

According to Hawthorne, the COVID masking flyer was created by a part-time staff member, contained the colors normally used for Parkland TRIO program graphics and was placed sparingly around the office.[34] Parkland stated that another African American staff member did not find the flyer offensive. Complainant did not make a racism or hostile work environment complaint to Parkland about the flyer.[35]

The OIG's investigation subsequently found that Complainant did not provide any evidence that the masking flyer was created or distributed by anyone at Parkland who was aware of her July 29, 2021 disclosure, nor did it find that the flyer was otherwise related to Complainant's disclosure.

OIG Whistleblower Complaint & Findings

On October 18, 2021, the OIG received Complainant's whistleblower reprisal complaint alleging she was forced out of her position as TRIO Project Manager at Parkland and resigned due to her "refusal to corroborate the institution's non-compliance status." Specifically, Complainant believed the TRIO program at Parkland was not in compliance with their TRIO grant proposal, which stated the Project Director – later reclassified as Project Manager – would supervise TRIO staff. Complainant believed, per the grant proposal, full-time TRIO staff at Parkland were required to report to her, but instead reported to the Director of Counseling and Advising, a position occupied by Hawthorne. In essence, Complainant believed Parkland conducted a bait-and-switch by telling the Department in their TRIO grant proposal the position she was hired for, i.e. the TRIO

[34] *Id.* Attach. 6.
[35] *Id.* Attach. 13.

Project Manager, would manage all TRIO employees, when in fact the TRIO Project Manager was not allowed to manage all TRIO employees. This is despite the information listed in the job description.

Complainant argues her protected disclosure was her assertion that Parkland violated its TRIO grant by not letting her, as the TRIO Project Manager, supervise full-time staff in the Parkland TRIO office. Complainant asserts as result of that protected disclosure Parkland took three acts of reprisal against her. First, Parkland extended her 90-day probationary period by 60 days. Second, Parkland processed "a false complaint" filed by a co-worker. Finally, Parkland subjected Complainant to a hostile work environment by displaying COVID masking flyers allegedly depicting "blackface."

On April 6, 2022, OIG issued its report of investigation. The report determined there was inconclusive evidence as to whether Parkland informed Complainant, prior to her disclosures, that the Department had approved Parkland's management structure for the TRIO grant with responsibilities divided between Complainant's position and her supervisor. Complainant's supervisor stated Complainant was so informed, but Parkland's counsel confirmed Parkland did not provide her with copy of the Department's written approval prior to the disclosure. Complainant did not mention being informed. However, additional evidence below shows she was so informed as early as when the job listing was posted.

The OIG investigation "did not substantiate Complainant's allegations of whistleblower reprisal."[36] For the purposes of the investigation, OIG treated Complainant's disclosure as protected under the whistleblower statute. OIG found Complainant only met her burden to show that her protected disclosure was a contributing factor in the extension of her probationary period,

[36] U.S. Dep't of Educ., Off. Inspect. Gen. Rep. Inv. No I22MID00158, (Apr. 6, 2022), at 1.

but also found that Parkland "provided clear and convincing evidence that it would have extended Complainant's probation in the absence of her disclosure."[37] Additionally, Complainant did not meet her burden of proof for Alleged Reprisals 2 and 3 regarding a false complaint against her and a "racist" flyer. OIG found that Complainant failed to meet her burden to show that her disclosure was a contributing factor to any of the other alleged acts of reprisal.[38]

This case file also contains [Complainant] Exhibit C, which is titled on the cover sheet as "2021 Parkland College Trio Program Audit." It is a narrative exhibit, despite being titled as an audit. This is the report which Parkland unsuccessfully moved to strike.

The report "describes the results of a Review of the SSS approved grant narrative at Parkland College (PC) SSS-approved grant Narrative (Need, Objectives, Plan of Operation, Institutional Commitment, Quality of Personnel, Budget, and Evaluation sections)."[39]

The result of the author's report was merely to recommend a compliance evaluation within the next two months. The unsigned report did not contain any audit results showing wrongly spent or wasted funds, and did not identify any way in which Parkland was out of compliance with TRIO program requirements, although it did discuss hypothetically how an evaluation could benefit any program. The report's author did not communicate with any Parkland staff. The only documentation attached was the author's curriculum vitae, and a two-page questionnaire that appears to have been completed by [Complainant].[40]

The audit report references refers to 34 C.F.R. § 646 generally. Nowhere in that regulation is there a requirement that the TRIO project manager or director must supervise TRIO staff. To

[37] *Id.*
[38] *Id.*
[39] McMath Exhibit C, at 2.
[40] McMath Exhibit C.

the contrary, it provides for alternatives and shared responsibilities.[41]

Hearing and Decision Process Before the Office of Hearings and Appeals

In her complaint, [Complainant] alleges a violation of TRIO funds and a violation of whistleblower statutory protections. [Complainant] believes these employment actions were reprisals in violation of the protections provided by the NDAA.[42] On April 14, 2022, the OIG sent the Secretary of Education a report from OIG's investigation.[43] That same day, redacted copies of the OIG report were sent to both [Complainant] and representatives for Parkland.[44]

The Secretary has delegated to the Office of Hearings and Appeals the responsibility of rendering a final agency decision and order on behalf of the Secretary in matters relating to whistleblower complaints filed pursuant to the NDAA. On April 14, 2022, the Acting Director of the Office of Hearings and Appeals authorized the undersigned to conduct this appeal case. A telephonic prehearing conference was conducted. The parties were offered the opportunity to submit additional evidence and to appear in an in-person or video hearing to make arguments, confront adverse evidence, and cross-examine witnesses. Both parties waived the opportunity for such a hearing and were provided the opportunity to submit written arguments and relevant documents, which both parties submitted on May 6, 2022. Parkland moved to strike an audit submitted by [Complainant], and its motion was denied. Parkland's assertions were more properly issues relating to the weight of the evidence, and not its admissibility under the relaxed evidentiary standards for administrative hearings. The issue of that weight is examined further in this decision.

[41] 34 CFR 646.32(d).
[42] McMath Complaint at 2.
[43] Letter from Sandra D. Bruce to the Hon. Miguel Cardona (April 14, 2022).
[44] Letter from Sandra D. Bruce to Dr. McMath (April 14, 2022); Letter from Sandra D. Bruce to Parkland College (April 14, 2022). Because the parties were provided with only the redacted copies of the OIG report, only that information contained in the redacted version is considered in this decision.

Position of the Parties

I. Parkland Brief

Parkland argues that there is an insufficient basis to conclude that [Complainant] was subject to a prohibited reprisal.

Regarding the decision to extend [Complainant's] employment probationary period, Parkland challenges OIG's finding that [Complainant] made protected disclosures that could have contributed to her having her probation extended. Parkland argues that [Complainant's] disclosures were not protected by the NDAA because the allegation concerning supervision issues and the allegation concerning extension of probation were in compliance with the rules set up under the TRIO Program.[45]

Parkland also disputes [Complainant's] claim of a hostile work environment, detailing training provided by Parkland. At the end of her 90-day probationary period, Parkland asserts [Complainant] had failed to perform her work satisfactorily in several areas, including advising students, engaging in several interpersonal conflicts, and handling TRIO budgeting.[46]

Parkland also argues it had extended the probationary period for other employees besides [Complainant].[47]

During her probationary period evaluation, [Complainant] was informed her probation would be extended, that she would receive further training and feedback, and that she would receive additional national TRIO training in September 2021 in Atlanta.[48]

Both Parkland and the OIG report take the position that [Complainant] only met her initial burden of proof on one of her three claims of retaliation - that her probationary period was extended

[45] OIG Reprt at Attachments 4 and 18.
[46] Affidavit of Julia Hawthorne at ¶ 3 and ROI at Attachment 6.
[47] ROI at Attachment 9.
[48] Parkland brief at 11.

60 days. Both take the position that she has not met her burden in relation to her complaints about Raisner or of hostile work conditions related to a "wear a mask" flyer.

Parkland argues it has provided clear and convincing evidence that it would have extended [Complainant's] initial probationary period even in the absence of the disclosure of her belief that Parkland was violating TRIO requirements.[49] It also argues it has provided clear and convincing evidence establishing each of the Carr factors.[50]

II. [Complainant's] Brief

In her brief, [Complainant] details travel and credit card errors concerning her conference training in Atlanta in September 2021. [Complainant] describes the credit card limits as a humiliation at check-in, and states this happened after her probationary period evaluation. [Complainant] believes this is possible retaliation. [51]

[Complainant] also points to the timing of her evaluation, and how performance issues were identified after she voiced her concerns about a violation of TRIO program requirements.[52]

[Complainant] states she felt forced to resign. When she informed Julia Hawthorne of her resignation, she quotes Hawthorne as saying "Wow, I'm sorry to hear this and it's definitely a loss for Parkland." [Complainant] believes this shows acknowledgement of wrongdoing by Parkland.[53] [Complainant] did not provide any information on monetary damages.

Having considered the OIG investigation report, those documents attached to that report, as well as the brief and additional evidence submitted by the parties, the file is closed and ready for decision.

[49] Parkland brief at 13.
[50] Parkland brief at 16.
[51] McMath brief at 2.
[52] McMath brief at 5-6.
[53] McMath brief at 8-9.

PRINCIPLES OF LAW

41 U.S.C. § 4712 prohibits retaliation by a grantee such as Parkland against an employee for whistleblowing. The grantee cannot retaliate against an employee by discharging, demoting or discriminating against the employee for disclosing "information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant" to among others, a "management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct."[54]

When an employee believes that he or she has been subject to a reprisal prohibited by the statute, the employee may submit a complaint to the OIG within three years of the reprisal.[55] If the OIG determines that the complaint is not frivolous, that it alleges a violation of the statute, and that it has not been previously addressed in another federal or state judicial or administrative proceeding initiated by the employee, OIG will investigate the complaint and, upon completion of the investigation, submit a report of the findings of the investigation to the employee, the entity, and the Secretary. OIG must either make a determination that an investigation is not warranted or submit its report of an investigation within 180 days after receiving the complaint. If the employee agrees, the OIG can extend the time to investigate and report for an additional 180 days.[56]

After receiving the OIG report, the Secretary or designee must decide within 30 days whether there is sufficient basis to conclude that the contractor or grantee concerned has subjected

[54] 41 U.S.C. § 4712(a).
[55] 41 U.S.C. § 4712(b).
[56] Id.

the complainant to a prohibited reprisal.[57]

The whistleblower statute requires this decision to use the burdens of proof found in 5 U.S.C. § 1221(e).[58] First, the employee must show that (1) she or he was an employee of a federal grantee or contractor; (2) she or he made a disclosure protected by 41 U.S.C. § 4712; and (3) the disclosure was "a contributing factor" in the action taken against the employee.[59] This burden can be met through circumstantial evidence, including evidence that "the official taking the personnel action knew of the [whistleblower] activity" and that the "personnel action occurred within a period of time such that a reasonable person could conclude that the 'whistleblower' activity was a contributing factor in the personnel action."[60] It follows, however, that in order to show that a protected disclosure was a contributing factor in the adverse personnel action, the employee must show that the individual who initiated the personnel action had knowledge of the disclosures **before** ordering or initiating the personnel action.[61] The proper test for determining whether an employee had such a reasonable belief is whether a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the whistleblower could reasonably conclude that the actions of the government evidenced one of the categories of wrongdoing . See *Lachance v. White*, 174 F.3d 1378, 1381 (Fed. Cir. 1999), cert. denied, 528 U.S. 1153.

If an employee meets that burden, then the burden shifts to the employer to demonstrate "by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure."[62] In *Carr v. Social Security Administration*, 185 F.3d 1318 (Fed. Cir.

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[57] 41 U.S.C. § 4712(c)(1).
[58] 41 U.S.C. § 4712(c)(6).
[59] *See Armstrong v. Arcanum Group, Inc*., 897 F.3d 1283, 1287 (10th Cir. 2018); *Omwenga v. United Nations Found.*, 2019 WL 4860818, at *12 (D.D.C. Sept. 20, 2019); *Armstrong v. Arcanum Grp. Inc.*, 2017 WL 4236315, at *7 (D. Colo. Sept. 25, 2017).
[60] *See* U.S.C. § 1221(e)(1); *Armstrong v. Arcanum Group, Inc*., 897 F.3d 1283, 1287 (10th Cir. 2018).
[61] *Armstrong v. Arcanum Group, Inc*., 897 F.3d 1283, 1287 (10th Cir. 2018); *Young v. Haw. Dep't of Educ.*, Dkt. No. 19-81-CP, U.S. Dep't of Educ. (Dec. 31, 2019) at 34-35, 41-42.
[62] *See* U.S.C. § 1221(e)(1); *Omwenga*, at *12; *Armstrong*, 2017 WL 4236315, at *7.

1999), the United States Court of Appeals for the Federal Circuit provided a guideline for analyzing whether an employer, in that case a federal agency, has met its burden of showing by clear and convincing evidence that it would have taken the same adverse personnel action absent a protected whistleblower disclosure. *Carr* provides the controlling analysis that is applied once the employee meets their burden. The factors to be considered are: "the strength of the employer's evidence in support of its personnel action; the existence and strength of any motive to retaliate on the part of the employer's officials who were involved in the decision; and any evidence that the employer takes similar actions against employees who are not whistleblowers but who are otherwise similarly situated."[63]

After weighing the evidence, the Secretary, or designee, must issue an order either denying the relief requested by the employee or requiring one or more enumerated actions by the employer.[64]

[63] *Carr v. Social Security Administration,* 185 F.3d 1318, 1323 (Fed. Cir. 1999) (citing *Greyer v. Dep't of Justice*, 70 M.S.P.R. 682, 688 (1996), *aff'd*, 116 F.3d 1497 (Fed. Cir. 1997)).
[64] 41 U.S.C. § 4712(c)(1).

Parkland provided clear and convincing evidence that it would have extended [Complainant's] probation in the absence of her disclosure and that the other incidents did not relate to the disclosures. OIG found that [Complainant] did not meet her burden of showing that her protected disclosures were a contributing factor in the other incidents.

ANALYSIS

[Complainant] argues that she faced probation extension as a response to her disclosure. [Complainant] has failed to show that her disclosure was a "contributing factor" in the any of the three actions she identified in her complaint. Parkland has shown by clear and convincing evidence that Parkland had legitimate reasons for extending her probationary period.

[Complainant's] Initial Burden

[Complainant] has the initial burden to show (1) she was an employee of a federal grantee or contractor; (2) she made a disclosure protected by 41 U.S.C. § 4712; and (3) the disclosure was "a contributing factor" in the action taken against her as an employee.

I. [Complainant] has proven that she was an employee of a federal grantee during the relevant time.

It is undisputed that [Complainant] was an employee of a recipient of Department-administered grants during the relevant time. Since 1997, Parkland has been a recipient of TRIO grant funds, which is a grant program administered by the Department.[65] [Complainant] was an employee when her probationary period was extended, she got into a confrontation with and had a complaint filed by Raisner, and when the masking flyer was posted, all in September of 2021.[66]

II. [Complainant] has not shown that she made a protected disclosure.

A. [Complainant's] disclosure was not covered by the NDAA

[65] *See* OIG Report.
[66] *Id*.

In her complaint, [Complainant] asserted that she made a protected disclosure about Parkland not having [Complainant] supervise TRIO employees. However, this is not a disclosure protected by 41 U.S.C. § 4712 for two reasons detailed below.

The NDAA covers disclosures of

> Information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant.[67]

Complainant asserts that "Julia Hawthorne maintained the administrative authority/management" of Parkland's TRIO program during her time as Parkland's TRIO Project Director.[68] Complainant claims she "did not have executive authority to manage the program."[69] According to the OIG Report, Complainant's lack of authority is the basis of her whistleblower complaint, although Complainant more broadly asserts that her complaint was "based on [her] belief that Parkland College . . . was not in compliance with managing the [Department] TRIO/SSS grant in all areas of the grant that was approved by the [Department]."[70] Complainant cited her exclusion from management-level meetings about TRIO as further evidence that her management of the program was nominal.[71]

Complainant alleges that she was retaliated against for making her disclosure. Complainant contends this retaliation occurred in three ways: 1) an extension of her probationary period, 2) a false complaint filed against her by a TRIO coworker, and 3) the posting of a flyer with an alleged depiction of blackface. She asserts that the totality of these actions effectively

[67] 41 U.S.C. § 4712(a)(1)
[68] Compl. Br. at 2.
[69] *Id* at 2.
[70] *Id* at 3.
[71] *Id.* at 6.

forced her out of her position, causing her to submit her letter of resignation.

[Complainant's] belief on her disclosure was not reasonable. However, this decision further examines the extension of her probationary period. Had an actual valid disclosure or even if [Complainant] had a reasonable belief on her disclosure, then the extended probationary period could be considered a retaliatory action.

The document labelled by [Complainant] as an audit did not establish that there was any gross mismanagement, gross waste, abuse of authority, or violation of law for Parkland's TRIO grant program.[72] At most, there is an inconsistency with the grant application information identifying the TRIO program supervisor. The OIG report states that for purposes of its investigation, it has treated [Complainant's] disclosure as protected under the NDAA.[73]

Along with that statement that it was treating the disclosure as protected under the NDAA, the OIG made a significant notation:

> 41 U.S.C. § 4712(a)(1) requires complainants have a reasonable belief their disclosures evidenced certain wrongdoing (gross mismanagement of a Federal grant, a gross waste of Federal funds, an abuse of authority related to a Federal grant, a violation of law, rule, or regulation related to a Federal grant, or a substantial and specific danger to public health or safety). There is inconclusive evidence whether Parkland informed [Complainant] prior [to] her disclosures that the Department had approved Parkland's management structure for the TRIO grant with responsibilities divided between [Complainant's] position and her supervisor. [Complainant's] supervisor stated [Complainant] was so informed, but Parkland's counsel confirmed Parkland did not provide her with copy of the Department's written approval prior to the disclosure. [Complainant] did not mention being informed. If [Complainant] was fully informed, it may not have been reasonable for her to believe that the division of responsibilities was a violation of a term or condition of the grant.[74]

In her complaint, [Complainant] noted she had no experience with TRIO programs prior

[72] McMath Exhibit 3, at 3-4.
[73] OIG Report at 4.
[74] OIG Report at 4.

to June, 2021. In detailing the TRIO training she received from Parkland, prior to her complaint, [Complainant] had two trainings in July.[75]

Setting aside whether [Complainant] was told of the Department of Education approving the TRIO grant management structure, this decision diverges from the OIG's report on the issue of the reasonableness of [Complainant's] belief. [Complainant's] belief was not reasonable. She had little experience in a TRIO program, and only had a few days of formal TRIO training. It was utterly unreasonable for [Complainant] to believe that the division of responsibilities was a violation of a term or condition of the grant. That causes her initial case to fail.

Both of the remaining two alleged actions in [Complainant's] complaint – the disagreement and the flyers - were not distributed by someone with knowledge of the disclosure.

Although this lack of a reasonable belief (and lack of an actual protected disclosure) causes [Complainant's] complaint to fail, in the event that a reviewing court finds error, this decision will nonetheless further examine the remaining factors involved in review of an NDAA claim for the first action concerning the probation extension.

The burden to show that a protected disclosure was a "contributing factor" in a personnel action can be met through circumstantial evidence, including evidence that "the official taking the personnel action knew of the whistleblower activity" and that the "personnel action occurred within a period of time such that a reasonable person could conclude that the whistleblower activity was a contributing factor in the personnel action."[76]

The timing of the probationary period extension for [Complainant] is consistent with retaliation, since it occurred following her July, 2021 disclosure, in September 2021.

[75] McMath Complaint at 2.
[76] *Armstrong v. Arcanum Group, Inc*., 897 F.3d 1283, 1287 (10th Cir. 2018); 5 U.S.C. § 1221(e)(1).

Parkland ***has Proven by Clear and Convincing Evidence That It Would Have Extended [Complainant's] Probationary Period with Pay Regardless of the Protected Disclosures***

Even if [Complainant] had met her initial burden of showing that she made a protected disclosure that was "contributing factors" in the decision to extend her probationary period, Parkland has clearly and convincingly established that it would have taken the same action in the absence of her purported protected disclosure. However, [Complainant] has not made a *prima facie* case that her disclosure was a contributing factor in having her probation extended.

Concerning the second action, [Complainant] also claims retaliation when a coworker, Raisner, engaged her in a verbal disagreement which was subsequently investigated by Parkland. As also found in the OIG's report, [Complainant] has failed to provide sufficient evidence to meet her initial burden of proof on this claim of retaliation.[77]

The verbal disagreement with Raisner was with a co-worker, not a supervisor, and occurred on September 2, 2021.[78] A verbal disagreement without any resulting adverse personnel action is not covered under the NDAA. [Complainant] has failed to meet her burden of proof on the second claim of retaliation.

[Complainant's] third retaliation claim is that she was subjected to a hostile work environment by the posting of a COVID mask flyer which she believed depicted "blackface."[79] While the ink that was used to print the flyer was black (and red), the images on the flyer are consistent with computer generated representations of people wearing masks, with no other unusual or significant characteristics.[80] Again, consistent with the OIG's finding, [Complainant] has failed to provide sufficient evidence to meet her initial burden of proof.[81]

[77] ROI at page 6.
[78] *See*, OIG Report at Attachments 6, 7, 10, 11 and 12.
[79] See OIG Report at Attachment 13.
[80] OIG Report, Attachment 2.
[81] OIG Report, p. 6.

Similar to her second retaliation claim, [Complainant] has also failed to provide evidence that there is any connection between her prior disclosure to Parkland and the production of the flyer – which occurred after her probationary period had already been extended and after the incident with Raisner.[82] Moreover, it is undisputed that [Complainant] never raised any concerns about the COVID flyer with Hawthorne, higher level staff at Parkland, or with Parkland counsel.[83]

[Complainant] did not provide any evidence that the masking flyer was created or distributed by anyone at Parkland who was aware of her disclosure or that the flyer was otherwise related to her disclosure. According to Hawthorne, the COVID masking flyer was created by a part-time staff member, contained the colors normally used for Parkland TRIO program graphics, and was placed sparingly around the office.[84] Parkland stated that another African American staff member did not find the flyer offensive. [Complainant] did not make a racism or hostile work environment complaint to Parkland about the flyer.[85] [Complainant] has failed to meet her initial burden of proof on her third claim of retaliation.

Strength of Parkland's Reasons for the Actions

The first *Carr* factor is the strength of Parkland's evidence of a legitimate reason for extending [Complainant's] probationary period. The evaluation process was documented in detail, and was written in a way to encourage an employee to advance, while giving them the detailed goals needed to accomplish that advancement.[86] It utilized a typical employee evaluation on a form standardized for that purpose.[87]

[82] OIG Report, Attachment 1.
[83] OIG Report, Attachment 6.
[84] OIG Report, Attachment 6.
[85] OIG Report, Attachment 13.
[86] Affidavit of Julia Hawthorne.
[87] Affidavit of Julia Hawthorne, Exhibit 1.

The evaluation specifically identified areas that [Complainant] did not meet performance expectations and identified important goals, including: "Demonstrates an understanding of concepts, methods, techniques and principles necessary to accomplish job duties," and "understanding and consistently adhering to college and department policies and procedures."[88] The goals identified in [Complainant's] evaluation also included "understanding of budget tracking procedures, familiarity and comfort with student advising, and her relationships with co-workers."[89] As Hawthorne stated, Parkland could have terminated Complainant's employment as a result of her evaluation. Parkland's pre-printed employee evaluation form contained three options for Parkland during the probationary period: (1) Probation has been satisfactorily completed and the employee is recommended to be classified as a regular full-time member of the staff, (2) More time is needed to determine the employee's suitability for full-time employment, and (3) The employee has not satisfactorily completed probation and should not be employed as regular full-time staff.[90] Parkland could have chosen to terminated [Complainant's] employment, but decided to extend her probationary period instead, and provide guidance to give [Complainant] an opportunity to succeed.

In each area, Hawthorne identified an employee goal, and also listed specific skills needed to meet that goal. For example, for the goal of "Familiarity with available project resources and how students can connect with them," the specific skills Hawthorne identified included toolkit, programming calendar, Cobra, webpage, iGrad/Career, Cruising/Thinkingstorm, resource lab and tutoring.[91] Each area included many specifically articulated, functionally important and

[88] Affidavit of Julia Hawthorne, p. 5-6.
[89] Affidavit of Julia Hawthorne, Exhibit 1.
[90] Affidavit of Julia Hawthorne, Ex. 1.
[91] Affidavit of Julia Hawthorne, Exhibit 1.

appropriate goals Parkland sought for [Complainant] to achieve during the extended probation.[92] Parkland has shown strong reasons for its actions in extending the probationary period.

Strength of Motive to Retaliate

The second *Carr* factor is the existence and strength of any motive to retaliate on the part of the Parkland officials involved. There is no strong reason for Hawthorne or any other Parkland leader or employee to retaliate against [Complainant] for her disclosure.

When [Complainant] raised her concern over not supervising TRIO staff, the circumstances here show there was not instant opposition and antagonism to the concern. Hawthorne did not agree there was any area of TRIO noncompliance, but Hawthorne nonetheless responded, "I am not certain that we are out of compliance, but I recognize the value of getting an expert opinion."[93]

Hawthorne agreed to check again, despite the fact that the job posting for the TRIO Program Manager position [Complainant] applied for stated: "The job posting for the TRIO Program Manager at Parkland stated that the position involved supervision of "part time project personnel" only – not full-time staff."[94] Further, the TRIO Project Manager job description, *which complied with the Department approved revisions to the Parkland TRIO program*, informed Complainant she would not supervise full-time employees in Parkland's TRIO office.[95]

As detailed above, not only was there no intentional wrongdoing by Parkland, [Complainant's] disclosures did not reveal any wrongdoing of any sort, and Parkland and [Complainant] both had knowledge of this. Given that, it is extremely unlikely that Parkland

[92] Affidavit of Julia Hawthorne, p. 9-10.
[93] OIG Report, p. 5.
[94] OIG Report, Attachment 6.
[95] OIG Report, Attachments 4, 6 & 18.

would have any motive to retaliate against [Complainant].

Treatment of Other Similarly Situated Employees

The final *Carr* factor is comparing the action taken against [Complainant] with other Parkland employees who were not whistleblowers but who are otherwise similarly situated.

Parkland has provided uncontradicted evidence that it also extended the initial probationary period for other employees who had not made disclosures, including one employee whose period was extended an additional 30 days and another's whose probationary period was extended an additional 90 days.[96]

Further evidence that other employees were treated similarly is found on Parkland's pre-printed employee evaluation form. In the Probationary Evaluation portion, there are three options Parkland provided: (1) Probation has been satisfactorily completed and the employee is recommended to be classified as a regular full-time member of the staff, (2) More time is needed to determine the employee's suitability for full-time employment, and (3) The employee has not satisfactorily completed probation and should not be employed as regular full-time staff.[97] This form demonstrates that Parkland's employee evaluation system clearly identified probation extension as an option for any employee being evaluated, and not just for [Complainant].

There is a High Probability that Parkland Would Have Extended [Complainant's] Probationary Period Even if She Had Made a Protected Disclosure

Again, while this decision is based on [Complainant's] failure to make a protected disclosure, for purposes of judicial economy and appellate review, this decision makes additional

[96] OIG Report, Attachment 9.
[97] Affidavit of Julia Hawthorne, Ex. 1.

findings. The clear and convincing standard requires significant proof, but not the "highest levels of proof."[98] It requires the fact finder to determine that there is a highly probability that a fact is true.[99] In this case, Parkland had a compelling reason to extend [Complainant's] probationary period. There was no motivation for Parkland to retaliate, and Parkland established that it acted in a way that is consistent with how some other employees were treated. It is highly probable that Parkland did not extend [Complainant's] probationary period in reprisal for her disclosures.

CONCLUSIONS OF LAW

1. [Complainant] has met her burden of showing that she was an employee of a federal grantee.

2. [Complainant] has not met her burden of showing that she made any protected disclosure protected by 41 U.S.C. § 4712 to any Parkland official or employee.

3. [Complainant] has not shown that her disclosures were contributing factors in the decision to extend her probationary period.

4. Parkland College has proven by clear and convincing evidence that it would have extended [Complainant's] probationary period even if her disclosure was protected.

5. There is an insufficient basis to conclude that the Parkland College subjected [Complainant] to a retaliatory reprisal even if her disclosure was protected.

ORDER

The relief requested by Virginia [Complainant] is **DENIED**.

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[98] *See U.S. v. Owens*, 854 F.2d 432, 435-36 (11th Cir. 1988).
[99] *See Colorado v. New Mexico*, 467 U.S. 310, 316 (1984); *U.S. v. Owens*, 854 F.2d 432, 436 (11th Cir. 1988); *Cornell v. Nix,* 119 F.3d 1329, 1334-35 (8th Cir. 1997); *Flores v. Spearman*, 2016 WL 8136629, at *6, 9 (C.D. Cal. Nov. 17, 2016).

APPEAL RIGHTS

This order constitutes an order denying relief issued by the head of the executive agency under 41 U.S.C. § 4712(c)(1), pursuant to the authority delegated by the Secretary of Education. This is the final decision of the Department of Education on the matter. The statute does not authorize motions for reconsideration. The following language summarizes adversely affected parties' rights to appeal this order as set forth by the NDAA. This paragraph is not intended to alter or interpret the applicable rules or to provide legal advice. Because a final agency order has been issued denying the compliant her requested relief, she has exhausted all administrative remedies and may, within two years of this decision, bring a de novo action at law or equity against Parkland College "to seek compensatory damages and other relief available under this section in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy."[100]

Additionally, any person adversely affected or aggrieved by this order may obtain review in the United States court of appeals for a circuit in which the reprisal is alleged to have occurred. No petition for review may be filed more than 60 days after issuance of this order. Review shall conform to chapter 7 of Title 5. Filing an appeal shall not act to stay the enforcement of this order, unless a stay is specifically entered by the court.[101]

DATE OF DECISION: May 16, 2022

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Robert G. Layton
Administrative Law Judge

[100] 41 U.S.C. § 4712(c)(2).
[101] 41 U.S.C. § 4712(c)(5).

SERVICE

This Decision and Order has been sent by OES automatic filing system, and also by email, delivery receipt requested, to the parties and their counsel below:

[Complainant]
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