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

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

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

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

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

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

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

(g) If a person other than the complainant requests that his or her identity be kept confidential, the investigator may grant confidentiality, but must advise such person that confidentiality means that the Office of Hearings and Appeals will not identify the person as a source of information to anyone outside the Office of Hearings and Appeals, except as required by statute or other law, or as determined by the OHA Director to be unavoidable.

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

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

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

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

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

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

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

§ 708.25 Who will conduct the hearing?

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

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

§ 708.26 When and where will the hearing be held?

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

(b) The Hearing Officer will schedule the hearing for a location near the site where the alleged retaliation occurred or your place of employment, or at another location that is appropriate considering the circumstances of a particular case.

§ 708.27 May the Hearing Officer recommend mediation to the parties?

The Hearing Officer may recommend, but may not require, that the parties
§ 708.30 What procedures govern a hearing conducted by the Office of Hearings and Appeals?

(a) In all hearings under this part:

(1) The parties have the right to be represented by a person of their choosing or to proceed without representation. The parties are responsible for producing witnesses in their behalf, including requesting the issuance of subpoenas, if necessary;

(2) Testimony of witnesses is given under oath or affirmation, and witnesses must be advised of the applicability of 18 U.S.C. 1001 and 1621, dealing with the criminal penalties associated with false statements and perjury;

(3) Witnesses are subject to cross-examination;

(4) Formal rules of evidence do not apply, but OHA may use the Federal Rules of Evidence as a guide; and

(5) A court reporter will make a transcript of the hearing.

(b) The Hearing Officer has all powers necessary to regulate the conduct of proceedings:

(1) The Hearing Officer may order discovery at the request of a party, based on a showing that the requested discovery is designed to produce evidence regarding a matter, not privileged, that is relevant to the subject matter of the complaint;

(2) The Hearing Officer may permit parties to obtain discovery by any appropriate method, including deposition upon oral examination or written questions; written interrogatories; production of documents or things; permission to enter upon land or other property for inspection and other purposes; and requests for admission;

(3) The Hearing Officer may issue subpoenas for the appearance of witnesses on behalf of either party, or for the production of specific documents or other physical evidence;

(4) The Hearing Officer may rule on objections to the presentation of evidence; exclude evidence that is immaterial, irrelevant, or unduly repetitious; require the advance submission

§ 708.29 What must the parties to a complaint prove?

The employee who files a complaint has the burden of establishing by a preponderance of the evidence that he or she made a disclosure, participated in a proceeding, or refused to participate, as described under §708.5, and that such act was a contributing factor in one or more alleged acts of retaliation against the employee by the contractor. Once the employee has met this burden, the burden shifts to the contractor to prove by clear and convincing evidence