

OFFICE OF COMPLIANCE
LA 200, John Adams Building, 110 Second Street, S.E.
Washington, DC 20540-1999

_____)	
JOE D. CLARK ,)	
)	
Complainant,)	
)	
v.)	Case No. 00-AC-104(CV, RP)
)	Date: May 30, 2003
OFFICE OF THE ARCHITECT)	
OF THE CAPITOL)	
)	
Respondent .)	
_____)	

Before the Board of Directors: Susan S. Robfogel, Chair; Barbara L. Camens, Alan V. Friedman; Roberta L. Holzwarth; Barbara Childs Wallace, Members.

DECISION OF THE BOARD OF DIRECTORS

On September 6, 2002, Hearing Officer Curtis E. von Kann issued the attached Decision in this matter concluding that the Respondent failed fully to implement¹ its settlement agreement with the Complainant, but for non-discriminatory and non-retaliatory reasons. The Complainant timely filed a petition for review of that decision, and a supporting brief. The Respondent timely filed its opposition brief to the petition for review.

¹ The Complainant and Respondent, through Office of Compliance mediation in an earlier case, entered into a January 4, 2000 settlement agreement resolving his discriminatory non-promotion claim. The agreement afforded the Complainant (1) formal training; (2) regular supervisory verbal feedback regarding his performance; and (3) a supervisory evaluation, 90 days following Complainant's completion of formal training, assessing his readiness for promotion. The hearing officer found that the Respondent complied with items (1) and (2), but it did not provide him with the evaluation through oversight and neglect.

The Board has considered the decision² and the record in light of the petition for review and briefs. The Board affirms the hearing officer's determinations: (1) that the evidence did not establish that the Respondent acted out of a proscribed discriminatory or retaliatory motive in failing to implement the settlement agreement; and (2) that the Complainant failed to prove damages from Respondent's failure to comply fully with the agreement.

ORDER

Pursuant to Section 406(e) of the Congressional Accountability Act and Section 8.01(d) of the Office's Procedural Rules, the Board affirms the hearing officer's merits determination of no discrimination, retaliation, or actionable damages in this matter.

It is so ordered.

Susan S. Robfogel, Chair

Barbara L. Camens, Member

Alan V. Friedman, Member

Roberta L. Holzwarth, Member

Barbara Childs Wallace, Member

Issued, Washington, D.C.: May 30, 2003

² Respondent argued before the hearing officer that the doctrine of sovereign immunity precluded his enforcement of a settlement agreement entered into under the Congressional Accountability Act unless the Complainant proved that the non-compliance was occasioned by proscribed discrimination or retaliation. The hearing officer, in finding that the "inexcusable" agreement breach had not damaged the Complainant, did not reach any conclusion regarding that defense. We agree with the hearing officer that it is not necessary to reach any conclusion regarding this defense because of our finding that Complainant was not damaged by Respondent's breach of the agreement.

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of May 2003, I delivered a copy of this Decision of the Board of Directors to the following parties by the below identified means:

First-Class Mail Postage-Prepaid

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**First-Class Mail Postage-Prepaid
& Facsimile Mail (w/o Hearing Officer Decision)**

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Kisha L. Harley
Office of Compliance