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

DAVID CULVER **Appellant,**	)	
v.	)	**Case No. 96-AC-55 (AG, CV, FM)**
OFFICE SUPPLY SERVICE, OFFICE OF THE CHIEF ADMINISTRATIVE OFFICER, UNITED STATES HOUSE OF REPRESENTATIVES **Appellee.**	)	

Before the Board of Directors: Glen D. Nager, Chair; James N. Adler; Jerry M. Hunter; Lawrence Z. Lorber; Virginia A. Seitz, Members.

DECISION OF THE BOARD OF DIRECTORS

Appellant, David Culver ("appellant"), appeals from those portions of the Hearing Officer's decision dismissing his claims of employment discrimination based on race and failure to comply with provisions of the Family and Medical Leave Act, in violation of sections 201 and 202 of the Congressional Accountability Act of 1995 (the "CAA" or the "Act"), 2 U.S.C. §§ 1311, 1312. He also asserts that the Hearing Officer's decision was not timely issued, in violation of section 405 of the CAA, 2 U.S.C. § 1405, and section 7.16 of the Procedural Rules of the Office of Compliance (the "Procedural Rules").[1] For the reasons set forth below, the Board finds appellant's contentions to be without merit and affirms the Hearing Officer's decision.

I.

Appellant, an African-American, was employed from 1993 to 1996 as the sole stock clerk of the Office Supply Service (the "OSS") of the Office of the Chief Administrative Officer (the "CAO") of the United States House of Representatives. *See* Decision at 4, 8 (Findings of Fact Nos. 1, 3.d.(1)). The staff of OSS is racially mixed: of the 27 employees, 14 are African-American, including Willie Holliday, appellant's immediate supervisor, and William Crain, the

[1] Appellant does not appeal the Hearing Officer's dismissal of his other claims of employment discrimination based on age, perceived disability, and retaliatory action, in violation of sections 201 and 207 of the CAA, 2 U.S.C. §§ 1311, 1317.

Associate Administrator of the Office of Media and Support Services. *See* Decision at 9 (Findings of Fact Nos. 3.e, 4.a). The mid-level supervisor, Gerald Bowles, the Director of the Office Supply Service, is white. *See id.*

In 1995, the CAO tightened personnel policies for all House employees; and, in 1996, a new personnel manual was issued. *See id*. (Finding of Fact No. 3.d). On May 3, 1996, appellant, by signed receipt, acknowledged that he had received, read, and understood the new personnel policies and procedures contained in the manual. *See id*. at 12 (Finding of Fact No. 5.a). The personnel manual contained guidance concerning family and medical leave; appellant was also mailed, through his employer, information on family and medical leave prepared by the Office of Compliance. *See id*. (Finding of Fact No. 5.b). In addition, the OSS work space contained posters containing information respecting family and medical leave. *See Id*.

Appellant was terminated from his employment in OSS on August 19, 1996 "because of his multiple failures to comply with the leave policies of the House of Representatives and his work unit." *Id*. at 5 (Finding of Fact No. 2). Appellant's leave history included some half dozen unauthorized absences in 1995 and 1996, which resulted in a number of verbal and written disciplinary warnings. These incidents culminated in a formal "Notice of Disciplinary Action - Last Chance Agreement," signed by him on June 10, 1996, warning him that he might lose his job for further infractions. *See id*. at 5, 7-8, 13 (Findings of Fact Nos. 2.a; 3.c.(1)-(3), 6.b); *see also* Respondent's Exhibit Nos. 3, 4, 47. After receiving that Notice, he was absent from work for eight days beginning on August 7, 1996, without having secured approved leave, despite a telephone warning from his supervisors. *See* Decision at 8 (Finding of Fact No. 3.c.(4)). Following that last unauthorized absence, appellant was sent a notice of termination for cause, by letter dated August 14, 1996. *See* Respondent's Exhibit No. 41.

The letter of termination, which "accurately summarized his leave records," Decision at 5 (Finding of Fact No. 2.a), noted a number of incidents in which appellant failed to abide by the procedures of the office, including the requirement that all employees sign in and sign out and receive approval of leave in advance unless the leave in question falls under the emergency leave exception, *see id.* at 8 (Finding of Fact No. 3.d.(1)); *see also* Respondent's Exhibit Nos. 6, 9, 10. For example, the termination notice cited an incident in which appellant was disciplined when he left work early and stayed off work without calling in for the following two days because he had not received a parking sticker. *See* Decision at 7, 11 (Findings of Fact Nos. 3.c.(1), 4.c.(1)). In another incident, appellant was disciplined when he did not return to the office after a group function: "He did not follow procedure by calling-in and gave a series of unsubstantiated excuses including being locked out of the building, going to the nurse and falling asleep in the park." *Id*. at 7-8 (Finding of Fact No. 3.c.(3)).

The final instance in which appellant took unauthorized leave arose in connection with a trip to a friend's family reunion and to visit his mother, who was in poor health. *See id*. at 12-13 (Finding of Fact No. 5). Appellant did not go through the appropriate channels to secure leave, nor did he request leave under the Family and Medical Leave Act. *See id.* at 8, 12 (Finding of Fact No. 3.c.(4); 5.c). Rather than ask his immediate supervisor for leave, appellant tried to enlist the help of William Crain, who reminded appellant that he lacked the requisite leave for the trip.

See id. at 8 (Finding of Fact No.3.c.(4)). Appellant failed to secure approval of his leave; on the eve of his trip, he left an unapproved leave slip on the OSS receptionist's desk, stating the reason for the leave was a "trip and visit mother." *Id*. at 12 (Finding of Fact No. 5.c., quoting Respondent's Exhibit No. 46). The following morning, having been warned by telephone by his supervisors, appellant nonetheless left to attend the reunion and to visit his mother. He did not request family leave or provide his employers with information "alerting them to his possible entitlement to family leave." *Id*. at 12-13 (Finding of Fact No. 5.d). Pursuant to office procedures, he was placed in non-pay status and then terminated. *Id*. at 5, 8 (Findings of Fact Nos. 2.a, 3.c.(4)).

Kay E. Ford, the Associate Administrator for Human Resources in the Office of the CAO, decided to terminate appellant for cause after "careful and impartial" review of appellant's leave records, consultation with administrative counsel, and receipt of the recommendation of all three supervisors in appellant's unit. *Id*. at 5, 9 (Findings of Fact Nos. 2.a, 2.b.(1), 3.e). At the time Ms. Ford decided that appellant's personnel record warranted termination, she had not met appellant, did not know his race, and was unaware that he had made any complaints of discrimination or was encouraging others to do so; nor had he or anyone else in OSS filed complaints of any unlawful employment practice. *See id*. at 5, 14 (Findings of Fact Nos. 2.b.(2), 7). At appellant's request and in light of his allegations concerning his termination, Ms. Ford reviewed the basis of her decision: "She checked records, recomputed leave, traced worker's comp. time and looked for any indicators of need for a family leave opportunity. She found no inaccuracies, falsifications or deprivations. She was alert to, but did not find, pretextual firing." *Id*. at 6 (Finding of Fact No. 2.b.(3)). Appellant was replaced by an African-American, *see id*. at 13 (Finding of Fact No. 6.a), who performs the duties of the stock clerk and also works in receiving and shipping, *see id*. at 11 (Finding of Fact No. 4.c.(2)).

II.

Appellant filed a complaint with the Office of Compliance alleging that he "was terminated without cause . . . because of (. . . one or more of) the following factors: his color, race, age, and (perceived) disability (back injury)." Complaint at 1 (March 26, 1997). In addition, appellant alleged that he "received disparate treatment and discipline in terms of being criticized and reprimanded concerning sick, annual, and other leave policy and procedures . . . ;" that he "suffered a racially hostile working environment;" that after African-Americans complained about "racially inflammatory" behavior, he was retaliated against "as a member of the class of persons in the office who were complaining black African-Americans;" and that "[v]erbal and written reprimands, such as the last chance agreement, and the August 14, 1996, letter of termination are false and misleading and pretext for illegal motives and acts in violation of the [CAA]." *Id.* at 2-3. Appellant also alleged that his termination violated section 202 of the CAA, 2 U.S.C. § 1312, which made certain rights and protections under the Family and Medical Leave Act of 1993 applicable to covered employees. *Id*.

As provided under section 405(d) of the CAA, 2 U.S.C. § 1405(d), a full evidentiary hearing was held before a Hearing Officer. Appellant, who had been represented by counsel

during mediation, proceeded pro se at the hearing. He testified on his own behalf and called one witness, Ms. Lillie Drayton, "who had no personal knowledge of the job site occurrences but who spoke to some of Mr. Culver's efforts and frustrations, particularly with regard to attendance and leave." Decision at 3-4. Four of appellant's exhibits were received into evidence. At the close of appellant's case-in-chief, the Hearing Officer dismissed appellant's claims of discrimination on the basis of age and perceived disability. Appellee then called six witnesses and presented documentary evidence, including appellant's leave records, the revised personnel manual signed by appellant, posters giving notice of family and medical leave, and other documents relating to specific events about which appellant complained (*e.g.*, the assignment of parking spaces).

The Hearing Officer concluded, based on the documentary evidence and her assessment of the testimony, that appellant had failed to prove any violation of the CAA. The Hearing Officer found that the testimony of Kay E. Ford, the Assistant Administrator for Human Resources, "was candid and persuasive of a termination untainted by violations of the Congressional Accountability Act," Decision at 6 (Finding of Fact No. 2.b.(5)), while appellant's "testimony, which was his primary evidence, was heartfelt, but on occasion strained credulity and seemed to be the result of confused comprehension. On key points, his testimony was contradicted by co-workers and by written documents." *Id.* at 15 (Finding of Fact No. 2.(b)). The Hearing Officer made detailed findings respecting each of appellant's allegations. In sum, she found:

> Although Mr. Culver was given wide evidentiary latitude in his effort to prove violations of the Act, he did not prove any of his claims. . . . [M]any of his allegations merely reflect the usual work place contretemps over parking spaces, work uniforms, work hours and close supervision by management. He failed to establish that decisions which he did not like in these areas were racially motivated. Similarly he failed to establish that his leave records were "forged" or falsified or that he did not receive notice of family and medical leave opportunities or that he was fired for urging other employees to "speak out."

Decision at 2. Contrary to appellant's allegations that he was singled out for more stringent application of the OSS time and attendance policy, the Hearing Officer found that appellant's leave problems "were not created by or exacerbated by racial discrimination." *Id.* at 6 (Finding of Fact No. 3). Both white and African-American employees received reprimands; all employees were subject to the sign-in and sign-out procedures and, in 1995, to increased discipline; and the specific reprimands and disciplinary actions taken against appellant were based on racially neutral criteria. *Id.* at 6-8 (Finding of Fact No. 3). The Hearing Officer further found that appellant received numerous warnings of the consequences of his failures to meet job expectations, *id.* at 13 (Conclusion of Law No. 6.b); that the decision to terminate him was made by an official who acted carefully and impartially and without knowledge of his race or any alleged exercise of activity protected by the CAA, *id.* at 5, 14, (Findings of Fact Nos. 2.b., 7.a); and that there was no pattern of racially suspect terminations of employment in OSS, *id.* at 13 (Finding of Fact No. 6.d).

The Hearing Officer also found that appellant was not subject to a racially hostile

environment. *Id.* at 9 (Finding of Fact No. 4). Two incidents which appellant construed as racially offensive behavior were dealt with promptly and effectively by management. *Id*. at 10 (Finding of Fact No. 4.b.(2)). The Hearing Officer found that other incidents which appellant viewed as having a racial motivation did not: his failure to secure a parking space was based on lack of seniority, rather than race, and the fact that the African-American employee who replaced appellant was given a uniform, while appellant was not, was based on the latter's performance of additional job duties in receiving and shipping. *Id*. at 11 (Finding of Fact No. 4.c.(1)-(2)).

Further, the Hearing Officer rejected appellant's allegations that he did not receive adequate notice of the availability of family and medical leave and that management had sufficient notice of his mother's serious medical condition to inquire whether he was eligible for family leave during his August 1996 absence without leave. The Hearing Officer found that appellant had notice of the availability of family and medical leave based on publication of the family and medical leave policy in the personnel manual, signed for by appellant; direct mailings of materials discussing family and medical leave; and the display of posters within the OSS job site describing the family and medical leave policy. The Hearing Officer further found that appellant had neither requested family leave nor provided OSS management with sufficient information to suggest the possible applicability of family and medical leave to the August leave request. Appellant's leave form stated the reason for the requested leave as "'trip and visit mother;'" he discussed the proposed leave with colleagues in terms of a family reunion; and his much earlier comments about his mother's health condition at the time of her original illness did not constitute notice to his supervisors at this later date. *Id*. at 12-13 (Finding of Fact No. 5).

Based on the above findings, the Hearing Officer concluded that appellant neither produced "'[d]irect evidence' of discriminatory practices which resulted in the termination of his employment" nor "met the standards of the *McDonnell Douglas* test"[2] in that he failed to establish that "he met the legitimate expectations of the job, that he was discharged despite good performance or that he was replaced by a person of a non-protected class. His compliance with reasonable time and attendance [policies] did not meet expectations. Further, he was replaced by an African-American." *Id.* at 15-16 (Conclusion of Law No. 2). The Hearing Officer further found that the CAO "convincingly and persuasively" rebutted every "allegation, inference or colorable claim of discrimination." *Id.* at 16 (Conclusion of Law No. 3). The Hearing Officer therefore concluded that "the evidence does not establish the requisite proof of a racially motivated termination, a retaliatory discharge or violations of the family and medical leave provisions of the Act." *Id*. at 16 (Conclusion of Law No. 2.d).

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[2] *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973) (articulating four-prong test for establishing *prima facie* case of racial discrimination). To establish a *prima facie* case of racial discrimination in a case in which the complainant alleges that his employment termination was racially motivated, the complainant must demonstrate that (1) he belongs to a protected class, (2) that he met the legitimate qualifications of the job he held, (3) that he was discharged despite good performance, and (4) that the position remained open and was ultimately filled by a person of a non-protected class. *See St. Mary's Honor Center v. Hicks*, 509 U.S. 503, 508 (1993).

III.

Under section 406 of the CAA, "[t]he Board shall set aside a decision of a hearing officer if the Board determines that the decision was—

> (1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;
> (2) not made consistent with required procedures; or
> (3) unsupported by substantial evidence."

2 U.S.C. § 1406(c). "In making determinations under subsection (c), the Board shall review the whole record, or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error." 2 U.S.C. § 1406(d). Applying these standards, and after review of the record as a whole, the Board affirms the Hearing Officer's decision.

Appellant does not argue that the Hearing Officer misapplied the relevant legal standards. Rather, appellant appears to take issue with a number of the subsidiary factual findings on which those legal conclusions are based and to argue that the Hearing Officer failed to consider some (unspecified) record evidence. *See* Appellant's Petition for Review and Brief (December 8, 1997). The Hearing Officer's findings, however, are supported by substantial evidence in the record, and these findings dispose of all germane issues raised by appellant.

"Substantial evidence" means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Universal Camera Corp. v. National Labor Relations Board*, 340 U.S. 474, 477 (1951). The record in this case clearly supports the Hearing Officer's conclusion that the CAO's termination of appellant's employment did not violate any provision of the CAA.

Specifically, the record amply documents the Hearing Officer's finding that appellant failed to meet the legitimate expectations of the job and that his employment was terminated because of his repeated failures to comply with the leave policies of his office, despite numerous warnings. *See, e.g.* Respondent's Exhibit Nos. 3, 13, Tr. at I:133-45 (supervisor gave appellant a written warning after he left work early and failed to report in for two days); Respondent's Exhibit No. 4, Tr. at I:160–63, 177-78 (supervisor gave appellant another written warning respecting attendance violations, which described three unauthorized absences in violation of attendance policy and explained to him that such violations could result in dismissal); Respondent's Exhibit No. 17, Tr. at I:262-64, Tr. at II:433-34 (appellant given a "Notice of Disciplinary Action - Last Chance Agreement" noting a number of violations of time and attendance policy which warned that further violations could result in dismissal; appellant also orally warned when given that notice); Tr. at I:25-34, 272-89, III:721-29 (appellant placed on non-pay status and terminated when, after telephone warning from supervisors, he was absent for eight days without approved leave).

The record also fully supports the Hearing Officer's conclusion that the time and

attendance and leave policies were applied in a racially neutral manner. *See, e.g.*, Respondent's Exhibit No. 6 at 8-9 (1996 Personnel Policies and Procedures Manual for the Officers and the Inspector General of the U.S. House of Representatives, stating that all employees must notify appropriate authorizing official if they are unable to report to work); Respondent's Exhibit No. 9 (memorandum requiring all OSS employees to report directly to the Assistant Chief to sign in formally and to obtain permission from their supervisor and notify the Assistant Chief for permission to arrive late or leave early); Respondent's Exhibit No. 10 (memorandum which required all OSS employees to contact their supervisor to call in sick or request emergency leave, was signed by OSS staff including appellant); Tr. at III:642-47, 655-65 (supervisor describes leave policies in effect in 1995-97, as set forth in exhibits and unsuccessful attempts to counsel appellant to comply with these procedures); Tr. at II:483-85; IV:813 (other African-American and white employees disciplined for violation of personnel policies, including time and attendance); Tr. at I:260-61 (all three supervisors discuss and agree on disciplinary action respecting appellant's excessive absenteeism); Tr. at I:271, 304, II:435-37, III:731-32 (same group of supervisors agree on recommendation that appellant's employment be terminated for repeated violations of office time and attendance policy).

There is also substantial evidence in the record supporting the Hearing Officer's conclusion that the ultimate decision to terminate appellant's employment was made impartially, after review of appellant's leave records, by a neutral decision-maker who did not know appellant's race and was unaware of any complaints by appellant or any other OSS employee of racial discrimination. *See, e.g.*, Tr. at IV:828-835, 839-41, 882-86. Moreover, at appellant's request, appellant's personnel records were reviewed for signs of error or pretextual firing and none was found. *See* Tr. at IV:849-51, 854-856, 858-62, 866-67, 886.

The record also entirely supports the Hearing Officer's finding that appellant received adequate notice of the availability of family and medical leave. *See, e.g.*, Respondent's Exhibit No. 6 at 10 (1996 Personnel Policies and Procedures Manual for the Officers and the Inspector General of the U.S. House of Representatives, describing the availability of family and medical leave and alerting employees of circumstances requiring advance notice to employer); Respondent's Exhibit No. 7 (appellee's signature acknowledging receipt of the 1996 manual); Tr. at IV:867-71 (notice of family and medical leave provided to employees by direct mailings of brochures and by display of posters in work place); *see also* Respondent's Exhibit No. 55 (poster containing information on family and medical leave); Tr. at III:635-38 (posters containing information on family and medical leave displayed in a number of locations in OSS workplace). Assuming, *arguendo*, that appellant potentially was entitled to family and medical leave, the record also supports the Hearing Officer's finding that appellant did not provide sufficient information to put the OSS on notice that he was requesting such leave. *See, e.g.*, Tr. at III:724 (supervisor believed that appellant sought leave to attend family reunion); Tr. at IV:867 (appellant's letter referring to his mother's hospitalization in March of 1996 did not alert reviewing official that appellant was seeking family leave in August of 1997).

In sum, the record in this case contains substantial evidence supporting the Hearing Officer's conclusion that appellant failed to produce "proof of a racially motivated termination, . .

. or [of] violations of the family and medical leave provisions of the Act." Decision at 16 (Conclusion of Law No. 2.d). Rather this evidence establishes, as the Hearing Officer found, "a non-discriminatory cause for termination of [appellant's] employment." *Id*. Conclusion of Law No. 3.

In arguing to the contrary, appellant offers little in the way of record evidence in support his sincere belief that he has been wrongfully terminated. Appellant takes issue with a number of the Hearing Officer's findings, but fails to demonstrate that these findings are in error. Appellant states that "[a] copy of my leave records of 93, 94, 95, and 1996 shows that OSS has no record of me taking the leave claimed." Appellant's Brief at 1. The Hearing Officer found that appellant had taken the leave charged to him, based on Respondent's submission of relevant personnel records, *see* Respondent's Exhibit Nos. 2-3, 10, 13, 14, 17-30, 33-44, 46-48, and testimony respecting those records, *see* Tr. at II:424, IV:848-56, 885-87. Appellant argues that several of the actual dates cited in the Decision are inaccurate. *See* Appellant's Brief at 1. He disputes the Hearing Officer's finding, based on the actual letter of termination and the supporting testimony thereto, that he was taken off the payroll on August 19, 1996, arguing that the actual date was August 13, 1996. *Id*. He also disputes the accuracy of the leave records of August 15-16, 1996 which show him signed in at OSS, when, according to his undisputed testimony, Tr. at I:34-35, he was still absent without leave and had been taken off the payroll. *See* Appellant's Brief at 1. Appellant does not dispute, however, that he was absent without obtaining leave according to normal OSS procedures from August 7, 1996 to August 19, 1996, *see, e.g.,* Tr. at I:31-35, and that he had been warned of the possible employment consequences of such unexcused absences, *see, e.g.*, Tr. at I:33, 281, II:432, III:723-29. His arguments, thus, do not undermine the Hearing Officer's findings respecting his August, 1996 absence without leave. There is simply no evidence that his leave records were forged in a "cover up[]" of a racially motivated termination. Accordingly, there is no record evidence that would support reversal of the Hearing Officer's findings. *See Arkansas v. Oklahoma*, 503 U.S. 91, 113, (1992) (" A court reviewing an agency's adjudicative action should accept the *agency's* factual findings if those findings are supported by substantial evidence on the record as a whole.").

Finally, appellant renews his denial that he received information respecting family and medical leave, contending once again that his signature acknowledging receipt of the 1996 Personnel Policies and Procedures Manual was forged. *See* Appellant's Brief at 2. However, the Hearing Officer credited the contrary evidence, which is substantial. *See, e.g.* Respondent's Exhibit No. 7 (acknowledgment of receipt form, signed by appellant and his supervisor); Tr. at III:629-632 (supervisor describes circumstances in which appellant was given 1996 personnel manual and identifies appellant's signature along with his own on the form); Tr. at IV:860-61 (Associate Administrator of Human Resources explains procedure for obtaining employee signatures on receipt form, where her office retained the completed receipt forms, and the research undertaken by her office to ensure that all employees signed the receipt form or, in cases in which they preferred not to sign, that their supervisors noted that refusal on the form). The Hearing Officer's finding that appellant never requested family leave and did not give his supervisors sufficient information to alert them to a possible entitlement to such leave also is supported by substantial evidence. *See, e.g.* Respondent's Exhibit No. 46 at 37 (appellant's leave

slip, requesting leave for a "trip and visit my mother"); Tr. at I:272 (supervisor, who had no documentation of appellant's mother's illness, thought that appellant was going to a family reunion); Tr. at III:724 (another supervisor also thought appellant was requesting leave for a family reunion). The record supports the Hearing Officer's conclusion that the supervisors in question were not sufficiently aware of his mother's illness to treat his leave request as a request for family leave.

IV.

Appellant raises one further issue. He argues that the Hearing Officer's decision was contrary to required procedures because it was issued 145 days after the conclusion of the Hearing, in violation of section 7.16 of the Procedural Rules. Appellant's Petition for Review at 1. Appellant misunderstands the requirements of the Procedural Rules. Although the last day of testimony in this case occurred on June 23, 1997, the record remained open in accordance with section 7.14 of the Procedural Rules, which gives a hearing officer the discretion to permit the parties to file post-hearing briefs on the factual and legal issues. Under section 7.15 of the Procedural Rules, the hearing record remains open until that briefing is completed. The Hearing Officer exercised her discretion to allow appellant to file a post-hearing brief, which she received on August 13, 1997, nearly one month after the original deadline of July 14, 1997. The Hearing Officer thereupon closed the hearing record, in accordance with section 7.15 of the Procedural Rules. Her decision was issued on November 13, 1997, 91 days after the closing of the record, as computed in accordance with section 1.03(b) of the Procedural Rules, rather than the 90 days required by section 405 of the CAA, 2 U.S.C. § 1405, and section 7.16 of the Procedural Rules. However, the Board finds the circumstances of this case to warrant application of the *de minimis* doctrine. *See Hessel v. O'Hearn*, 977 F.2d 299, 304 (7th Cir. 1992) (The *de minimis* doctrine refers to a legal violation or harm, "often but not always trivial, for which the courts do not think a legal remedy should be provided."); *see also Wisconsin Dep't of Revenue v. Wrigley*, 505 U.S. 214, 232 (1992) ("Whether a particular activity is a *de minimis* deviation from a prescribed standard must . . . be determined with reference to the purpose of the standard."). The time requirement for issuance of the Hearing Officer's decision is designed to assure the parties of a timely resolution of their dispute. The Hearing Officer has duly rendered her decision within one day of that requirement, which complies with the purpose of the statutory time requirement. Moreover, all but that one day of the "delay" of which appellant complains is directly attributable to the Hearing Officer's accommodation of his late filing of his post-hearing brief. Under these circumstances, any violation of the requirements of the CAA is *de minimus*.

Accordingly, for the reasons set forth above, the Board affirms the Hearing Officer's decision.

It is so ordered.

Issued, Washington, D.C., April 1, 1998.