

**BOARD OF DIRECTORS OF THE OFFICE OF COMPLIANCE**  
**JOHN ADAMS BUILDING, Room LA200**  
**110 Second Street, S.E.**  
**Washington, D.C. 20540-1999**

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<b>JUANITA JOHNSON</b>	)
<b>Complainant (Employee),</b>	)
	)
	)
<b>v.</b>	) <b>Case No. 99-AC-326-(DA)</b>
	)
<b>OFFICE OF THE ARCHITECT OF</b>	)
<b>THE CAPITOL,</b>	)
<b>Respondent (Employing Office)</b>	)
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**DECISION**

The final decision of the Board in this matter was issued on November 20, 2002. On February 14, 2003 the Architect filed a notice for a petition for review of this Board's final decision. On February 19, 2003, during a meeting with the Executive Director of this Office, the respondent Office of the Architect of the Capitol ("Architect") made an oral "motion" to stay the final decision. On February 21, 2003 the Architect submitted a written "Motion for Stay of Remedies Pending Appeal" together with a supporting Memorandum. On February 26, 2003 complainant Juanita Johnson ("Johnson") filed an "Opposition to Motion for Stay" together with a supporting Memorandum. The Architect was given an opportunity to file a reply to Johnson's Opposition, but elected not to do so.

The November 20 final decision in this matter requires the Architect to assign Johnson "permanently" to the position of Subway Operator, and requires the payment from the United States Treasury of certain monies to Johnson and to her attorneys as back pay, compensatory damages, interest, and attorney's fees. Such monetary payments to satisfy "awards and settlements" issued or approved by the Office are authorized by section 415(a) of the Congressional Accountability Act of 1995 ("the Act", 2 U.S.C. 1415(a).)

This Board may, "in its discretion, stay[] the final decision of the Office during the pendency of an appeal . . ." to the United States Court of Appeals for the Federal Circuit. (See Rule 8.03(a).)

The Board has reviewed the submissions of the parties, and DENIES the Architect's motion for a stay for the following reasons.

The Board does not agree that the Architect is likely to prevail on the merits of its appeal to the Federal Circuit. In addition, the character of the "injury" suffered by the Architect by reason of the denial of a stay is neither irreparable nor substantial.

Johnson is currently assigned to the position of Subway Operator. The final decision requires that her existing "temporary" status in that position be made "permanent." The Architect's Motion does not explain how or why such an action could not be undone if this aspect of the Board's decision is reversed on appeal, or otherwise explain how complying with the Board's order to make the assignment would cause it irreparable harm.

The sum of \$10,432.89 in compensatory damages and interest have already been tendered to Johnson by the Office. The remaining payments of back pay, attorneys fees, and interest to Johnson and her attorneys does not "harm" or "injure" the Architect in any way. None of the funds for any payments come from the Architect's budget or appropriation, but rather are obtained by this Office directly from the Treasury pursuant to section 415(a) of the Act. (2 U.S.C. 1415(a).)

Neither would a stay of the final decision adversely affect the public interest. The applicable public interest and policy resides in the Act itself, which was promulgated to ensure that employing offices in Congress and its instrumentalities are accountable for actions taken in contravention of statutes made applicable by the Act.

The harm or injury caused to Johnson by reason of the grant of a stay in this instance would certainly be more substantial than its denial is to the Architect. Under the current situation, Johnson has no binding assurance from day to day that she will not be removed from her assignment as a Subway Operator. Neither does her modest income receive the benefit of the back pay which was ordered.

Therefore, the Board of Directors of the Office of Compliance DENIES the Architect's Motion for a Stay of Remedies Pending Appeal, except that the Architect is granted seven days from the date of entry of this Order in the records of the Office to seek a stay from the United States Court of Appeals for the Federal Circuit.

The Board of Directors takes under advisement the request of Johnson that the Board authorize the General Counsel of the Office to petition for enforcement of the Board's final decision, pending the determination of any stay by the United States Court of Appeals for the Federal Circuit.

Date: March 7, 2003

FOR THE BOARD OF DIRECTORS OF THE OFFICE OF COMPLIANCE

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Susan S. Robfogel, Chair