

OFFICE OF COMPLIANCE
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Washington, DC 20540-1999

ROBERT SOLOMON,)
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 Appellant,)
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 (RP))
 OFFICE OF THE ARCHITECT)
 OF THE CAPITOL,)
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 Appellee.)
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Case Number: 04-AC-13

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 June 7, 2006, Hearing Officer Warren R. King issued the attached Decision, in which he concluded that the Office of the Architect of the Capitol ("the AOC") had not retaliated against Complainant Solomon because of his protected activity, in violation of Section 207(a) of the Congressional Accountability Act ("the CAA").

In his Complaint, Solomon, a former employee of the AOC's Senate Restaurants, alleged (1) that his termination by the AOC in December 2003 was in retaliation for his participation in earlier proceedings before the Office of Compliance, (2) that the AOC's initial denial of sick leave benefits for the period June 9-11, 2003, and its denial of his request for a copy of the decision of an AOC hearing officer who conducted an internal agency disciplinary hearing, were also in retaliation for his earlier participation in protected activities; and (3) that these alleged acts of retaliation created a retaliatory hostile work environment.

The Board has considered the decision in light of the record, the petition for review, and the parties' briefs. The Board is satisfied that the Hearing Officer applied the correct legal standards and that his conclusions are supported by substantial evidence. See Section

406 (c) of the CAA. Accordingly, the Board affirms the Hearing Officer's determination that the record does not establish that the AOC engaged in proscribed retaliation.

While we agree with the Hearing Officer's conclusion that Solomon failed to carry his burden of establishing that the denial of sick leave was retaliatory, we do not adopt his finding that the sick leave policy that the AOC applied to Solomon in this instance – namely, that requests for three or more consecutive days of sick leave had to be supported by a doctor's medical diagnosis – had been uniformly applied to other, similarly situated employees. Rather, we base our affirmance on Solomon's failure to establish that other employees were *not* required to provide a medical diagnosis to support three-day absences. As the Hearing Officer found, "Solomon presented no evidence that he was singled-out in the application of this policy, either in this instance or at any other time, or that the policy was not uniformly applied to all restaurant employees." In the absence of any evidence of disparate treatment or other evidence supporting his claim of retaliation, Solomon has failed to carry his burden of proving that he was the victim of retaliation, and his appeal must fail.

ORDER

Pursuant to Section 406(e) of the Congressional Accountability Act and Section 8.01(d) of the Office of Compliance Procedural Rules, the Board affirms the Hearing Officer's merits determination of no violation in this matter.

It is so ORDERED.

Issued, Washington, D.C.
March 8, 2007

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Decision of the Board of Directors was provided to the parties via first-class mail at the addresses below on the 8th of March, 2007. The complainant received actual service on the dates below:

FOR ANTICIPATED PICK UP ON MARCH 9, 2007

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Respectfully submitted,

/s/ Selviana B. Bates
Selviana B. Bates
Hearing Clerk
