

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

Anthony Katsouros)	
Appellant/Appellee)	
)	
v.)	
)	
Office of the Architect of the)	Case Numbers: 07-AC-48 (DA, RP)
Capitol,)	09-AC-10 (DA, FM, RP)
Appellee/Appellant.)	
)	
)	

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

ORDER DENYING REQUEST FOR RECONSIDERATION

On September 19, 2013, the Board of Directors issued a Decision and Order (“Decision”) in the above-captioned cases¹, affirming the Hearing Officer’s Decision, in part and reversing, in part. In its Decision, the Board affirmed the Hearing Officer’s finding, on remand, that the Appellee/Appellant (“Office of the Architect of the Capitol” or “AOC”) violated Section 201(a)(3) of the Congressional Accountability Act (“CAA”) by denying Appellant/Appellee’s (“Katsouros”) request for postponement of his December 2007 suspension hearing (*Katsouros I*, Case No. 07-AC-48 (DA, RP)). The Board reversed the Hearing Officer’s finding, on remand, that AOC also violated Section 201(a)(3) of the CAA when it failed to engage in the interactive process to determine a reasonable accommodation with respect to Katsouros’ May 8, 2008 termination hearing. (*Katsouros II*, Case No. 09-AC-10 (DA, FM, RP))

On October 17, 2013, Katsouros filed a Request for Reconsideration of the part of the Board’s Decision reversing the Hearing Officer. After a full review of the Petitioner’s request and supporting memorandum,² the Board denies the request.

I. Background

¹ These cases were joined by Order of the Board of Directors on January 21, 2011 and remanded to the Hearing Officer for further proceedings consistent with the Board’s Decision.

² Pursuant to Section 8.02 of the Procedural Rules of the Office of Compliance, the Board of Directors determined that the issues presented by Katsouros could be addressed sufficiently without additional pleadings; thus, a response to the request for reconsideration was not requested of the AOC.

Anthony Katsouros was employed by the AOC as a mechanic in the Elevator Shop, and made various Family and Medical Leave Act (“FMLA”), Americans with Disabilities Act (“ADA”), retaliation and hostile work environment claims. In December of 2007, while Katsouros was on an approved medical leave, the AOC conducted a disciplinary hearing which imposed a 10-day suspension. The evidence shows that Katsouros returned from medical leave on January 14, 2008, presumably ready to work. Upon his return to work, Katsouros was sent home to serve the 10-day suspension. After serving the 10-day suspension, Katsouros never returned to work. On February 12, 2008, Katsouros’ supervisor issued a proposal to terminate him based on his failure to follow leave procedures and his absences without leave. On May 15, 2008, a hearing was held on the proposed termination. Katsouros was not present at this hearing and on June 5, 2008, the Acting Architect issued a final decision upholding the termination. Katsouros filed FMLA, ADA, retaliation and hostile work environment claims as a result of his termination.

In a decision dated January 21, 2011, the Board joined the cases; affirmed the Hearing Officer’s dismissal of the counts alleging retaliation under Section 207 of the Act, creation of a hostile work environment, and interference with FMLA rights in *Katsouros I*; reversed the Hearing Officer’s dismissal of the counts alleging a failure to accommodate claim under the ADA in *Katsouros I*; reversed the Hearing Officer’s dismissal of the entire complaint in *Katsouros II*; and remanded the matter for further proceedings.

A. *Hearing Officer’s Decision on Remand*

Pursuant to the Board’s January 21, 2011 remand, the Hearing Officer issued a Decision and Order, finding that Katsouros was a qualified individual with a disability, of which the AOC had notice, and that his requests for accommodation by postponement of the suspension hearing were denied by the AOC, in violation of the ADA as applied by the CAA. The Hearing Officer ordered the AOC either to expunge the 10-day suspension from Katsouros’ file, or reschedule the disciplinary hearing for a time that reasonably accommodated Katsouros’ disability.

With respect to allegations relating to Katsouros’ termination, the Hearing Officer found that the medical documentation submitted in August and November 2007 used to support the request for postponement of the suspension hearing in 2007 was sufficient to support his postponement request of the termination hearing in 2008. Based on this finding, the Hearing Officer determined that the AOC was on notice that Katsouros needed a reasonable accommodation, placing the AOC under the obligation to engage in an interactive process. The Hearing Officer held that when the AOC did not engage in this process, it violated Section 201(a)(3) of the CAA. The Hearing Officer ordered that Katsouros be reinstated to his former position retroactive to June 5, 2008, with back pay and benefits.

B. *Board’s Decision*

Both parties filed Petitions for Review of the Hearing Officer’s Decision and Order and on September 19, 2013, the Board issued a Decision holding that, on remand, the Hearing Officer properly found that in *Katsouros I*, the AOC violated the CAA when it denied Katsouros’ request for accommodation to postpone the December 2007 disciplinary hearing. The Board determined that the rescission of the 10-day suspension and an award of backpay and benefits for that time period to be the appropriate remedy for this ADA violation.

With respect to the ADA claim in *Katsouros II*, the Board reversed the Hearing Officer's finding of an ADA violation and held that there was no record evidence that Katsouros made a request for leave or followed the AOC's leave procedures during his absence in 2008.

II. Standard of Review

Section 8.02 of the Office of Compliance Procedural Rules states that a party may move for reconsideration of a Board decision where the party can establish that the Board has "overlooked or misapprehended points of law or fact."

III. Discussion

In his motion for reconsideration, Katsouros reiterates the same arguments made on review. The Board thoroughly considered these arguments in its September 19, 2013 decision. Specifically, the Board disagreed with the Hearing Officer's finding that the medical documents used to support the request for postponement of the suspension hearing in 2007 were sufficient to support his postponement request for the termination hearing in 2008, but instead found that there was no evidence in the record that Katsouros made any attempt to comply with any procedure, written or oral, to request leave during this absence, or to document any medical disability that would have prevented him from complying with leave procedures, during the period between January 28, 2008 and May 15, 2008.

In light of the above, Katsouros failed to meet his burden of establishing that the Board had "overlooked or misapprehended points of law or fact." His arguments merely state his disagreement with the Board's decision and do not demonstrate how the Board's reversal of the Hearing Officer's decision with respect to the ADA claim in *Katsouros II* amounts to a misapprehension of law or fact. As Katsouros has failed to present any arguments which might lead the Board to reconsider its September 19, 2013 Decision, Katsouros' motion is denied.

ORDER

Pursuant to §8.02 of the Office of Compliance Procedural Rules, the Board DENIES Katsouros' request for reconsideration, as he has failed to establish that the Board has "overlooked or misapprehended points of law or fact."

It is so ORDERED.

Issued, Washington, DC

December 11, 2013