

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

John D. Sujat,)
Appellant,)
)
v.)
) Case Number: 13-AC-60 (AG, VT, VP)
Architect of the Capitol,)
Appellee.)
)
)

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 December 16, 2014, the Board of Directors (“Board”) issued a Decision and Order (“Decision”) in the above-captioned case, affirming the Hearing Officer’s finding of summary judgment in favor of the Architect of the Capitol (“AOC”) on John Sujat’s (“Sujat”) Veterans Employment Opportunities Act (“VEOA”) claim.

Sujat filed a request for reconsideration of the Board’s Decision. After a full review of Sujat’s request and supporting documents, the Board denies the request.¹

I. Background

Sujat is a Vietnam War veteran and claims to have over 32 years of government service. In January 2013, Sujat applied for a GS-13 construction representative position with the AOC. The vacancy announcement indicated that the successful candidate would be “the primary representative in charge of major building renewal and improvement projects, expected duration of 13 years, involving planning, design, pre-construction, construction, and close-out.”

The vacancy announcement was for one position, was temporary (not to exceed five years) and was non-restricted, which meant that all individuals including veteran, non-veteran, AOC, and non-AOC individuals could apply for the position. The AOC sought to fill the position through an on-line application system. The vacancy announcement also stated:

¹ Pursuant to Section 8.02 of the Procedural Rules of the Office of Compliance, the Board determined that the issues presented by Sujat could be addressed sufficiently without additional pleadings; thus, a response to the request for reconsideration was not requested of the AOC.

Welcome Veterans – The Veterans Employment Opportunities Act of 1998 (VEOA) gives veterans’ preference rights in the legislative branch to certain veterans as applied by the Congressional Accountability Act. Veterans’ preference is applied on this vacancy announcement. If you are a veteran and have been separated under honorable conditions, you must submit a copy of your Certificate of Release or Discharge from Active Duty (DD-214), or other proof of eligibility: Application for 10-Point Veterans’ Preference (SF-15), if applicable and Department of Veterans Affairs documentation of disability, if applicable.

While Sujat did answer a question from the electronic application that indicated that he had been a member of the U.S. armed forces, he failed to select the degree of his veterans’ preference. Although Sujat claims that he was entitled to a 10-point veterans’ preference, because he did not provide the required documentation in the vacancy announcement to show that he was entitled to ten points, the AOC only added an additional five points to his application score

Sujat’s application score was 98 points, which included the five veterans’ preference points. The AOC placed Sujat and the other candidates who advanced to the next round of the selection process on a candidate referral list. The AOC considered every candidate on the candidate referral list to be qualified for the position. The candidate referral list was forwarded to the Assistant Superintendent. The Assistant Superintendent was the hiring official and used the candidate referral list to select candidates for interviews. The Assistant Superintendent did not pick Sujat for an interview. The AOC interviewer/selection team interviewed several candidates from the candidate referral list for the position. The AOC claims to have hired the candidate whom it found to be the best qualified candidate for the position.

II. Hearing Officer’s Decision

The Hearing Officer found that Sujat did not adequately inform the AOC that he was entitled to ten preference points because he did not select the degree of his disability in his electronic application. The Hearing Officer concluded that the AOC did not violate Sujat’s veterans’ preference rights by awarding him only five points as opposed to ten points.

Nonetheless, the Hearing Officer assumed, for purposes of summary judgment, that Sujat should have received ten preference points. The Hearing Officer, however, found that because there was no evidence presented to suggest that the AOC would have selected Sujat, for interview or for the position, even if he had been awarded the ten points, the AOC should prevail on summary judgment. The Hearing Officer reasoned that upon receipt of Sujat’s application, the Assistant Superintendent gave it due consideration, and made his decision based on factors unrelated to the numerical scores of the applicants.

The Hearing Officer also found that Sujat did not submit any evidence to dispute the AOC’s reasoning for the selection of the successful candidate. In finding for the AOC on summary

judgment, the Hearing Officer ruled that Sujat made unsupported allegations of pre-selection and a post-hoc explanation that did not create a genuine dispute of fact.

III. Board's Decision

On December 16, 2014, the Board issued a Decision affirming the Hearing Officer's grant of summary judgment. The Board reasoned that, given the circumstances of this case, the AOC's addition of veterans' preference points to Sujat's numerical score and his placement on the candidate referral list, was all the preference due to Sujat. The Board also determined that the AOC had the right to select whom it deemed to be the best qualified candidate for the position.

IV. 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."

V. Discussion

In his request for reconsideration, Sujat makes primarily the same arguments he made on review. In his initial petition for review, he also argued he should have been awarded the construction representative position because of his veteran status, his work experience, his work accomplishments and his work awards. He also maintained that the AOC did not correctly comply with veterans' preference requirements. Further, he alleged that the selection process and selectee list was manipulated to select the successful candidate. In addition, he claimed that the selectee list was created "after the fact" to justify the hire of the successful candidate.

In its December 16, 2014 Decision, the Board determined that the construction representative position was a non-restricted position, which meant that veterans as well as non-veterans could apply for the position. The Board further concluded that Sujat failed to pick the percentage of his disability in compliance with the AOC's requirement for a candidate to receive preference points and provide the required documentation stated in the vacancy announcement to show that he was entitled to ten points. According to the December 16 Decision, the AOC's application of veterans' preference points to Sujat's application score and the placement of Sujat on the candidate referral list was all that Sujat was eligible to receive under the VEOA. Thus, the Board had held that the AOC appropriately awarded Sujat the preference points he was entitled to receive in view of his application.

As for the selection of the successful candidate, the Board previously concluded that the AOC was permitted to use its discretion to determine that the successful candidate was the best candidate for the position. The Board found that it did not matter whether five or ten veteran preference points were added to Sujat's application score; the AOC was only required to apply the points to Sujat's application score and place him on the candidate referral list.

With respect to the manipulation and fabrication of the hiring process allegations made by Sujat, in its December 16 decision, the Board concluded that Sujat failed to provide sufficient evidence to support these allegations and therefore could not overcome summary judgment. Further, in his request for reconsideration, Sujat has still failed to provide any evidence to support these allegations or any alleged misstatements made by the Board in its Decision. Indeed, Sujat has failed to submit any evidence that suggests that the Board overlooked any facts or law that should call for a reconsideration of the Board's Decision.²

Therefore, Sujat cannot meet his burden of establishing that the Board had overlooked or misapprehended points of law or fact. His most recent arguments merely restate his disagreement with the Board's Decision and do not show how the Board's Decision amounts to a misapprehension of law or fact. Moreover, the alleged misstatements he cites in his reconsideration are not determinative or material to suggest that the Board overlooked any facts or law that should call for a reconsideration of the Board's Decision.³

ORDER

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

It is so ORDERED.

Issued, Washington, DC

February 27, 2015

² Sujat's request for reconsideration also maintains that the Board reviewed the case based on subjective comparisons of candidates rather than a discrimination complaint against a veteran or veterans. Sujat requests that his complaint be reviewed as a discrimination complaint. The VEOA provides a preference to veterans in hiring in the Federal government. To the extent Sujat's allegation may be construed as one alleging discrimination based on military service, the allegation would fall under the Uniformed Services Employment and Reemployment Rights Act (USERRA). Sujat, however, did not raise a USERRA claim before the Hearing Officer below and is therefore barred from pursuing a USERRA claim on the non-selection in his request for reconsideration.

³ In his reconsideration, Sujat contends that the Board made misstatements in its December 16, 2014 Decision that purportedly show that the Board erred with its finding (i.e. debating whether Sujat should have received 10 preference points when the Hearing Officer and the AOC stated he should have).