

OFFICE OF COMPLIANCE

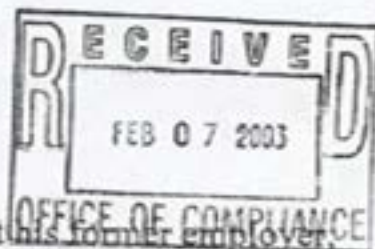
Viateur Commeree,
Employee

vs.

Office of the Architect of the Capitol,
Employing Office.

Case Number: 02-AC-30 (DA, RP)

ORDER



Complainant has previously prosecuted against his former employer, the Office of the Architect of the Capitol ("AOC"), four separate proceedings under the Congressional Accountability Act of 1995 ("CAA"). Those proceedings resulted in the filing of four separate complaints in the United States District Court for the District of Columbia. The District Court eventually dismissed the Complaints, and the United States Court of Appeals for the District of Columbia Circuit affirmed the dismissal.

In this fifth Complaint against AOC, complainant contends that AOC committed new acts of discrimination and retaliation against him when its counsel allegedly made deliberate misrepresentations of fact and law to the District Court and the Court of Appeals in the prior cases, thus prompting those courts to deny him relief.

In its Motion to Dismiss or for Summary Judgment, Respondent AOC has raised numerous challenges to the maintenance of the instant action. It is only necessary to consider one of those challenges, which is plainly dispositive of the matters at issue.

Under Section 402(a) of the CAA, in order to commence a proceeding in the Office of Compliance, a covered employee must begin by requesting counseling by the Office, and "[a] request for counseling shall be made not later than 180 days after the date of the alleged violation." Any complaint with respect to violations which allegedly occurred more than 180 days before the request for counseling is untimely, and a Hearing Officer is without jurisdiction to entertain the matter.

In this case, the request for counseling was made on May 2, 2002. Accordingly, this Hearing Officer is without jurisdiction to consider alleged violations which occurred prior to November 2, 2001.

At page 21 of his Opposition to Respondent's Motion for Summary Judgment, complainant cites his Exhibits K - X as containing the "intentional and deliberate misrepresentations of fact and law" which constitute the discriminatory and retaliatory acts and practices of which he here complains. All of those documents were submitted to the respective courts well before November 2, 2001; the latest document containing any representations of AOC (Exhibit W) is dated August 24, 2001. While Exhibit AA, not cited by Complainant as a basis of his complaint, is dated November 8, 2001, slightly after the November 2, 2001 cutoff date, that Exhibit merely quotes earlier (time-barred) representations in AOC's brief and makes no new representations.

Consequently, even if, *arguendo*, the employing office here, through its counsel, made intentionally false representations to the District Court and Court of Appeals concerning complainant's discharge and such representations could be held to constitute new and independent act of discrimination and retaliation against complainant, a matter which the Hearing Officer expressly declines to decide at this time, all such acts occurred more than 180 days prior to complainant's request for counseling herein. Thus, this Hearing Officer is without jurisdiction to consider such a complaint.

Accordingly, the complaint herein is dismissed for want of jurisdiction.

February 6, 2002

Curtis E. von Kann

Curtis E. von Kann
Hearing Officer