

OFFICE OF COMPLIANCE

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

_____)
Steven Patterson,)
Appellant,)
)
v.)
)
Office of the Architect of the)
Capitol,)
Appellee.)
_____)

Case Number: 08-AC-48 (RP)

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

DECISION OF THE BOARD OF DIRECTORS

Following a hearing on the merits, on November 4, 2010, Hearing Officer Susan R. Winfield issued a Final Order in a decision on remand from the Board of Directors. The Hearing Officer granted judgment for the Appellee on both of the Appellant’s retaliation claims, on the grounds that the Appellant had failed to prove that he had been retaliated against for engaging in protected activity. The Appellant timely filed a petition for review of the Hearing Officer’s decision. The Appellee filed a brief in opposition to the petition for review.

Upon due consideration of the Hearing Officer’s decision and order, the parties’ briefs and filings, and the record in this proceeding, the Board affirms the Hearing Officer’s granting of judgment for the Appellee. The Board agrees with the Hearing Officer that the Appellant failed to demonstrate that he was retaliated against because of his protected activity.

Specifically, Appellant failed to prove that the suspension by the former Inspector General of the Architect of the Capitol (“IG”) of an investigation of Appellant’s claims was in retaliation for Appellant’s participation in an Office of Compliance (“OOC”) mediation proceeding.

Although Appellant argues that there was only one week between the IG’s discovery of Appellant’s participation in OOC procedures and his decision to suspend the investigation, Appellant offered no other evidence of retaliation. Nor did he provide evidence to contradict credited testimony that the Appellee had nondiscriminatory reasons for suspending the IG’s investigation. *See St. Mary’s Honor Ctr. v. Hicks*, 509

U.S. 502, 515 (1993) (observing that temporal proximity alone cannot satisfy a plaintiff's burden of persuasion in light of an employer's nondiscriminatory reason for its actions).

Notwithstanding Appellant's argument that temporal proximity proved retaliation, there is no reason to disturb the Hearing Officer's conclusion that Appellant did not prove retaliation because her credibility findings are supported by ample evidence in the record. *See Sheehan v. Office of the Architect of the Capitol*, 08-AC-58 (CV, RP) (Jan. 21, 2011) (observing that "credibility determinations are entitled to substantial deference, because it is the Hearing Officer who 'sees the witnesses and hears them testify, while the Board and the reviewing court look only at cold records.'" (quoting *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408 (1962))); *Palace Sports & Entertainment v. NLRB*, 411 F.3d 212, 220 (D.C. Cir. 2005) (observing that the court "will not disturb the Board's adoption of an ALJ's credibility determinations 'unless those determinations are hopelessly incredible, self-contradictory, or patently unsupportable.'" (quoting *United Servs. Auto. Ass'n v. Nat'l Labor Relations Bd.*, 387 F.3d 908, 913 (D.C. Cir. 2004)) (internal quotations omitted)).

For the foregoing reasons, the Hearing Officer's decision to grant judgment for the Appellee **is affirmed**.

It is so ordered.

Issued: at Washington, D.C., July 27, 2011