

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

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**ROBERT SOLOMON,** )  
 )  
 **Complainant,** )  
 )  
 v. )  
 )  
 **OFFICE OF THE ARCHITECT** )  
 **OF THE CAPITOL** )  
 )  
 **Respondent .** )  

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**Case No. 02-AC-34(CV, RP)**  
**Date: October 24, 2003**

**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 May 9, 2003, the Office of Compliance entered into its records the attached decision of Hearing Officer Warren R. King in this proceeding. The Hearing Officer concluded that the Respondent did not (1) unlawfully deny the Complainant a reasonable accommodation for his religious beliefs or practices, (2) unlawfully retaliate against Complainant, nor (3) did Respondent create an unlawful hostile work environment for the Complainant. The Complainant timely filed a petition for review of that decision, and a supporting brief. The Respondent timely filed its opposition brief to the petition for review.

Upon due consideration of the Hearing Officer's Decision, the record and the parties' filings, the Board affirms the Hearing Officer's dismissal of the complaint. The Board is satisfied that the Hearing Officer's findings are supported by substantial record evidence, in that: (1) Complainant's religious accommodation claim fails because the accommodation would have posed an undue hardship on Respondent, (2) Complainant's retaliation claim fails because he did not meet his burden of establishing a connection between the protected activity and the actions complained of.<sup>1</sup>, and (3) Complainant failed to show that the conduct was sufficiently severe or pervasive to establish the elements of a hostile environment claim. *Harris v. Forklift Systems*, 510 U.S. 17 (1993).

## ORDER

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

*It is so ordered.*

Issued, Washington, D.C.: October 24, 2003

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<sup>1</sup> In view of our foregoing disposition we do not rule upon or adopt the Hearing Officer's conclusion that the Complainant's retaliation claim must fail because his "leave restriction" status did not amount to an actionable "adverse action". We have reserved ruling upon the scope of the anti-retaliation provision of the Congressional Accountability Act (Section 207, 2 U.S.C. 1317) until the appropriate case arises. See *Ziggy Bajbor v. Office of the Architect of the Capitol*, Case No. 01-AC-377 (RP) (2003); *Lawrence Hatcher v. Office of the Architect of the Capitol*, Case No. 96-AC-15 (CV, RP), (1998). We also find it unnecessary to rely upon the Hearing Officer's conclusion that the Complainant's failure to comply with the Respondent's internal leave request procedure barred his religious failure to accommodate claim. Cf. [re requests under the Family and Medical Leave Act], *Samuel J. Cavin v. Honda of America Manufacturing, Inc.*, 2003 U.S. App. LEXIS 20722 (6<sup>th</sup> Cir. 10/10/2003).

**CERTIFICATE OF SERVICE**

I hereby certify that on this 24<sup>th</sup> day of October 2003, I delivered a copy of this Decision of the Board of Directors to the following parties by the below identified means:

First-Class Mail Postage-Prepaid

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Kisha L. Harley  
Office of Compliance