



September 29, 1999

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RE: Stanley E. Wooten, Appellant
versus
Office of the Architect of the Capitol, Appellee

Case No. 98-AC-29(CV,RP)

Dear Gentlemen:

The attached Decision of the Board of Directors of the Office of Compliance in the above-referenced case has this date been entered into the records of the Office of Compliance, pursuant to section 406(e) of the Congressional Accountability Act.

Section 407 of the Congressional Accountability Act provides that any party aggrieved by a final decision of the Board of Directors under section 406(e) may file a petition for review with the United States Court of Appeals for the Federal Circuit not later than 90 days after entry of the decision in the records of the Office.

A certificate of service is also attached.

Sincerely,

A handwritten signature in cursive script that reads "Ricky Silberman".

Ricky Silberman
Executive Director

Attachments

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

STANLEY E. WOOTEN)	
Appellant,)	
)	
v.)	Case No. 98-AC-29 (CV, RP)
)	
THE OFFICE OF THE ARCHITECT)	
OF THE CAPITOL)	
Appellee.)	

Before the Board of Directors: Glen D. Nager, Chair; Virginia A. Seitz, Member.

DECISION OF THE BOARD OF DIRECTORS

Appellant, Stanley E. Wooten (appellant or Mr. Wooten), appeals from the Hearing Officer’s decision finding against his claims of employment discrimination based on race and retaliatory discharge in alleged violation of sections 201(a)(1) and 207(a) of the Congressional Accountability Act of 1995 (the CAA or the Act), 2 U.S.C. §§ 1311(a)(1), 1317(a). For the reasons set forth below, the Board affirms the Hearing Officer’s decision.

I.

The facts found by the Hearing Officer are as follows: Appellant is an African-American. Decision and Judgment, (Decision) No.98-AC-29 (CV, RP) (May 20, 1999) at 1. He was hired on May 19, 1997 for a one-year probationary period as an Engineering Technician (Mechanical) GS-802-10. Id.

The Engineering Technician job was a new, skilled position in the field of computer-assisted design (CAD) in the Technical Support Section of the Office of the Architect of the Capitol (AOC or respondent). Id. at 1, 4 (Finding of Fact (FOF) No.1). The position required “extensive knowledge of computer programs, broad in-depth knowledge of mechanical engineering design standards,” and “the ability to work independently at a journeyman-level expertise.” Id. at 4 (FOF No. 1.a., b.) (internal quotations omitted).

Appellant worked in a unit of seven professionals. Appellant’s supervisor, Mr. Weber, a Caucasian, hired both appellant and the other African-American professional employed in the unit at the time of appellant’s employment there. Id.; see also id. at 7-8 (FOF No. 5. a.).

Like all members of his unit, appellant was expected to work independently. Id. at 4

(FOF No. 2). Like other employees, appellant did not receive formal written evaluations. Id. at 5 (FOF No.3.c.). Rather, he received verbal feedback. Id.

Sometime around January 1998, Mr. Weber became disturbed by apparent deficiencies in appellant's job performance, id. at 6-7, 10 (FOF Nos. 6, 7.a), as well as by appellant's "difficulties in conforming to standards of behavior in the government sector," such as irregularities in time and attendance, use of government time and equipment for private projects, and over-use of the telephone, id. at 12 (FOF No. 7.c.). On or about January 12 or 13, 1998, a meeting reviewing appellant's CAD work on the Capitol Police Building revealed that, after three months' inputting data on this relatively simple project, there remained many deficiencies, including missing information involving nine basic types of data. Id. at 8-11 (FOF Nos. 6. a., 7.a.). Appellant was given deadlines to complete the work. Id. at 9 (FOF No. 6. a.).

Shortly thereafter, Mr Weber contacted the AOC Equal Employment Opportunity and Fair Employment Office for assistance in communicating with appellant. He was referred to Mrs. Bowman-Williams, an experienced African-American Human Resources specialist. Id. at 3, 8 (FOF No. 6.b.). She contacted appellant, who then filed a request for informal advice on Fair Employment Practices (FEP) matters concerning his communication problems with Mr. Weber. Id. at 9. (FOF No. 6.b.-c.). However, after counseling, appellant did not bring any claim of racial discrimination. Id. (FOF No. 6.d.). Rather, according to Mrs. Bowman-Williams, it was not "until a long time after he had been told of the proposal to terminate his employment" that appellant first raised issues of racial discrimination with her. Id. (FOF No. 6.e., quoting transcript (tr.) at 755).

Appellant continued to have problems performing his duties at the standard expected of him and in the time allotted. Id. at 9-12 (FOF No. 7.). He appeared to lack the requisite skill in engineering drafting and to have difficulties "understanding about how a building was put together and how systems fit into the building." Id. at 10-11 (FOF. No. 7.a.3., quoting tr. at 547). In particular, Mr. Weber found that appellant's productivity on the West House Garage assignment was "appalling and more akin to a GS-5 than a GS-10." Id. at 11 (FOF No. 7.b.2., quoting tr. at 549). The Assistant Supervisor of Technical Support and the Director of Engineering also reviewed appellant's work on this project; and they echoed Mr. Weber's conclusion that the quantity of appellant's work fell below expected productivity. Id. at 11-12 (FOF No. 7.b.).

On May 8, 1998, before the end of the probationary period, the AOC terminated appellant's employment for continuing failure to complete assigned duties satisfactorily. Id. at 1, 8 (FOF No. 8).

II.

Appellant filed a complaint with the Office of Compliance alleging that he was terminated because of race, in violation of section 201(a)(1) of the CAA, and in alleged retaliation for engaging in activities protected by the Act, in violation of section 207(a) of the CAA. In particular, appellant asserted that he was subjected to racial harassment, a racially

hostile atmosphere, disparate treatment, and retaliation for his complaints of racial discrimination to the Human Resources Office of the AOC.

As provided under section 405 of the CAA, 2 U.S.C. § 1405, a full evidentiary hearing was held before a Hearing Officer. Appellant, represented by counsel, called three co-workers as witnesses and testified on his own behalf. He introduced 18 exhibits. The AOC called three witnesses, Mr. Weber, appellant's supervisor; Mrs. Bowman-Williams, the Human Resources specialist who had counseled appellant and Mr. Weber; and Mr. DeHanas, another AOC employee who had reviewed appellant's work. The AOC also presented 28 exhibits, including copies of appellant's computer drawings, marked with the asserted errors and omissions, and the corresponding time sheets.

The Hearing Officer concluded, based on the documentary evidence and her assessment of the testimony, that appellant had failed to prove any violation of the CAA. She supported that conclusion with detailed findings of fact respecting appellant's allegations; she also made separate conclusions of law (COL) based on her evidentiary findings. The Hearing Officer found that appellant had failed to sustain his ultimate burden of proof on his claim of discrimination, id. at 14 (Conclusion of Law No. 2.), or to prove the essential elements of his claim of retaliatory discharge, id. at 16 (COL No. 3).

With respect to appellant's claim of racial harassment by his supervisor, the Hearing Officer found that appellant's supervisor, Mr. Weber, had exhibited no racial animus against appellant. Id. at 7-8 (FOF No. 5). The Hearing Officer found that Mr. Weber had hired and worked with a number of African-American men besides appellant. Id. Indeed, in 1997, Mr. Weber had taken the opportunity to rehire at a higher, professional level an African-American who had previously worked for the AOC in his unit. Id. Moreover, the Hearing Officer found that Mr. Weber had chosen not to terminate appellant's employment for cause when he learned that appellant had failed to reveal an arrest record on his employment application. Id. The Hearing Officer also credited the analysis of Mrs. Bowman-Williams, who believed after meeting both appellant and Mr. Weber that appellant's "hostile" exchanges with Mr. Weber were job-related and reflected different styles of communication, rather than racial hostility. Id. at 8 (FOF No. 5.c.).

With respect to appellant's claim of a racially hostile environment, the Hearing Officer found that appellant's co-workers had helped him in the workplace and did not isolate or denigrate him. Id. (FOF 4. a.-c.). The Hearing Officer also found that appellant was not subjected to disparate treatment with regard to perquisites of the job, such as telephone, parking spaces and training, id. at 5 (FOF No. 3); that his failure to secure a parking space after initially declining one was due to his place on the waiting list, id. at 6 (FOF No. 3.b.2); that others had the same type of telephone access as he had, id.; that he participated in a number of training programs, id. (FOF No. 3.b.3.); and that incidents which appellant viewed as having a racial motivation did not, id. at 13 (FOF No. 8.b.2.).

The Hearing Officer further found that appellant's claim of retaliatory discharge was not

supported by the evidence. Id. at 9 (FOF No. 6), 16 (COL No. 3). She credited the testimony of Mrs. Bowman-Williams that appellant did not make a complaint of racial discrimination until long after he had received notice of termination, id. at 9 (FOF No. 6.a.), and she concluded that appellant's contacts with the Human Resources Office were not sufficient to establish any activity protected by the CAA, id. at 16 (COL No. 3.a.).

Finally, the Hearing Officer found that the evidence supported the AOC's stated reason for terminating appellant: his continual failure to complete his assigned job duties. Id. at 1, 12, 16 (FOF No. 8; COL No. 4.). The Hearing Officer made detailed findings respecting the inadequacies of appellant's performance on the CAD work for the Capitol Police Building and West House Garage projects, which led to Mr. Weber's decision to terminate appellant's employment before the end of his probationary term. Id. at 9-12 (FOF No. 7). The Hearing Officer further found that Mr. Weber's assessments of appellant's performance as substandard were confirmed by other employees of the AOC on both the Capitol Police Building project, id. at 10 (FOF No. 7.a.1.), and the West House Garage project, id. at 11-12 (FOF No. 7.b.2). The Hearing Officer did not find appellant's explanations for the deficiencies of the Capitol Police Building drawings to be credible, id. at 10 (FOF No. 7.a.2.); and she further found that his testimony respecting the West House Garage did not rebut the AOC's case that there were more efficient methods to complete the work in a timely fashion, id. at 12 (FOF No. 7.b). Finally, the Hearing Officer found that appellant's witness lacked knowledge of these work products, id. at 3, and that "credibility rarely lies with Mr. Wooten's testimony," id. at 13 (FOF No. 8.b.3.). She therefore concluded that there was a legitimate, non-pretextual reason for appellant's termination.

III.

Under section 406 of the CAA, "[t]he Board shall set aside a decision of a hearing officer if the Board determines that the decision was—

- (1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;
- (2) not made consistent with required procedures; or
- (3) unsupported by substantial evidence."

2 U.S.C. § 1406(c). "In making determinations under subsection (c), the Board shall review the whole record, or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error." 2 U.S.C. § 1406(d). Applying these standards, and after review of the record as a whole, the Board affirms the Hearing Officer's decision.

Appellant does not argue that the Hearing Officer misapplied the relevant legal standards. Rather, appellant takes issue with a number of the subsidiary factual findings on which the Hearing Officer's ultimate conclusions are based. Appellant also argues that the Hearing Officer failed to admit and consider some deposition testimony that allegedly would have been favorable to appellant. See Appellant's Supporting Brief (Brief) (July 17, 1999) at 7-10.

In reviewing these arguments, we are bound to employ the long-standing definition of the “substantial evidence” test. Specifically, we determine whether the record contains “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474, 477 (1951).

Doing so, we find that the record adequately supports the Hearing Officer’s finding that appellant’s termination was not racially motivated. There is proof that appellant was treated no differently in the workplace than other employees of the AOC. See, e.g., tr. at 395; 411-12 (no written evaluations provided to other Caucasian and African-American probationary employees); tr. at 425, 480, 621-22 (parking); tr. at 656-58, Respondent’s Exhibit Nos. 12, 13 (training); tr. at 425, 621-23 (telephones). There is proof that appellant was not subjected to a hostile work environment. See, e.g., tr. at 155-59, 416, 422-23, 712-13 (single “off-color” remark during time appellant employed in AOC); tr. at 431-32 (members of unit assisted appellant); tr. at 423-24, 732-33 (members of unit participated in social discussions). Finally, there is testimony to support the conclusion that Mr. Weber did not demonstrate racial animus. Tr. at 577-79 (Mr. Weber hired both appellant and another African-American professional employee); tr. at 755, 769, 771, 775-76, 782-88 (disagreements between appellant and Mr. Weber reflected differences of political philosophy, culture, and communication style).

There is also adequate evidence in the record to support the Hearing Officer’s finding that appellant was not terminated in retaliation for engaging in activities protected by section 207 of the CAA. See, e.g., Complainant’s Exhibit No. 16 (Mrs. Bowman-Williams’ file memo makes no mention of racial discrimination – appellant’s “main concern expressed was his perception that his supervisor has a problem in communicating with him”); Respondent’s Exhibit No. 19 (appellant’s AOC EEO/FEP Complaint form); tr. at 171 (appellant testifies that he told Mrs. Bowman-Williams, “I just need some help communicating with my manager.”); see also tr. at 753-55, 769-71, 781-88. There is also proof in the record to support the Hearing Officer’s conclusion that any inferences that could be drawn between the timing of appellant’s contact with Mrs. Bowman-Williams and Mr. Weber’s actions are “overwhelmed by evidence of inadequate job performance.” See, e.g., Respondent’s Exhibit Nos. 16, 33, 34, 48, 49; Complainant’s Exhibit No. 6; see also tr. at 166-170, 486-506, 547-69, 715-19, 811-16, and discussion of appellant’s job performance, infra at 5-6.

Indeed, the record fully supports the Hearing Officer’s findings that appellant lacked credibility and that appellant’s employment was terminated before the end of the probationary period because he failed to meet the legitimate expectations of the job. See, e.g., Complainant’s Exhibit Nos. 5, 6, 8, 9, 11; Respondent’s Exhibit Nos. 16, 33, 34, 35, 46, 48, 49A-J, 51; tr. at 166-170, 486-506, 493-509, 547-569, 715-719, 811-816. Appellant’s position description indicates that his principal job was the preparation of “As-Is” computer-aided design master files. See Respondent’s Exhibit No. 1. To prepare accurate CAD files independently, appellant had to possess mastery of CAD drafting methods, “broad in-depth knowledge of mechanical engineering design standards, and . . . [the] [a]bility to interpret architectural and engineering design drawings. . . .” Id.

The record indicates that appellant was unable to perform his job duties satisfactorily on either the Capitol Police Building or the West House Garage project. After three months on the Capitol Police Building project, appellant's productivity was apparently below expectations and many types of basic data were omitted or entered incorrectly. See, e, g., tr. at 497-506, 716; Respondent's Exhibit Nos. 16, 34. These basic problems apparently persisted on the West House Garage project. See, e, g., tr. at 718-19 (quality and quantity of appellant's work "very low"); Respondent's Exhibit No. 35 (output "inconsistent with expected performance by an Engineering Technician at any level normally employed at the Architect of the Capitol and is totally unacceptable at Grade 10."). Indeed, although Mr. Weber and others pointed out these basic deficiencies to appellant and explained the standards expected of him in meetings, by memo, and through formal mark-ups of his work, see, e, g., Respondent's Exhibit Nos. 16, 33, 34, 51; tr. at 497-500; 715-20, appellant continued to perform below expected standards. See, e, g., Respondent's Exhibit No. 33 (corrected drawings still do not include required data; "inappropriate" to provide "remedial drafting or interpretation instruction as to drafting conventions"). The record evidence thus fully supports the conclusion that the Architect terminated appellant's employment for "continuing failure to satisfactorily complete [his] assigned job duties." Complainant's Exhibit No. 11.

In arguing to the contrary, appellant cites to record evidence that allegedly contradicts the findings of the Hearing Officer. Most of the allegedly contradictory evidence is either irrelevant, see e.g., Brief at 2 (presence or absence of staff member at conversation), or does not support the conclusion that appellant urges, compare e.g., Brief at 5, 10 (arguing that work on Capitol Police Building was completed only a few weeks beyond target date) with Respondent's Exhibit Nos. 16, 34, 51; tr. at 497-506, 716-17 (Capitol Police Building drawings incomplete, have a number of deficiencies).

Appellant also seeks to impeach Mr. Weber's credibility, alleging, among other things, that Mr. Weber substantially inflated the times that it took appellant to input data on the West House Garage Project. Brief at 2, 7-8, 11, 29. The alleged discrepancies between the time sheets and the corresponding drawings to which appellant points are not substantial. Compare, e, g., Respondent's Exhibit No. 48 (time sheet for March 5, 1998) with No. 49d (corresponding drawing); see also tr. at 555-56, 814-17. Testimony revealed only that Mr. Weber apparently overestimated the time by one hour, while appellant apparently underestimated it by one hour. Tr. at 814-17. Moreover, there is no support in the record evidence cited by appellant for his allegation that Mr. Weber deliberately falsified the time records. See, e, g., tr. at 672; see also tr. at 812-17. Appellant was given the opportunity further to challenge these exhibits but, on advice of counsel, declined. Tr. at 698-99. Finally, appellant did not refute the conclusion reached by the Hearing Officer that this type of work should have been completed in less than appellant's estimated four hours had appellant copied identical elements, rather than laboriously redrawing the data. Tr. at 814-817; see also tr. at 557-560.

Appellant also argues that the chronology of events demonstrates that his termination was motivated by retaliation for his complaints to Mrs. Bowman-Williams "that he was being treated unfairly and suspected that the reason was race." Brief at 25. To be sure, there are scattered

mentions of race in appellant's submissions to Mrs. Bowman-Williams. See, e.g., Complainant's Exhibit No. 18. But the conflicts between appellant and Mr. Weber are, as Mrs. Bowman-Williams testified, also reasonably interpreted as expressing differences in outlook, political philosophy, and communication style. Tr. at 753-55, 769-70, 781-82. Other evidence in the record, including appellant's own testimony, tr. at 171, directly supports this construction. See, e.g., Complainant's Exhibit No. 16 (appellant's FEP Complaint); Respondent's Exhibit No. 19 (Mrs. Bowman-Williams' contemporaneous file memo).

In support of his theory of retaliation, appellant alleges that, until he made the allegedly race-based complaints, Mr. Weber had not found fault with appellant's conduct or performance and that Mr. Weber subsequently issued a formal warning with "no allegations whatsoever mention[ing] a failure to comply, or poor job performance against the Complainant." Brief at 27. However, there is record evidence that Mr. Weber's dissatisfaction with appellant's conduct and performance pre-dated appellant's contact with Mrs. Bowman-Williams; in fact, appellant's own statement of the FEP problems that he was experiencing in January include productivity, conduct, and performance issues similar to those raised by memo and orally after that FEP contact. Compare Respondent's Exhibit No. 20 with Complainant's Exhibit No. 6, Respondent's Exhibit Nos. 16, 33, 34; tr. at 299, 300, 477-79, 497-506, 519-22. Accordingly, the evidence to which appellant points is not legally sufficient to allow rejection of the Hearing Officer's finding. The Hearing Officer's decision is supported by substantial evidence in the record and may not be reversed simply because appellant can point to some evidence in the record that is contrary to the decision. See Arkansas v. Oklahoma, 503 U.S. 91, 113 (1992) ("A court reviewing an agency's adjudicative action should accept the agency's factual findings if those findings are supported by substantial evidence on the record as a whole. The court should not supplant the agency's findings merely by identifying alternative findings that could be supported by substantial evidence.") (citation omitted).

Appellant also argues that the Hearing Officer "arbitrarily and capriciously" refused to admit the deposition testimony of Joseph Shelton, whom appellant alleges was in the best position to judge appellant's work product. Brief at 7, 8, 10. But the majority of this deposition testimony supports the findings respecting the inadequacies of appellant's job performance. See, e.g., Deposition at 29, 30, 39, 43, 45. Moreover, the allegedly supporting or contradictory statements on which appellant relies are either irrelevant or taken out of context. See, e.g., Deposition at 25 (every job is different). Thus, we cannot see how appellant was harmed by the exclusion of the evidence; nor do we find any abuse of discretion in the exclusion.

IV.

Accordingly, for the reasons set forth above, the Board affirms the Hearing Officer's decision.

It is so ordered.

Issued, Washington, D.C., September 29, 1999.