OFFICE OF CONGRESSIONAL WORKPLACE RIGHTS
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Jorge Torres-Velez, Appellant, v. Office of the Architect of the Capitol, Appellee.	)	Case No. 17-AC-36 (FL, RP, CV)

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

DECISION OF THE BOARD OF DIRECTORS

The appellant, Jorge Torres-Velez, proceeding pro se, has petitioned the Board to review the Hearing Officer's May 25, 2018 Order, which granted a motion to dismiss filed by the appellee, the Office of the Architect of the Capitol ("AOC"), as to some of Torres-Velez's claims alleging violations of the Congressional Accountability Act ("CAA"), and which entered summary judgment in favor of the AOC on all claims that were not dismissed. Upon due consideration of the Hearing Officer's orders, the parties' briefs and filings, and the record in these proceedings, the Board affirms the Hearing Officer's Order, as modified herein.

I. Background and Procedural History

At all relevant times, Torres-Velez has been employed by the AOC at the Capitol Visitor Center ("CVC") as the Restaurant Events Manager at a GS-12 pay grade. He is also the Contracting Officer's Technical Representative ("COTR") for the contractor that serviced the CVC and Senate restaurants. Torres-Velez filed a request for counseling on July 19, 2017, and on February 16, 2018, following counseling and mediation, he filed a complaint with the Office of Congressional Workplace Rights in which he claimed "unfair [job] classification, hostile work environment, because of sex and reprisal and. . . denial of equal pay, in violation of section(s) 201, 203, and 207 of the Congressional Accountability [Act]."

Because the complaint did not include any particulars about the events, dates, times or circumstances of these claims, the Hearing Officer ordered Torres-Velez to file an amended complaint. On February 27, 2018, Torres-Velez filed an amended complaint which included an attachment entitled, "Continuation of [OOC] Complaint Section A." In it, he asserted that in June 2015, his former supervisor at the CVC, Miguel Lopez, was reassigned from the CVC Restaurant and Special Events Division ("RSED"). Torres-Velez claimed that, as a result, from June 2015 through March 2017, he remained in the RSED and "assumed and managed all areas previously managed by Mr. Lopez (pay grade GS 14) minus the Visitors Center's special event section." Torres-Velez further alleged that in May 2016, he requested the Deputy Chief Executive Officer of the CVC, Nik Apostolides, to "increas[e his] position to GS 13 and provide [him] support (staff) to help accomplish the food service mission," but that Apostolides declined to do so.

Torres-Velez also contended that a desk auditor who undertook to determine the proper grade categorization for his job duties spent insufficient time (no more than 35 minutes) in April 2017 before reaching a conclusion that his work responsibilities were properly categorized at a GS-12 level. Torres-Velez further averred that he requested that Apostolides upgrade his position a second time, but that shortly thereafter, Apostolides reassigned Susan Sisk, the CVC Gift Shops General Manager, as Director of a new Retail division that combined RSED with the Gift Shops. Torres-Velez stated that he:

> felt disappointed that as a male staff leader for the CVC[,] I was being set aside or punished if you will by the CVC not trusting me to operate and run the food service program with the proper grade entitlement but instead gave the opportunity to a female employee that was well into the CVC's leadership favor of trust. (sic).

Torres-Velez also alleged that he had been "tar[red] and feather[ed]" professionally by the AOC Senate Superintendent, who allegedly stated that Torres-Velez was not well regarded by Senate Restaurant Operations officials and that he was "CVC's problem."

As discussed below, the AOC also construed Torres-Velez's claims as challenging other sundry actions including his non-selection for CVC positions in 2013, 2014, and 2016, a decision to move his office in 2015, and AOC's appointment of two COTRs to the restaurant contract in 2014. It filed a motion to dismiss these claims for lack of jurisdiction, on the ground that they were untimely filed. The AOC also moved for summary judgment on Torres-Velez's remaining claims, namely, that the AOC: (1) discriminated against him based on sex when it did not promote him following a 2017 desk audit; (2) discriminated against him based on sex under the Equal Pay Act when it failed to pay him at a rate comparable to Sisk; (3) retaliated against him in reprisal for

raising his discrimination claims; and (4) created a hostile work environment based on the foregoing actions. By Order dated May 22, 2018, the Hearing Officer granted the AOC's motion in its entirety.

Torres-Velez has filed a petition for review ("PFR") of the Hearing Officer's Order, and the AOC has timely filed a brief in opposition to the PFR.

II. Standard of Review

The Board's standard of review requires it to set aside a Hearing Officer's decision if it determines the decision to be: (1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with the law; (2) not made consistent with required procedures; or (3) unsupported by substantial evidence. 2 U.S.C. § 1406(c); *Rouiller v. U.S. Capitol Police*, Case No. 15-CP-23 (CV, AG, RP), 2017 WL 106137, at *6 (Jan. 9, 2017). 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).

III. Analysis

A. Motion to Dismiss

As discussed above, the AOC construed Torres-Velez's amended complaint as challenging, inter alia, his non-selection in 2013, 2014, and 2016, the decision to move his office, failure of the AOC to pay him at the grade of GS-13 after Lopez's departure in 2015, and the appointment of additional COTRs in 2014, and it sought dismissal of these claims for lack of subject matter jurisdiction because they were untimely filed. The Hearing Officer, however, determined that a review of the record in this case did not support the breadth of the AOC's recitation of his claims, noting that no mention of these events appeared in the amended complaint continuation pages. Nonetheless, she addressed the claims as outlined by the AOC in its motion, reasoning that issues not specifically identified in the amended complaint may have been raised in counseling and mediation that would justify the recitation of these claims.

1. Non-selections

As to Torres-Velez's non-selections in 2013, 2014, or 2016, the Hearing Officer noted that he made no allegations at all about them in his amended complaint, nor did he offer any explanation of how his non-selections violated the CAA. Accordingly, she dismissed these claims for failure to provide basic written notice of them in violation of Procedural Rule 5.01(c)(1)(v), which requires, inter alia, "[a] description of the conduct being challenged, including the date(s) of the conduct." Alternatively, the Hearing

Officer also concluded that these claims were subject to dismissal for lack of subject matter jurisdiction because, even had they been properly presented, they were untimely because they arose well before the 180-day period prior to the filing of the request for counseling, and Torres-Velez had presented no information that would justify tolling the timeframe for filing.[1]

We agree with the Hearing Officer that the lack of any mention of Torres-Velez's non-selections in 2013, 2014, or 2016 in his pleadings precludes their consideration in the instant proceedings. Accordingly, we affirm the Hearing Officer's dismissal for failure to provide basic written notice of the non-selection claim, in violation of Procedural Rule 5.01(c)(1)(v). We also agree, however, that the record does not support the AOC's broad construction of Torres-Velez's pleadings to include any claims concerning these events, and we are unconvinced that Torres-Velez was attempting to challenge them in the context of this case.[2] Under these circumstances, we find it unnecessary to reach the alternate grounds upon which the Hearing Officer granted the AOC's motion to dismiss, i.e., for lack of subject matter jurisdiction over any such claims as untimely filed.

2. Office Move

The Hearing Officer also granted the AOC's motion to dismiss insofar as it concerned any claim relating to the move of Torres-Velez's office in 2015, determining that such a claim would also be untimely. She recognized that under certain circumstances, an occurrence outside of the limitation period for filing a claim may be included in the claim where there is evidence of a continuing violation, *see AMTRAK v. Morgan*, 536 U.S. 101, 115 (2002), and further, that Torres-Velez contended in his opposition to the AOC's motion that the move of his office was part of a hostile work environment claim, which we discuss below. She concluded, however, that the move

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[1] This case was filed before the enactment of the CAA of 1995 Reform Act, Pub. L. No. 115-397, the provisions of which apply to all cases initiated on or after June 19, 2019. Accordingly, the pre-Reform Act CAA administrative dispute resolution procedures apply here. Under those procedures, before bringing a claim for violation of the CAA, an employee must first complete counseling and mediation with the OCWR. 2 U.S.C. § 1408(a) (2006). The request for counseling must be made "not later than 180 days after the date of the alleged violation." 2 U.S.C. § 1402(a). Failure to complete counseling and mediation in the manner prescribed by the Act deprives the Board of jurisdiction over the ensuing claims. *Blackmon–Malloy v. U.S. Capitol Police Bd.*, 575 F.3d 699, 705 (D.C. Cir. 2009); *Gordon v. Office of the Architect of the Capitol*, 928 F. Supp. 2d 196, 204 (D.D.C. 2013); *Ross v. U.S. Capitol Police*, 195 F. Supp. 3d 180, 195 (D.D.C. 2016).

[2] Nonetheless, we consider below any contention that Torres-Velez may be making that his non-selections were part of a hostile work environment.

was a discrete single act, that it occurred on a date certain, and that, because the office move occurred in 2015 and the claim was filed in 2017, it must be dismissed as untimely.

As with the non-selections, however, we note that no mention of the office move appears in Torres-Velez's amended complaint. Accordingly, that failure warrants the exclusion of them from the proceedings in this case for failure to provide basic written notice of them in violation of Procedural Rule 5.01(c)(1)(v), except insofar as Torres-Velez alleged in his opposition to the AOC's motion to dismiss that they were part of a hostile work environment, which we discuss below. Under these circumstances, therefore, we find it unnecessary to consider whether they must also be dismissed for lack of subject matter jurisdiction as untimely filed.

3. Other Actions by the AOC

The Hearing Officer also granted AOC's motion to dismiss, on timeliness grounds, all other claims by Torres-Velez that predated January 19, 2017, that are not part of a continuing violation theory (discussed below). Thus, she concluded that Torres-Velez's claims about the appointment of COTRs to the restaurant contract in 2014 concerned discrete, easy to identify acts, and that Torres-Velez was clearly aware of these appointments.

As with the non-selections and the office move, however, we note that no mention of the COTR appointments appears in Torres-Velez's amended complaint or the attachments thereto. However, Torres-Velez does discuss these appointments in his opposition to the AOC's motion to dismiss, contending that the two Special Events Coordinators were not appointed as "alternate" COTRs, but instead were appointed as primary COTRs, who allegedly failed to perform their assigned duties. Under these circumstances, we agree that Torres-Velez's pleadings can fairly be construed as challenging these appointments. Because the discrete act of appointing the two individuals as COTRs occurred in 2014, however, we agree with the Hearing Officer that any claims concerning these appointments must be dismissed as untimely, except insofar as the Hearing Officer considered them in the context of Torres-Velez's hostile work environment claims, which we discuss below.

Finally, as noted, Torres-Velez claims that, beginning in 2015, the AOC violated the Equal Pay Act each time he was paid as a GS-12, despite allegedly doing similar work as Sisk who was paid as a GS-13 and later a GS-14. The Hearing Officer determined that Title VII triggers a new charging period whenever the employer issues paychecks using a discriminatory pay structure. Therefore, each time Torres-Velez was paid as a GS-12, while allegedly doing the same work as Sisk, the Hearing Officer found that Torres-Velez acquired a cause of action for Equal Pay Act discrimination. Accordingly, the Hearing Officer dismissed as untimely filed all such claims of

discrimination based on violations of the Equal Pay Act that arose prior to January 19, 2017, i.e., more than 180 days before he requested counseling on July 19, 2017.

The AOC also contends that Torres-Velez was attempting to raise a claim of discriminatory underpayment based on the failure of the AOC to pay him at the grade of GS-13, despite the fact that he allegedly assumed the duties of his former supervisor, Lopez, after Lopez was reassigned in April 2015. The Hearing Officer also dismissed any such claim as untimely.

For the reasons discussed below, however, it is not necessary to reach the issue whether Torres-Velez's Equal Pay Act claims were timely filed because, even assuming that they were, the AOC is entitled to summary judgment as to all such claims.

B. Summary Judgment

1. Summary Judgment Standard

We review a decision granting a motion for summary judgment *de novo*. *Patterson v. Office of the Architect of the Capitol,* No. 07-AC-31 (RP), 2009 WL 8575129, at *3 (OOC Apr. 21, 2009). Summary judgment is appropriate if there are no genuine issues of material fact and the movant is entitled to summary judgment as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986); OOC Procedural Rule 5.03(d). In determining whether the nonmoving party has raised a genuine issue of material fact, the Board must view the evidence in the light most favorable to the nonmoving party and must draw all reasonable inferences in that party's favor. *U.S. Capitol Police & Lodge 1, FOP/U.S. Capitol Police Labor Comm.*, No. 16-LMR-01 (CA), 2017 WL 4335144, at *3 (OOC Sep. 26, 2017); *see also Talavera v. Shah*, 638 F.3d 303, 308 (D.C. Cir. 2011).

To defeat a motion for summary judgment, the non-moving party must "designate specific facts showing that there is a genuine issue for trial," *Celotex Corp. v. Catrett,* 477 U.S. 317, 324 (1986), and the moving party can establish its entitlement to judgment by showing the lack of evidence to support the non-moving party's case. *Conroy v. Reebok Int'l,* 14 F.3d 1570, 1575 (Fed. Cir. 1994); *Eastham v. U.S. Capitol Police Bd.*, No. 05-CP-55 (DA, RP), 2007 WL 5914213, at **3-4 (OOC May 30, 2007) (affirming summary judgment when complainant "failed to proffer evidence" that would permit the inference of unlawful conduct required to establish complainant's prima facie case). The non-moving party is required to provide evidence in support of his claims, not merely assertions, allegations, or speculation. *See Solomon v. Architect of the Capitol*, No. 02-AC-62 (RP), 2005 WL 6236948, at *8 (OOC Dec. 7, 2005) (holding that at the summary judgment stage, claims must be supported by evidence, which distinguishes a decision on a motion for summary judgment from a decision on a motion to dismiss). However,

neither this Board nor the Hearing Officer may make credibility determinations or weigh the evidence. *See Burley v. Nat'l Passenger Rail Corp.,* 801 F.3d 290, 296 (D.C. Cir. 2015).

B. The Hearing Officer Properly Denied Torres-Velez's Claims.

1. Disparate Treatment Discrimination Claims

On review, Torres-Velez reiterates his claims that the AOC discriminated against him based on gender when it did not promote him following a 2017 desk audit, whereas Sisk was promoted. The Hearing Officer granted the AOC's motion for summary judgment on this claim, concluding that Torres-Velez failed to proffer any evidence to rebut the legitimate nondiscriminatory reason offered by the AOC, i.e., that desk audits justified the difference between Torres-Velez's and Sisk's pay grades. As discussed below, the Hearing Officer's determination is supported by substantial evidence in the record. We therefore affirm.

Section 201 of the CAA governs employment discrimination claims. It provides, in relevant part:

> All personnel actions affecting covered employees shall be made free from any discrimination based on –
>
> (1) race, color, religion, sex, or national origin, within the meaning of section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2002-e); . . . or
>
> (2) disability, within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. § 791) and sections 102 through 104 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12112-12114).

2 U.S.C. § 1311(a). To establish a prima facie case of discrimination under section 201, the employee must show that: (1) he is a member of a protected class; (2) he suffered an adverse employment action; and (3) the action gives rise to an inference of discrimination. *Rouiller v. U.S. Capitol Police,* No. 15-CP-23 (CV, AG, RP), 2017 WL 106137, at *8 (OOC Jan. 9, 2017) (citing *Udoh v. Trade Ctr. Mgmt. Assoc.*, 479 F. Supp. 2d 60, 64 (D.D.C. 2007)). If the employee meets this burden of production, "[t]he burden then must shift to the employer to articulate some legitimate, nondiscriminatory reason" for its action. *Id.* If the employer succeeds, then the plaintiff must "be afforded a fair opportunity to show that [the employer's] stated reason. . . was in fact pretext" for unlawful discrimination. *Id.* The ultimate burden of proving discrimination always remains with the complainant. *See Evans v. U.S. Capitol Police Bd.,* No. 14-CP-18 (CV, RP), 2015 WL 9257402, at *7 (OOC Dec. 9, 2015).

As discussed below, the AOC asserts that the classification specialist who performed a desk audit of Torres-Velez's job found that his position responsibilities were properly classified at the GS-12 level, in part because Torres-Velez did not supervise anyone and because he did not have authority to "approve or revise existing policies and regulatory guidance, such as a contract," and that his gender had nothing to do with it. In a Title VII disparate-treatment suit where an employee has suffered an adverse employment action and an employer has asserted a legitimate, non-discriminatory reason for the decision, the Hearing Officer need not—and should not—decide whether the plaintiff actually made out a prima facie case. *See Brady v. Office of the Sergeant at Arms*, 520 F.3d 490, 494 (D.C. Cir. 2008). Rather, in considering an employer's motion for summary judgment or judgment as a matter of law in those circumstances, the Hearing Officer must resolve one central question: Has the employee produced sufficient evidence for a reasonable factfinder to find that the employer's asserted non-discriminatory reason was not the actual reason and that the employer intentionally discriminated against the employee on the basis of sex? *Id.* To answer that question at the summary judgment stage, the Board assesses whether there is evidence from which a reasonable factfinder could find that the employer's stated reason for the firing is pretext and that "unlawful discrimination was at work." *Burley*, 801 F.3d at 296; *see also Barnett v. PA Consulting Grp., Inc.*, 715 F.3d 354, 358 (D.C. Cir. 2013). When determining whether summary judgment or judgment as a matter of law is warranted for the employer, the court considers all relevant evidence presented by the parties. *Brady*, 520 F.3d at 494.

Torres-Velez may try in multiple ways to show that the AOC's stated reason for the employment action was not the actual reason—in other words, was a pretext. Often, the employee attempts to produce evidence suggesting that the employer treated other employees of a different sex more favorably in the same factual circumstances. *Brady*, 520 F.3d at 495. Here, Torres-Velez claims that he was the victim of gender discrimination when he was not promoted after a desk audit of his position in 2017, but Ms. Sisk was.

The question of whether employees are similarly situated ordinarily presents a question for the finder of fact. *Wheeler v. Georgetown Univ. Hosp.*, 812 F.3d 1109, 1115 (D.C. Cir. 2016). Factors that bear on whether someone is an appropriate comparator include the similarity of the employee and the putative comparator's job and job duties. *Burley v. Nat'l Passenger Rail Corp.,* 801 F.3d 290, 301 (D.C. Cir. 2015). Here, Torres-Velez does not dispute that Sisk was hired as a GS-13 as the Gift Shops General Manager with supervisory authority over eight subordinates, that she served as a key member of the Office of the Chief Executive Officer's Senior Leadership Team, and that, even without taking into consideration a recommendation that she assume responsibility for the restaurant operations, the audit determined that her position equated to a GS-14 level.

Torres-Velez does not assert that he ever supervised anyone at the CVC; he did not specify what additional duties, beyond those stated in his position description, he allegedly performed that were not taken into account by the desk auditor; and he did not specify how this calculation is provably wrong or the product of gender discrimination. Rather, as the Hearing Officer determined, viewing the record in a light most favorable to Torres-Velez, the record indicates that Sisk was a trusted member of the leadership at the CVC, whereas he was not. Although Torres-Velez notes the difference between his gender and Sisk's, we agree with the Hearing Officer that Sisk was not similarly-situated to Torres-Velez.

Furthermore, Torres-Velez does not proffer any other evidence to support a finding that the gender difference motivated how he and Sisk were treated at the AOC. He offers no evidence that anyone with a discriminatory motive had any influence over the separately conducted desk audit of Sisk's position, nor does he proffer that gender had anything to do with any of the desk audit results. Torres-Velez offers no more than his statement that he was paid less as a male than an identified female employee. In the absence of sufficient grounds to establish that there is a genuine and material fact in dispute regarding Torres-Velez's pay grade and in the absence of any proffered evidence to rebut the legitimate non-discriminatory reason offered by the AOC for its actions, the Hearing Officer correctly granted summary judgment in favor of the AOC on the gender discrimination non-promotion claim.

2. Equal Pay Discrimination

As discussed above, the Hearing Officer dismissed as untimely filed all claims of discrimination based on violations of the Equal Pay Act that arose prior to January 19, 2017, i.e., more than 180 days before Torres-Velez requested counseling on July 19, 2017, and she granted the AOC's motion for summary judgment regarding Torres-Velez's claim that it violated the Equal Pay Act each time after January 19, 2017 that he was paid as a GS-12, despite allegedly doing similar work as Sisk who was paid as a GS-13 and later a GS-14. The Hearing Officer also dismissed as untimely filed any claim of discriminatory underpayment based on the failure of the AOC to pay Torres-Velez at the grade of GS-13, despite the fact that he allegedly assumed the duties of his former supervisor, Lopez, after Lopez was reassigned in April 2015. As discussed below, it is not necessary to reach the issue whether any of Torres-Velez's Equal Pay Act claims were untimely filed because we conclude that the AOC is entitled to summary judgment on all such claims.

To prove an Equal Pay Act claim, Torres-Velez must establish that: (1) he was doing substantially equal work that required substantially equal skill, effort, and responsibility as jobs held by members of the opposite gender; (2) his job was performed under similar working conditions as the comparator jobs; (3) he was paid at a lower wage

than similarly situated members of the opposite gender; and (4) there was a nexus between his gender and the decision to pay him a lower wage. *Cornish v. District of Columbia,* 67 F. Supp. 3d 345, 360 (D.D.C. 2014). As the Hearing Officer recognized, an Equal Pay Act claim overlaps with a disparate treatment gender discrimination claim. *County of Wash. v. Gunther,* 452 U.S. 161, 172 (1981).

Torres-Velez's petition for review provides no basis to disturb the Hearing Officer's determination that he failed to proffer any evidence that his position as Restaurant Events Manager was substantially the same work – requiring the same skills, effort and responsibility – as the work performed by Sisk when she was the Gift Shops General Manager, or that he was similarly situated in skills or responsibilities to Sisk. Further, as the Hearing Officer recognized, because Torres-Velez is male, evidence that he was treated differently than Lopez, who is also male, is not evidence he was paid at a lower wage than similarly situated members of the opposite gender. Moreover, there does not appear to be any evidence that would support a finding that discriminatory animus, based on gender, motivated the agency's decision to pay him at a GS-12, rather than a higher, level. Therefore, we agree with the Hearing Officer that his Equal Pay Act discrimination claims cannot survive a motion for summary judgment for the same reasons that his discriminatory non-promotion claim fails.

Accordingly, we affirm the Hearing Officer's decision rejecting Torres-Velez's Equal Pay Act claims on the grounds that the AOC was entitled to summary judgment on all such claims.

3. Reprisal

Section 207(a) of the CAA governs all reprisal claims under the Act. It provides:

> It shall be unlawful for an employing office to intimidate, take reprisal against, or otherwise discriminate against, any covered employee because the covered employee has opposed any practice made unlawful by this chapter, or because the covered employee has initiated proceedings, made a charge, or testified, assisted, or participated in any manner in a hearing or other proceeding under this chapter.

2 U.S.C. § 1317. The Board has adopted a Title VII-based approach to analyze all section 207 claims. *See Britton v. Office of the Architect of the Capitol*, No. 02-AC-20 (CV, RP), 2005 WL 6236944 (OOC May 23, 2005). Therefore, to establish a prima facie claim of reprisal under the CAA, the employee is required to demonstrate that: (1) he engaged in activity protected by Section 207(a) of the CAA; (2) the employing office took action against him that is reasonably likely to deter protected activity; and (3) a causal connection existed between the two. *Id.* If the employee so demonstrates, the

employing office thereafter is required to rebut the presumption of reprisal by articulating a legitimate non-retaliatory reason for its actions. *Evans v. U.S. Capitol Police Bd.*, No. 14-CB-18 (CV, RP), 2015 WL 9257402, at *6 (OOC Dec. 9, 2015). The articulation of a legitimate, non-retaliatory reason for the adverse employment action shifts the burden to the employee to show that the employer's reason is merely a pretext for unlawful reprisal. *Id.; see Texas Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 255-56 (1981).

With respect to his retaliatory Equal Pay Act claim, the Hearing Officer determined that Torres-Velez would have to prove, inter alia, that he engaged in protected activity and there was a causal link between plaintiff's protected activity and the decision to pay him a lower wage. Although the AOC concedes that Torres-Velez engaged in protected activities in January, February and April 2015, when he complained about his work environment and when he participated in the investigation of complaints filed by two COTRs, the Hearing Officer's determination is supported by substantial evidence that Torres-Velez failed to proffer any evidence that would establish a causal connection between his prior protected activities and the decision by the AOC to pay him at a GS-12 level. As the Hearing Officer noted, Torres-Velez's protected activities occurred in 2015. There is no dispute, however, that the initial decision to pay him as a GS-12 was made in 2008 when plaintiff was first hired, prior to that protected activity. Thus, he cannot base a claim of reprisal on AOC actions that occurred prior to his protected activities. *See Moran v. United States Capitol Police Bd.,* 887 F. Supp. 2d 23, 26 (D.D.C. 2012). Furthermore, there is no evidence in the record to support a finding that the AOC continued to pay him less than comparator females in reprisal for engaging in protected activities.

Accordingly, the Hearing Officer also correctly determined that the AOC was entitled to summary judgment in Torres-Velez's reprisal claim.

4. Hostile Work Environment

Torres-Velez also alleged that he was the victim of a hostile work environment when: (1) he was not selected for positions for which he applied in 2013, 2014 and 2016; (2) two individuals were appointed as additional COTRs for the restaurant contract in 2014; (3) supervisors, including Apostolides, Lopez and Sisk, interacted with the restaurant contractors without involving him and without his approval; (4) his office was moved to a space in or near the kitchen; and (5) he was not paid the same as Sisk. The Hearing Officer also granted the AOC's motion for summary judgment on this claim. We affirm.

To make out a hostile work environment claim, Torres-Velez must show that he was subjected "to discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an

abusive working environment." *Williams v. Office of the Architect of the Capitol*, No. 14-AC-11 (CV, RP), 2017 WL 5635714, at *8 (OOC Nov. 21, 2017); *see also Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23, (1993) (whether an environment is "hostile" or "abusive" can be determined only by looking at all the circumstances). "In order to be actionable under the statute, an objectionable environment must be both objectively and subjectively offensive, one that a reasonable person would find hostile or abusive." *Fargher v. City of Boca Raton*, 524 U.S. 775, 787 (1998); *see also Baird v. Gotbaum*, 792 F.3d 166, 172 (D.C. Cir. 2015) ("[T]he standard for severity and pervasiveness is an objective one.") (citing *Harris*, 510 U.S. at 21). These standards for judging hostility are sufficiently demanding to ensure that Title VII does not become a "general civility code." *Faragher v. City of Boca Raton*, 524 U.S. 775, 787 (1998).

Viewing Torres-Velez's allegations in a light most favorable to him, we agree with the Hearing Officer that they are insufficient to support a claim of hostile work environment harassment. First, a necessary component of a hostile work environment claim is that the allegedly hostile behavior must be "discriminatory"--that is, it must be tied to the complainant's membership in a protected class. *See Williams*, 2017 WL 5635714, at *8; *Baloch*, 550 F.3d at 1201 (plaintiff's hostile work environment claim failed, in part, because "none of the comments or actions directed at [plaintiff] expressly focused on his race, religion, age, or disability"); *Gray v. Foxx*, 637 F. App'x 603, 608 (D.C. Cir. 2015) (plaintiff submitted evidence that her supervisor yelled at her and belittled her, but "[did] not connect his remarks to any protected status."); *Hyson v. Architect of Capitol*, 802 F. Supp. 2d 84, 104 (D.D.C. 2011) ("because [plaintiff] is unable to tie the majority of her allegations to her gender or protected activity, the Court is unable to consider them."). Torres-Velez does not allege that any AOC employee made derogatory comments about males or engaged in actions targeted towards men. *See Williams*, 2017 WL 5635714, at *9.

Second, although Torres-Velez complains about his supervisors' interaction with the restaurant contractor without his approval, the courts have generally rejected hostile work environment claims based on work-related actions by supervisors. *See Williams*, 2017 WL 5635714, at *9, *see also, e.g., Wade v. District of Columbia*, 780 F. Supp. 2d 1, 19 (D.D.C. 2011); *Nurriddin v. Bolden*, 674 F. Supp. 2d 64, 94 (D.D.C. 2009) ("[T]he removal of important assignments, lowered performance evaluations, and close scrutiny of assignments by management [cannot] be characterized as sufficiently intimidating or offensive in an ordinary workplace context."); *Bell v. Gonzales*, 398 F.Supp.2d 78, 92 (D.D.C. 2005) (finding that actions such as exclusion from the informal chain of command, close monitoring of work, missed opportunities for teaching, travel, and high-profile assignments, and reassignment to another unit did not amount to a hostile work environment because "they cannot fairly be labeled abusive or offensive"); *see also Houston v. SecTek, Inc.*, 680 F. Supp. 2d 215, 225 (D.D.C. 2010) ("Allegations of undesirable job assignment or modified job functions and of

[supervisor's] unprofessional and offensive treatment are not sufficient to establish that [plaintiff's] work environment was permeated with discriminatory intimidation, ridicule, and insult.") (citation and quotation marks omitted). Under the circumstances, the work-related actions that Torres-Velez cites were not objectively offensive, abusive, hostile or threatening.

The remaining actions that Torres-Velez describes also fall far short of the kind of "severe or pervasive" harassing conduct he is required to show in order to prevail. *Harris,* 510 U.S. at 21-23. *See Brooks v. Grundmann*, 748 F.3d 1273, 1275 (D.C. Cir. 2014). Although Torres-Velez contends that he felt "disappointed that as a male staff leader for the CVC [, he] was being set aside or punished," general feelings of workplace discomfort or unease are simply not enough to support a claim for hostile work environment. *See Williams,* 2017 WL 5635714, at *9; *Tucker v. Johnson,* 211 F. Supp. 3d 95, 101 (D.D.C. 2016).

Accordingly, we affirm the Hearing Officer's grant of summary judgment for the AOC on Torres-Velez's hostile work environment claim.

ORDER

For the foregoing reasons, the Board affirms the Hearing Officer's Order on all claims.

It is so ORDERED.

Issued, Washington, DC, September 23, 2019