

OFFICE OF COMPLIANCE

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

Kehinde Taiwo,)
Appellant,)
)
v.)
)
Office of the Architect of the)
Capitol,)
Appellee.)
)
_____)

Case Number: 09-AC-106 (CV, RP)

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

ORDER DENYING REQUEST FOR RECONSIDERATION

On July 24, 2012, the Board of Directors issued a Decision (“Decision”) in the above-captioned case, affirming the Hearing Officer’s finding that Kehinde Taiwo (“Taiwo” or “Appellant”) failed to establish that the Architect of the Capitol (“AOC” or “Appellee”) discriminated and retaliated against Appellant; or subjected Appellant to a hostile work environment based on Appellant’s race, national origin, and participation in federally protected activities in violation of Sections 201 and 207 of the Congressional Accountability Act (“CAA”). On August 8, 2012, Appellant filed a Motion for Reconsideration, Enlarge the Time in Which to File Reply to Appellee’s Memorandum in Opposition to Petition for Review and Stay the Time in Which to File an Appeal with the U.S. Court of Appeals for the Federal Circuit. On August 16, 2012, Appellee filed a document entitled: “Agency Clarification of Statement in Petitioner’s Motion for Reconsideration.”¹ After a full review of the pleadings, the Board denies Appellant’s motion for reconsideration and request for a stay, and denies as moot the request to enlarge the time in which to file a reply brief.

I. Background

After a hearing on the merits of Appellant’s claims of harassment, discrimination, and retaliation, the Hearing Officer issued an Order entering a judgment for Appellee on all claims. Appellant timely filed a Petition for Review of the Decision and Order on April 17, 2012 and, with permission from the Board, filed an Amended Brief in Support on May 9, 2012. On May 18, 2012, Appellee filed the Agency’s Memorandum in

¹ Although the Board of Directors did not request that a responsive pleading be filed by Appellee, the Board has reviewed the issues raised in the Appellee’s submission. See, Section 8.02 of the Office of Compliance Procedural Rules.

Opposition to the Petition for Review. On May 25, 2012, Appellant filed a Motion for an Extension of Time in Which to File His Reply Brief. The Executive Director granted the enlargement in part ² and ordered that the reply brief be filed on or before the close of business, June 8, 2012. Appellant filed a Reply to the Appellee's Opposition on June 15, 2012. As this reply was untimely filed, the Board noted in its July 24 decision that it had not considered it.

II. Standard of Review

Section 8.02 of the Office of Compliance Procedural Rules states that a party may move for reconsideration of a Board decision where the party can establish that the Board has "overlooked or misapprehended points of law or fact."

III. Discussion

In the motion for reconsideration, Appellant specifically refers to the untimely filed reply brief and attaches it as an exhibit. Therefore, in reviewing the motion for reconsideration, the Board has, in fact, considered Appellant's reply brief. As the reply brief repeats the same arguments that were made in Appellant's petition for review, arguments that were already thoroughly considered by the Board, Appellant has not shown that consideration of the reply brief would have changed the outcome of the Board's decision. As Appellant has not established in any of his moving papers that the Board has "overlooked or misapprehended points of law or fact," we find that there is nothing more that can be gained in granting Appellant's motion for reconsideration. Accordingly, the motion for reconsideration is denied. See §8.02 of the Office of Compliance Procedural Rules; *Lucero v. Detroit Public Schools*, 2006 WL 799175 (E.D. Michigan, S. D., March 29, 2006)(motion to reconsider, based on the failure of the court to consider the reply brief, denied where plaintiffs did not show that the review of the reply brief would have resulted in a different decision). In addition, Appellant's request to stay the time in which to file an appeal with the U.S. Court of Appeals for the Federal Circuit is likewise denied. Finally, Appellant's request to enlarge the time in which to file a reply brief is denied as moot.

ORDER

Pursuant to §8.02 of the Office of Compliance Procedural Rules, the Board DENIES the Motion for Reconsideration, the Request to Enlarge the Time in Which to File Reply to Appellee's Memorandum in Opposition to Petition for Review and the Request to Stay the Time in Which to File an Appeal with the U.S. Court of Appeals for the Federal Circuit.

It is so ORDERED.

Issued, Washington, DC
September 7, 2012

² Pursuant to Section 8.01 of the Office of Compliance Procedural Rules, upon delegation by the Board of Directors, the Executive Director is authorized to determine requests for extensions of time to file any post-petition for review document.