

OFFICE OF COMPLIANCE

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

Emma Gibson,)
Appellant,)
)
v.)
)
Office of the Architect of the)
Capitol,)
Appellee.)
)
_____)

Case Number: 06-AC-44 (CV)

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 August 6, 2007, Hearing Officer Michael W. Doheny issued his Decision dismissing this equal pay, non-promotion, and hostile work environment complaint on its merits after conducting an evidentiary hearing. The Appellant timely filed a petition for review of the Hearing Officer’s decision and a supporting brief. The Appellee employing office filed a brief in opposition to the petition for review. The Appellant filed a brief in response to the Appellee’s brief in opposition to the petition for review.

Upon due consideration of the Hearing Officer’s Decision and Order, and the parties’ filings, the Board affirms the Hearing Officer’s dismissal of this complaint. The Board is satisfied that the Hearing Officer’s decision is supported by substantial record evidence. The record shows that in addition to his major task of delivering ice and glasses to Senate committee rooms, the Appellant’s comparitor performed the tasks of setting up rooms and moving heavy tables and furniture and the Appellant did not. On these facts, the Hearing Officer found that the Appellant did not establish that her position was substantially equal to that of her comparitor under *Gunther v. County of Washington*, 623 F.2d 1303 (9th Cir. 1979), aff’d 452 U.S. 161 (1981)(Overall job, not its individual elements must form basis of comparison to determine whether positions are substantially equal.) The Appellant argues that the proper legal standard is set forth in *Brobst v. Columbus Services International*, 761 F.2d 148 (3rd Cir. 1985) where the court found that the first step in determining the equal work issue is to find whether the jobs to be compared have a “common core” of tasks, and if so, the second step is to find whether any additional tasks make the job “substantially different. We affirm the Hearing Officer’s dismissal of this complaint without adopting either line of precedent because under either precedent, the result is the same under the circumstances of this case.

For the foregoing reasons, the Hearing Officer's decision dismissing the complaint **is affirmed.**

It is so ordered.

Issued: at Washington, D.C., September 11, 2008

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of September 2008, I delivered a copy of this Decision of the Board of Directors to the following parties by the identified means:

First-Class Mail Postage-Prepaid

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Office of Compliance