

OFFICE OF COMPLIANCE

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

_____)	
Eric J.J. Massa)	
)	
Appellant,)	
)	
v.)	Case Number: 10-HS-64 (CFD)
)	
Camilla McKinney,)	
)	
Appellee.)	
_____)	

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

DECISION OF THE BOARD OF DIRECTORS

This case is before the Board of Directors (“Board”) pursuant to a petition for review filed by Eric J.J. Massa (“Appellant”), from an order arising from his allegations that Camilla McKinney (“Appellee”) violated the confidentiality requirements of the Congressional Accountability Act (“Act” or “CAA”). Hearing Officer Susan Winfield issued a Decision and Order granting Appellee’s motion to dismiss, finding that Appellant did not have standing to file a claim that Appellee violated the Act’s confidentiality requirements. Appellant seeks review of the decision and order. For the reasons set forth below, we vacate the Decision and Order of Hearing Officer Winfield and dismiss the appeal.

I. Background

Appellant is a former United States Representative. Appellee is an attorney representing a former employee of the Appellant. On April 8, 2010, Appellee’s client filed a Request for Counseling with the Office of Compliance (“OOC”) alleging violations of sections 201 and 207 of the Act. On May 4, 2010, after a reduced period of counseling, Appellee’s client invoked mediation. Mediation was completed on July 30, 2010, and a complaint was filed with the OOC on October 21, 2010, alleging a hostile work environment and retaliatory treatment. This case was assigned to Hearing Officer Warren King, who issued his Decision and Order on June 20, 2011. A petition for review was filed with the Board on July 20, 2011 and withdrawn on August 31, 2011.

On April 19, 2010, Appellant filed a claim under §1.07(e) of the Procedural Rules, alleging that from around April 13-April 16, 2010, Appellee violated confidentiality by making public statements to the media about her client’s allegations against Appellant and activities with the OOC in violation of Section 416 of the Act (2 U.S.C. 1416).

On May 11, 2010, Appellee filed a Motion to Dismiss the Complaint on the grounds that neither the CAA nor the Procedural Rules allowed Appellant to bring an action to enforce the confidentiality provisions because he was not a party to nor a participant in the proceedings.

On June 29, 2010, Hearing Officer Winfield issued her decision and order granting the motion to dismiss and finding that because he was not a participant in any of the underlying proceedings, Appellant was without standing to file a breach of confidentiality claim.

II. Jurisdiction

Appellant filed a timely Petition for Review of the Hearing Officer's order. Before deciding whether the Hearing Officer properly dismissed the case, we must first decide whether there is jurisdiction under the CAA.¹ For the reasons that follow, we find that there is no jurisdiction for the claims raised.

Under §405 of the Act, an employment rights proceeding under Part A of Subchapter II of the Act is initiated by a complaint filed by a covered employee against an employing office alleging violations of laws specifically incorporated by the CAA under 2 U.S.C. 1311 – 1317. In this case, the Appellant never filed a complaint against an employing office alleging violations of sections 201 – 207 of the CAA. The only §405 proceeding was the one before Hearing Officer King on June 20, 2011 on the underlying hostile work environment and retaliation complaint. The complaint in the case before Hearing Officer King was filed almost four months after Hearing Officer Winfield issued her decision in the instant case. Inasmuch as there was no §405 proceeding extant at the time, there is no jurisdiction under the CAA for Appellant's claims. Accordingly, under the circumstances of this case, we vacate the decision and order of the Hearing Officer. See, *Philip Taylor v. United States Senate Budget Committee*, 10-SN-31 (CFD) (Feb. 14, 2012).

ORDER

For the reasons stated above, the Board hereby vacates Hearing Officer Winfield's Decision and Order and dismisses the appeal.

It is so ORDERED.

Issued, Washington, D.C. on May 8, 2012.

¹ Although the issue of whether there is jurisdiction was not raised, “[w]hen a requirement goes to subject-matter jurisdiction, courts are obligated to consider *sua sponte* issues that the parties ... have not presented. Subject-matter jurisdiction can never be waived or forfeited. Objections may be resurrected at any point in the litigation...” *Gonzalez v. Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division*. 132 S.Ct. 641,648 (2012) (citations omitted.)