

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

ROBERT SOLOMON,)	
)	
Complainant,)	
)	
v.)	Case No. 03-AC-28(CV, RP)
)	Date: September 23, 2004
OFFICE OF THE ARCHITECT)	
OF THE CAPITOL)	
)	
Respondent .)	
)	

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

On March 1, 2004, Hearing Officer Michael Doheny issued the attached Order Granting Respondent's Motion to Dismiss Complaint. The Hearing Officer concluded that the Complainant's retaliation claim herein was barred by the doctrine of claim preclusion, in essence, because it arose and was addressable in the Complainant's earlier case before the Office of Compliance, which resulted in a final Board of Directors' Decision in the Respondent's favor. *Robert Solomon v. Office of the Architect of the Capitol*, Case No. 02-AC-34(CV,RP) (October 24, 2003).

We agree with the Hearing Officer's conclusion and disposition of this case. The Complainant seeks, through a retaliation claim brought under Section 207(a)¹ of the CAA, 2 U.S.C. § 1317(a), to relitigate the credibility of a Respondent witness in his earlier Board adjudicated case. Complainant claims that in his earlier religious accommodation case, Respondent's witness provided contradictory testimony bearing upon Respondent's undue hardship defense in reprisal for Complainant bringing that case. Complainant avers that the witness, despite testifying in his

¹ The Board is concerned with the repeated attempts by Complainant's counsel to resurrect adjudicated claims through the retaliation provisions of section 207(a). Concerns with the manner in which claims and defenses are litigated must be raised within the case, either to the Hearing Office or to the Board for review. Respondent has not sought sanctions and the Board will not impose them *sua sponte* in this action. Instead, the Board trusts that publication of this Decision, as well as its decisions in *Ziggy Bajbor v. Office of the Architect of the Capitol*, Case No. 03-AC-377 (May 30, 2003), and *Thomas J. Devlin v. Office of the Architect of the Capitol*, Case No. 03-AC-19 (September 22, 2004), may have some prophylactic effect on litigants who might be inclined to engage in similar conduct.

deposition that he lacked knowledge regarding the costs of engaging a temporary employee to replace him during his requested annual leave period, also provided a declaration in that proceeding affirming that such an accommodation would incur additional costs for the Respondent.

The credibility of the subject testimony and the adjudication of the underlying undue hardship issue were directly before the hearing officer in Complainant's earlier case. Complainant had the opportunity at that time to confront the witness during cross-examination with his allegedly inconsistent prior statements. Complainant's instant claim, as Hearing Officer Doheny found, is simply Complainant's attempt to relitigate the claim that he unsuccessfully presented in his earlier case. It is plainly barred under the doctrines of claim and issue preclusion. See *Ziggy Bajbor v. Office of the Architect of the Capitol*, Case No. 01-AC-377(RP) (May 30, 2003).

ORDER: Pursuant to Section 406(e) of the Congressional Accountability Act and Section 8.01(d) of the Office's Procedural Rules, the Board affirms the Hearing Officer's dismissal of this matter.

It is so ordered.

Issued, Washington, D.C.: September 23, 2004

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of September, 2004, I delivered a copy of this Decision of the Board of Directors to the following parties by the below identified means:

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