

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.

DECISION OF THE BOARD OF DIRECTORS

This case is before the Board of Directors (“Board”) pursuant to a petition for review filed by Kehinde Taiwo, (“Appellant”), from an order arising from his allegations that the Office of the Architect of the Capitol (“Appellee” or “AOC”) engaged in harassment, discrimination, and retaliation in violations of Sections 201 and 207 of the Congressional Accountability Act (“CAA”). On February 28, 2012, Hearing Officer Gary M. Gilbert issued his Order entering a judgment for Appellee on all claims. Appellant timely filed a Petition for Review of the Decision and Order. For the reasons set forth below, we affirm the Decision and Order of Hearing Officer Gilbert.

The Board has considered the Hearing Officer’s Decision and Order, the record, the Petition for Review, and the parties’ filings.¹ The Board finds that the Hearing Officer’s conclusions are supported by substantial evidence and affirms the Hearing Officer’s determination that the record fails to establish either the proscribed discrimination or the retaliation. Furthermore, the Board finds that the Hearing Officer’s conclusions regarding the harassment claims are supported by substantial evidence. However, in

¹ Appellant filed a Petition for Review with the Board of Directors 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 Opposition to the Petition for Review. Subsequently, Appellant filed a Reply to the Appellee’s Opposition on June 15, 2012. This Reply was untimely filed and, therefore, not considered by the Board.

affirming the Hearing Officer's finding that there was no merit to the hostile work environment claim, we do not condone Appellee's conduct. We echo the Hearing Officer and note that, at the very least, the comment made by Appellant's supervisor at the April 16, 2009 Visitor Services Division meeting was "insensitive" and "inappropriate."² Moreover, Appellee's assertions that the comment was not intended to be racially offensive does not, by itself, excuse the behavior. It is not the speaker's intentions that determine whether the environment is offensive, but rather, "one that a reasonable person would find hostile or abusive, and one that the victim in fact did perceive to be so." *Faragher v. City of Boca Raton*, 524 U.S. 775,787 (1998) (citing *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21-22 (1993)). Nonetheless, the Board finds that even if the allegations as presented by the Appellant at the hearing are accepted as true, they do not rise to the level of behavior that was "sufficiently severe or pervasive" to satisfy the legal standard of harassment. *See Faragher*, 524 U.S. at 788; *Baloch v. Kempthorne*, 550 F.3d 1191, 1201 (D.C. Cir. 2008) (finding that the totality of circumstances presented in the record did not rise to the level necessary to support a hostile work environment claim).

For the foregoing reasons, the Hearing Officer's decision finding no harassment, discrimination, or retaliation is **affirmed**.

It is so ordered.

Issued: at Washington, D.C., July 24, 2012

² As the April 16 meeting was breaking up, in response to an employee's comment that he had not answered Appellant's question, Appellant's supervisor made a statement to the effect that he did not see Appellant in the dark.