

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: 10-AC-25 (DA, 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

On December 8, 2010, Hearing Officer Gary M. Gilbert issued his Order Dismissing Complaint with Prejudice for Failure to Proceed and Failure to Prosecute on the grounds that the Appellant and his counsel had failed to appear at the scheduled hearing and had not shown good cause for that failure. Further, the Appellant had failed to submit an appropriate jurisdictional statement as ordered. The Appellant timely filed a petition for review of the Hearing Officer’s decision. The Appellant did not file a supporting brief.

Upon due consideration of the Hearing Officer’s decision, the Appellant’s filings, and the record in this proceeding, the Board affirms the Hearing Officer’s dismissal of the complaint with prejudice. The Board agrees with the Hearing Officer that the Appellant failed to proceed in this matter when he and his counsel did not appear at the scheduled hearing. In this connection, the Board also agrees with the Hearing Officer’s conclusion that the Appellant and his counsel did not show good cause for failing to appear at the hearing. The Board further agrees with the Hearing Officer that the Appellant failed to prosecute this case by belatedly filing a jurisdictional statement that did not address the issues and facts of the instant case.

The record shows that the Hearing Officer scheduled a hearing for the instant case on October 18, 2010. The Appellant did not request an extension or postponement of the hearing date. On October 18, 2010, the Appellant and his Counsel failed to appear at the hearing. The Appellant’s counsel contacted the Hearing Officer one hour after the

scheduled start of the hearing to say that he had experienced automobile trouble. He gave no explanation for why the Appellant did not appear. The record further shows that in response to a notice to show cause and a supplemental notice to show cause, the Appellant stated that he failed to appear because of “unintentional neglect and oversight.” The Appellant’s counsel stated that he failed to appear because he could not get his car to the service station some five blocks from his home and had forgotten to bring his cell phone. Observing that the Appellant’s counsel could have easily walked to make a telephone call and should have arranged for alternative transportation if he knew he had to get his car to a service station on the day of the hearing, the Hearing Officer found that the Appellant had not shown good cause for failing to appear at the hearing. The record supports the Hearing Officer’s conclusion that by failing to appear for the hearing on October 18, 2010, the Appellant failed to proceed with his case and that this failure warrants dismissal of the complaint with prejudice under the Procedural Rules of the Office of Compliance section 5.03(c).

The record also shows that the Hearing Officer ordered the Appellant to provide a jurisdictional statement giving the basis for the Complaint, including how the Complaint was covered by the applicable statutes and a statement as to the exhaustion of remedies, to be filed no later than October 17, 2010. The Appellant neither responded to this order nor requested an extension of time in order to do so. In addition, the record shows that the Hearing Officer issued a verbal order to the Appellant during a November 10, 2010 hearing to file his jurisdictional statement before the close of business on that day. The Appellant filed the statement after the close of business on November 10, 2010. Further, the statement addressed no facts and issues of the instant case, but rather, appeared to discuss an entirely different case. In these circumstances, the record supports the Hearing Officer’s conclusion that the Appellant failed to prosecute his case by failing to provide the Hearing Officer with the requested information in an appropriate jurisdictional statement and that this failure warrants dismissal of the Complaint with prejudice under the Procedural Rules of the Office of Compliance section 7.02(b)(2). *Rollins v. Office of the Clerk of the House of Representatives*, case number 03-HS-105(CV, AG)(Hearing officer’s dismissal of complaint for failure to prosecute justified in light of Appellant’s repeated failures to respond to Appellee and the Hearing Officer, give notice for the need for rescheduling or seeking an extension of dates for submissions, or comply with the Office of Compliance Procedural Rules.)

For the foregoing reasons, the Hearing Officer’s dismissal of the complaint with prejudice is **affirmed**.¹

It is so ordered.

Issued: at Washington, D.C., May 13, 2011

¹ In light of this ruling, the Board denies the Appellant’s request for oral argument before the Board in this case.