

OFFICE OF CONGRESSIONAL WORKPLACE RIGHTS
LA 200, John Adams Building, 110 Second Street SE
Washington, D.C. 20540-1999

_____)	
Julia C. Leggett,)	
)	
Appellant,)	
)	
v.)	
)	Case Number: 20-LC-18 (CV)
Library of Congress,)	
)	
Appellee.)	
_____)	

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

DECISION OF THE BOARD OF DIRECTORS

On September 20, 2021, the Board of Directors of the Office of Congressional Workplace Rights (“OCWR”) issued a Decision and Order in the above-captioned case affirming the Hearing Officer’s order granting summary judgment in favor of the Library of Congress (“Library” or “LOC”) on the appellant’s claim that that she was not selected for a vacant position because of her race (Asian), color (non-White), and national origin (China). The appellant has filed a motion for reconsideration of the Board’s Decision.

After a full review of the appellant’s motion and supporting memorandum, the Board DENIES the motion.

I. Background

The appellant filed a claim with the OCWR alleging that the Library failed to select her for a supervisory position because of her race, color, and national origin. After preliminary review of her claim, the appellant requested an administrative hearing on the merits before an OCWR Hearing Officer. Following discovery, the Library moved for summary judgment.

The Hearing Officer granted the Library’s motion for summary judgment in its entirety. The appellant thereafter filed a petition for review with the Board. By Decision and Order dated September 20, 2021, the Board affirmed the Hearing Officer’s order. On

October 5, 2021, the appellant filed the instant motion for reconsideration of the Board's Decision and Order.

II. Discussion

Section 8.02 of the Procedural Rules of the OCWR concerns request for reconsideration. It provides, in relevant part:

After a final decision or order of the Board has been issued, a party to the proceeding before the Board who can establish in its moving papers that reconsideration is necessary because the Board has overlooked or misapprehended points of law or fact, may move for reconsideration of such final decision or order. . . . The decision to grant or deny a motion for reconsideration is within the sole discretion of the Board and is not appealable.

The Board has noted that the standard for motions to reconsider is a higher standard than that on a petition for review. *Duncan v. Office of the Architect of the Capitol*, No. 02-AC-59 (RP), 2007 WL 5914212, at *2 (OOC Jan. 17, 2007).

In support of her motion for the Board to reconsider her claim that she was not selected for the vacant position because of her race, color, and national origin, the appellant reiterates arguments that she made before the Hearing Officer and before the Board on review. The hope that the Board may arrive at a different conclusion based on the same factual record and legal arguments already considered is not grounds for granting a request for reconsideration. The requirement in Procedural Rule 8.02 that a party establish that the Board "misapprehended points of law or fact" is similar to the requirement for requests for panel rehearing in Rule 40(a)(2) of the Federal Rules of Appellate Procedure that "the petition must state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended." Because motions to reconsider, like petitions for rehearing, function to ensure that the appellate body properly considered all relevant information in coming to its decision, they should not simply reargue the appellant's case. *See Pentax Corp. v. Robison*, 135 F.3d 760 (Fed. Cir. 1998); *Armster v. U.S. Dist. Court for C.D. Cal.*, 806 F.2d 1347 (9th Cir.1986).

Thus, the appellant has failed to meet her burden of establishing that the Board has "overlooked or misapprehended points of law or fact" with respect to her non-selection claim.¹

¹ We find no grounds for granting reconsideration merely because the Hearing Officer failed to mention every piece of evidence in the record. *See Marques v. Department of Health & Human Services*, 22 M.S.P.R. 129, 132 (1984) (recognizing that an administrative judge's failure to

ORDER

We DENY the appellant's motion for reconsideration of her non-selection claim.²

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mention all of the evidence of record does not mean that he did not consider it in reaching his decision), *aff'd*, 776 F.2d 1062 (Fed. Cir. 1985) (Table).

² We note that the appellant has filed an appeal of the Board's Decision with the United States Court of Appeals for the Federal Circuit. In light of our disposition, we do not reach the issue whether filing such an appeal deprives the Board of jurisdiction to grant a motion for reconsideration under Section 8.02.