

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

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Ilya Dines,)	
)	
Appellant,)	
)	
v.)	
)	Case Number: 23-LC-44 (CV, DA, FM, RP)
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 March 24, 2025, 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 post-hearing decision in favor of the Library of Congress (Library) on the appellant's claim that the Library violated the anti-reprisal provision of the Congressional Accountability Act (CAA), 2 U.S.C. § 1317(a), when it terminated his employment. The appellant has filed a motion for reconsideration of the Board's Decision.

After a full review of the appellant's motion, the Board DENIES the motion.

I. Background

The appellant filed a claim with the OCWR alleging, among other things, that the Library retaliated against him in violation of 2 U.S.C. § 1317.¹ After a two-day hearing, the Hearing Officer determined that the appellant failed to establish any of his claims and issued a decision in favor of the Library.

¹ The appellant also raised claims of discrimination based on race, religion, and national origin in violation of section 201(a)(1) of the CAA, 2 U.S.C. § 1311(a)(1), disability in violation of section 201(a)(3) of the CAA, 2 U.S.C. § 1311(a)(3), age in violation of section 201(a)(2) of the CAA, 2 U.S.C. § 1311(a)(2), and the Family Medical Leave Act in violation of section 202(a)(1) of the CAA, 2 U.S.C. § 1312(a)(1). The appellant did not challenge on review the Hearing Officer's findings in favor of the Library with respect to these claims. As a result, the appellant waived his appeal of these claims. *See Dines v. Library of Congress*, No. 23-LC-44 (CV, DA, FM, RP), 2025 WL 1019270, at *1 n.1 (C.A.O.C. Mar. 24, 2025) (citing *Evans v. U.S. Capitol Police Bd.*, No. 14-CP-18 (CV, RP), 2015 WL 9257402, at *8 (OOC Dec. 9, 2015) (arguments not raised on appeal before the Board are waived)).

On August 7, 2024, the appellant filed a petition for review of the Hearing Officer's decision. By Decision and Order dated March 24, 2025, the Board affirmed the Hearing Officer's decision. On April 7, 2025, 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 requests 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 his motion for the Board to reconsider his claim that the Library violated the anti-reprisal provision of the CAA when it terminated his employment, the appellant contends that the Board incorrectly found “there was no error in the [Hearing Officer's] decision.”

According to the appellant, the Hearing Officer's finding that “temporal proximity, standing alone, does not show that there was a causal connection between the [appellant's] protected activity and his termination” is incorrect as temporal proximity alone can satisfy the causation element. Although the appellant contends that the *Hearing Officer* committed legal error, he does not explain how the *Board* did so. Indeed, in its decision, the Board agreed that, to the extent the Hearing Officer's statement above could be read to mean that temporal proximity alone can never be sufficient to establish the causation element of a prima facie case, it was error. *Dines v. Library of Congress*, No. 23-LC-44 (CV, DA, FM, RP), 2025 WL 1019270, at *1 n.2 (C.A.O.C. Mar. 24, 2025) (“Temporal proximity, standing alone, can satisfy the causation element.”). But the Board concluded that any error was *harmless* since the Hearing Officer, following a full hearing, ultimately rejected the appellant's reprisal claim on the grounds that the Library had legitimate, non-retaliatory reasons for terminating the appellant that the appellant failed to demonstrate by a preponderance of the evidence were a pretext for reprisal— and not because the appellant had failed to establish a prima facie case. *Id.* The appellant does not explain how the Board overlooked or misapprehended points of law or fact with regards to this point.

The appellant otherwise reiterates arguments that he made before the Hearing Officer and before the Board on review. But 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. *Leggett v. Library of Congress*, No. 20-LC-18 (CV), 2022 WL 21807827, at *1 (C.A.O.C. Feb. 7, 2022).²

Accordingly, the appellant has failed to meet his burden of establishing that the Board has “overlooked or misapprehended points of law or fact” with respect to his claim that the Library violated the anti-reprisal provision of the CAA when it terminated his employment.³

ORDER

We DENY the appellant’s motion for reconsideration of his reprisal claim.⁴

It is so ORDERED.

Issued, Washington, D.C.
April 28, 2025

² We find no grounds for granting reconsideration merely because the Hearing Officer failed to mention every piece of evidence in the record. *See Nkechi George-Winkler v. Office of Congressman Robert D. (“Bobby”) Scott, U.S. House of Representatives*, Case No. 19-HS-30 (DA, FM, RP), 2023 WL 8788936, at *4 (C.A.O.C. Dec. 8, 2023); *Marques v. Department of Health & Human Services*, 22 M.S.P.R. 129, 132 (1984) (recognizing that an administrative judge’s failure to mention all 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).

³ The appellant also relies on an argument that he failed to make before the Hearing Officer. Before the Hearing Officer, the appellant contended that he was terminated in reprisal for filing his EEO claim with the Library. Before the Board, he contends that he was terminated in reprisal for opposing certain Library practices. The appellant, however, may not raise arguments on appeal that were not first presented to the Hearing Officer. *See U.S. Capitol Police & Lodge 1, FOP/U.S. Capitol Police Labor Comm.*, No. 15-LMR-02 (CA), 2017 WL 4335143, at *3 (OOC Sep. 25, 2017) (the Board does not consider issues raised for the first time on appeal).

⁴ 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 decision to deny the request for reconsideration, 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.