

**Office of Congressional Workplace Rights
LA 200, John Adams Building
110 Second Street, SE Washington, DC 20540-1999**

Demetrice Brown,	)	
	)	
	)	
Appellant,	)	
	)	
and	)	Case No. 24-HS-27 (DA, RP)
	)	
The Office of the Chief	)	
Administrative Officer of the	)	
U.S. House of Representatives,	)	
	)	
Appellee.	)	
	)	

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

DECISION OF THE BOARD OF DIRECTORS

This appeal is before the Board of Directors pursuant to the appellant Demetrice Brown’s petition for review (PFR) of the Hearing Officer’s December 10, 2024 Decision, which granted a motion to dismiss filed by the appellee, the Office of the Chief Administrative Officer of the U.S. House of Representatives (CAO).

Upon due consideration of the Hearing Officer’s orders, the parties’ briefs and filings, and the record in these proceedings, the Board grants the PFR, vacates the Hearing Officer’s Decision and remands it for further adjudication.

I. Background and Procedural History

On July 2, 2024, Brown, a Senior Technical Support Representative in the House Information Resources, Technology Support Department, filed a claim form with the Office of Congressional Workplace Rights (OCWR) alleging the following:

I have been subjected to discrimination and harassment based on disability (physical and mental) and age by the denial of my requests for accommodation for my medical conditions (including continuing violations for failure to accommodate which occurred on multiple dates including but not limited to in or around March 2022, May 2022, April 2023, May 2023-September 2023, November 28, 2023 to February 5, 2024) and based on reprisal for my use of Family and Medical Leave and my prior requests for accommodation, by

Technology Support Team Supervisor . . . , IT Customer Support Director . . . ,
and IT Customer Support Chief

Brown also checked boxes on the claim form indicating that he was alleging discrimination and harassment based on disability and age, as well as for unlawful retaliation. He also indicated in his claim form that he was seeking, inter alia, compensable damages, effective reasonable accommodation, and restoration of leave.

CAO thereafter filed a motion to dismiss for failure to state a claim upon which relief can be granted. Brown filed an opposition to the motion in which he stated, among other things, that he was withdrawing his claims of disability harassment, age discrimination, and retaliation. In addition, Brown attached several documents to his opposition, including a declaration identified Brown's alleged disabilities, discussed how those disabilities affected his work, and provided specific detailed allegations about requests for reasonable accommodations and the employing office's denial thereof. Brown did not seek leave to amend his claim form.

The Hearing Officer granted CAO's motion to dismiss, concluding that Brown had failed to state a claim for failure to provide a reasonable accommodation. Specifically, the Hearing Officer determined that the claim form failed to allege: 1) what Brown's disability is; 2) what accommodations he requested; and/or 3) what, if any, alternative reasonable accommodations the employing office may have offered him.¹ Rather, the Hearing Officer found that Brown's claims consisted of "conclusory assertions of discrimination . . . not connected to any protected characteristic" and that Brown did not identify "actions taken by [the employing office] that relate to his . . . disability." The record does not indicate whether the Hearing Officer considered the materials in Brown's opposition in determining to grant CAO's motion to dismiss.

Alternatively, the Hearing Officer found that all the appellants' accommodation claims involving actions taken before January 5, 2024, were time-barred because they were filed beyond the 180-day limitations period set forth at 2 U.S.C. § 1402(b).

Brown appeals. For the reasons set forth below, we vacate the Hearing Officer's Decision and remand it for further adjudication.

II. Standard of Review

The Board's standard of review for appeals from a Hearing Officer's decision requires the Board to set the decision aside if it determines the decision to be: (1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law; (2) not made consistent with required procedures; or (3) unsupported by substantial evidence. 2 U.S.C. § 1406(c); *Katsouros v. Office of the Architect of the Capitol*, Case Nos. 07-AC-48 (DA, RP), 09-AC-10 (DA, FM, RP), 2011 WL 332311, at *3 (OOC Jan. 21, 2011). In making determinations under subsection (c), the Board shall review the whole record, or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error. 2 U.S.C. § 1406(d).

¹ The Hearing Officer also analyzed and dismissed Brown's withdrawn disability harassment, age discrimination, and retaliation claims for failure to state a claim. Brown does not appeal the dismissal of those claims.

The decision to grant a motion to dismiss for failure to state a claim is a question of law, which the Board reviews de novo. *United States Capitol Police, and Fraternal Order of Police, District of Columbia Lodge No. 1 U.S. Capitol Police Labor Committee*, No. 17-LMR-01(CA), 2018 WL 4382910 at *4 (OOC Sep. 12, 2018).

III. Analysis

A. The Standard for Stating a Claim in OCWR Administrative Dispute Resolution Proceedings

Section 405(b) of the CAA, 2 U.S.C. §1405(b), provides that “[a] hearing officer may dismiss any claim that the hearing officer finds to be frivolous or that fails to state a claim upon which relief may be granted.” OCWR Procedural Rule 4.10(a) provides further that “a Merits Hearing Officer may, after notice and an opportunity to respond, dismiss any claim that the Merits Hearing Officer finds to be frivolous or that fails to state a claim upon which relief may be granted.” In considering a motion to dismiss, the Board is guided by the liberal allowances accorded to pleadings under the Federal Rules of Civil Procedure. *See U.S. Capitol Police v. FOP/U.S. Capitol Police Labor Comm. Lodge No. 1*, No. 15-LMR-02 (CA), 2016 WL 5943737, at *3 (OOC Sep. 27, 2016).

As indicated above, the Hearing Officer dismissed this claim on the ground that Brown’s claim form failed to state a claim upon which relief can be granted. In doing so, the Hearing Officer applied the pleading standard used in District Court proceedings to the initial administrative request (the OCWR claim form) in this case. Citing the Supreme Court’s holding in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007), he determined that, to survive a motion to dismiss for a failure to state a claim, a claimant must “provide grounds for his entitlement to relief,” including “enough facts to state a claim for relief that is plausible on its face.” He concluded that “[w]hile the Claimant alleges he was discriminated against based on his ‘disability (physical and mental) . . . ,’ he alleges no adverse employment actions in the claim. This lack of specificity is fatal to his claim.”

We disagree. In *Gormley v. U.S. Capitol Police Board*, No. 07-CP-35 (DA), 2008 WL 5476090, *5 (OOC Aug. 7, 2008), a disability discrimination case, the Board held that administrative employment discrimination pleadings under the CAA need only give fair notice of the claims and grounds upon which they rest. Relying on the Supreme Court’s holding in *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506 (2002), the Board stated:

[*Swierkiewicz* held] that there is no requirement that all elements of the *prima facie* case test must be pled. In so holding, the Court reasoned that the *prima facie* case is an “evidentiary standard, not a pleading requirement.” *Swierkiewicz*, 534 U.S. at 510. The Court determined, based on notice pleading standards, that a plaintiff in an employment discrimination case is only required to plead those facts sufficient to “give respondent fair notice of what petitioner’s claims are and the grounds upon which they rest.” 534 U.S. at 514.

The *Gormley* Board expressly adopted the holding in *Swierkiewicz* and emphasized that it was not changed by the Supreme Court’s later decision in *Bell Atlantic*, relied upon by the Hearing Officer in this case:

In *Bell Atlantic*, the Supreme Court specifically noted, with approval, that it had reversed the Court of Appeals’ decision in *Swierkiewicz* because the court had impermissibly applied what amounted to a heightened pleading requirement by insisting that *Swierkiewicz* allege “specific facts” beyond those necessary to state his claim and the grounds showing entitlement to relief. Therefore, even under *Bell Atlantic*, the Supreme Court does not require “heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face.”

Id. (citations omitted); *see also Yoder v. Architect of the Capitol*, No. CV 23-2214 (TJK), 2025 WL 915611, at *4 n.4 (D.D.C. Mar. 26, 2025). The Board also distinguished between formal civil complaints filed in the U.S. district courts and an administrative complaints (now “claims”) under the CAA, stressing that,

unlike the requirement articulated in *Bell Atlantic* that under Fed. R. Civ. P. 8(a)(2), a complaint must contain allegations sufficient to show a “plausible” entitlement to relief, there is nothing in the [Board’s] Procedural Rules requiring that an *administrative* complaint filed with the [OCWR] show an entitlement to relief. Thus, § 5.01(c)(1) of the Procedural Rules² requires only that an *administrative* complaint include: “(iv) a description of the conduct being challenged...; (v) a brief description of why the complainant believes the challenged conduct is a violation of the Act and the section(s) of the Act involved; (vi) a statement of the relief or remedy sought.”

Id., (emphasis in original); *see also Yoder*, WL 915611, at *6 (distinguishing between “fil[ing] a claim” with the OWCR and filing a civil action with the court; referring to this preliminary step as filing an “administrative charge”).

We reiterate our ruling in *Gormley*. In a motion to dismiss claim under the CAA, the Hearing Officer must accept as true all well-pleaded factual allegations contained in the claim, and draw all reasonable inferences in the claimant’s favor. The Hearing Officer should dismiss for failure to state a claim only if the claim form fails to give fair notice of the claims and grounds upon which they rest, or “if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” *See also Solomon v. Office of the Architect of the Capitol*, Case No. 02-AC-62 (RP) (2005) (citing *Swierkiewicz*); *Britton v. Office of the Architect of the Capitol*, 2003 WL 25795025 (OOC June 3, 2003).³

² Now Rule 4.04, as amended June 2019.

³ Preliminary Hearing Officers should also apply this standard in determining whether “the individual filing the claim . . . has stated a claim for which, if the allegations contained in the claim are true, relief may be granted under this subchapter.” *See* 2 U.S.C. § 1402a(b).

Further, as we announced in this decision, as discussed below, a Hearing Officer may not dismiss a claim under section 405(b) of the CAA without first permitting the claimant to make a curative amendment.

B. The Procedure for Adjudicating a Motions to Dismiss in OCWR Administrative Dispute Resolution Proceedings

As stated above, Brown attached several documents to his opposition, including a declaration identified his alleged disabilities, discussed how those disabilities affected his work, and provided specific detailed allegations about requests for reasonable accommodations and the employing office's denial thereof. Brown, however, did not seek leave to amend his claim form, and it is unclear whether the Hearing Officer considered the materials that accompanied Brown's opposition to the motion to dismiss.

The federal courts have repeatedly stated that motions to dismiss for failure to state a claim are disfavored. *E.g.*, *Harris v. Bowser*, 369 F.Supp.3d 93, 105 (D.D.C. March 27, 2019) *citing Kingman Park Civic Ass'n v. Williams*, 348 F.3d 1033, 1040 (D.C. Cir. 2006). "[I]t is 'entirely contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of . . . mere technicalities,' and leave should be given where possible in order to facilitate resolution of cases on the merits." *Stonehill v. U.S. Dep't of Justice Tax Division*, 1:19-cv-03770 2022 WL 407145 at *4 (D.D.C. February 10, 2022) (*quoting Foman v. Davis*, 371 U.S. 178, 181 (1962)). Indeed, the Federal Rules themselves clearly favor amendment of pleading over dismissal. Fed. R. Civ. P. 15(a)(1)(B).

Under Fed. R. Civ. P. Rule 12(b)(6), "a plaintiff with an arguable claim is ordinarily accorded notice of a pending motion to dismiss for failure to state a claim and an opportunity to amend the complaint before the motion is ruled upon." *Neitzke v. Williams*, 490 U.S. 319, 329 (1989). The purpose of such a procedure is to enable the plaintiff "meaningfully to respond by opposing the motion to dismiss on legal grounds or by clarifying his factual allegations so as to conform with the requirements of a valid legal cause of action." *Id.* at 329–30. Providing the plaintiff with an opportunity to respond "crystallizes the pertinent issues and facilitates appellate review of a trial court dismissal by creating a more complete record of the case." *Id.* at 330. Nonetheless, it is a general rule that a plaintiff may not amend pleadings by way of an opposition to a motion to dismiss. *E.g.*, *Kingman Park Civic Ass'n v. Gray*, 27 F. Supp. 3d 142, 160 n.7 (D.D.C. 2014).

In *Shane v. Fauver*, 213 F.3d 113, 116 (3d Cir. 2000), the U.S. Court of Appeals for the Third Circuit held that if a claim fails for lack of specificity, the district court should grant leave to amend the complaint, regardless of whether the complainant asks for it. *See also Borelli v. City of Reading*, 532 F.2d 950, 951 n. 1 (3d Cir.1976). The court should dismiss only if the complainant is unable or unwilling to amend the complaint; *see Dist. Council 47 v. Bradley*, 795 F.2d 310, 316 (3d Cir.1986); or unless an amendment would be inequitable or futile," *Phillips v. County of Allegheny*, 515 F.3d 224, 236 (3d Cir. 2008). As the Court stated in *Shane*:

[W]e suggest that district judges expressly state, where appropriate, that the plaintiff has leave to amend within a specified period of time, and that application for dismissal of the action may be made if a timely amendment is not forthcoming

within that time. If the plaintiff does not desire to amend, he may file an appropriate notice with the district court asserting his intent to stand on the complaint, at which time an order to dismiss the action would be appropriate.

The Court made clear in *Phillips* that it did “not matter whether a plaintiff [sought] leave to amend.” 515 F.3d at 236. *See also Arthrocare Corp. v. Smith & Nephew, Inc.*, 406 F.3d 1365 (Fed. Cir. 2005) (applying the Third Circuit’s rule to a patent case originating in that circuit).⁴

After carefully considering this issue, the Board concludes that the approach of the Third Circuit best facilitates resolution of administrative cases on the merits under the CAA. Accordingly, where, as here, a claim is subject to dismissal for failure to state a claim, the merits hearing officer must permit a curative amendment, regardless of whether the claimant seeks to amend, unless an amendment would be inequitable or futile. The hearing officer must expressly state, where appropriate, that the claimant has leave to amend within a specified period of time, and that dismissal of the claim may occur if amendment is not forthcoming within that time. A claimant who does not desire to amend may file a notice with the hearing officer asserting the claimant’s intent to stand on the claim, at which time a ruling on the motion to dismiss the claim would be appropriate.

In the instant case, the Hearing Officer did not inform Brown that he had leave to amend his claim form. We therefore VACATE the Hearing Officer’s dismissal of Brown’s disability claim and direct the Hearing Officer to adjudicate it consistent with the standards set forth above, after giving Brown the opportunity to amend that claim. In light of our ruling, we do not reach the other issues on appeal, including whether the Hearing Officer properly dismissed some of Brown’s claims as time-barred, whether the Hearing Officer improperly excluded from his consideration evidence submitted by the appellant with his opposition to CAO’s motion to dismiss, or whether he improperly failed to treat the motion to dismiss as one for summary judgment. *See* Procedural Rule § 4.09(g).

ORDER

The Hearing Officer’s Decision in this case is VACATED and the case is REMANDED to the Hearing Officer for further proceedings consistent with this opinion.

So ORDERED.

Issued, Washington, DC
September 30, 2025

⁴ Other circuits have followed similar practices. *See, e.g., Sarter v. Mays*, 491 F.2d 675, 676 (5th Cir. 1974); *Bank v. Pitt*, 928 F.2d 1108, 1112 (11th Cir. 1991).