

OFFICE OF CONGRESSIONAL WORKPLACE RIGHTS
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Sunday Iyoha,	)	
	)	
	)	
Appellant,	)	
	)	Case No. 25-AC-14
v.	)	
	)	
Architect of the Capitol,	)	
	)	
Appellee	)	

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

DECISION OF THE BOARD OF DIRECTORS

This appeal is before the Board of Directors pursuant to the appellant Sunday Iyoha's petition for review of the Hearing Officer's April 6, 2026, post-hearing decision finding that he failed to prove his claims against the employing office, the Architect of the Capitol (AOC), under the Congressional Accountability Act (CAA). Upon due consideration of the Hearing Officer's orders, the parties' briefs and filings, and the record in these proceedings, the Board AFFIRMS the Hearing Officer's decision in full.

I. Background and Procedural History

On May 15, 2025, the appellant, a Customer Service Improvement Program Manager within AOC's Information Technology Division, filed a claim with the Office of Congressional Workplace Rights (OCWR), alleging that AOC discriminated against him based on his race and national origin, and retaliated against him based on his prior protected activity, in violation of sections 201 and 208 of the CAA. 2 U.S.C. §§ 1311(a)(1), 1317(a).

AOC filed a motion for summary judgment, which the Hearing Officer denied with respect to the appellant's discrimination and retaliation claims.¹ A hearing was held on January 27 and 28, 2026, on the appellant's claims of discrimination and retaliation related to his non-

¹ The appellant does not challenge the Hearing Officer's partial grant of summary judgment on review. As a result, the appellant has waived his right to appeal that Order. *See Dines v. Library of Congress*, No. 23-LC-44 (CV, DA, FM, RP), 2025 WL 1019270, at *1 n.1 (OCWR 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)).

selection for a Grade-15 Marketing and Communications Director position in the U.S. Capitol Visitor Center on November 19, 2024. After the hearing, the Hearing Officer issued a decision in favor of AOC on all of the appellant's claims, finding that the appellant failed to prove that AOC's nondiscriminatory and nonretaliatory reasons for its non-selection were pretext for discrimination or retaliation.

On April 10, 2026, the appellant timely filed a petition for review of the Hearing Officer's decision challenging these findings on appeal.

II. Standard of Review

We must set aside a Hearing Officer's decision if we determine the decision to be: (1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with the law; (2) not made consistent with required procedures; or (3) unsupported by substantial evidence. 2 U.S.C. § 1406(c); *Torres-Velez v. Office of the Architect of the Capitol*, No. 17-AC-36 (FL, RP, CV), 2019 WL 10784232, at *2 (OCWR Sept. 23, 2019); *Rouiller v. U.S. Capitol Police*, No. 15-CP-23 (CV, AG, RP), 2017 WL 106137, at *6 (OOC Jan. 9, 2017); *Hatcher v. Architect of the Capitol*, No. 96-AC-15 (CV, RP), 1998 WL 35281336, at *4 (OOC Feb. 18, 1998). In making determinations under subsection (c), we 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).

Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Biestek v. Berryhill*, 139 S.Ct. 1148, 1154 (2019). A reviewing body should accept such factual findings if they are supported by the record as a whole and should not supplant those findings merely by identifying alternative findings that could be supported by that record. *Arkansas v. Oklahoma*, 503 U.S. 91, 113 (1992); *Cobbin v. U.S. Capitol Police*, No. 21-CP-10 (CV, RP), 2023 WL 8471328, at *2 (OCWR Sept. 27, 2023). The question is not whether we would have made the same decision, or whether there is a "scintilla" of evidence in the record that is contrary to the Hearing Officer's decision. The only issue for us is whether, on the record as a whole, there is substantial evidence to support the Hearing Officer's findings. *Johnson v. Office of the Architect of the Capitol*, No. 96-AC-25 (CV), 1998 WL 35281337, at *4, *10 (OOC May 22, 1998).

III. Analysis

A. The Hearing Officer's Determination that the Appellant Failed to Establish His Discrimination Claim is Supported by Substantial Evidence

Section 201 of the CAA governs discrimination claims. Section 201 provides, in relevant part that, "[a]ll personnel actions affecting covered employees shall be made free from any discrimination based on race, color, religion, sex, or national origin, within the meaning of section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2002-e)." 2 U.S.C. § 1311(a)(1).

To establish a *prima facie* case of discrimination under the CAA, an employee must show that (1) they are a member of a protected class; (2) they suffered an adverse employment action; and (3) the action gives rise to an inference of discrimination. If the employee meets this burden

of production, “[t]he burden then must shift to the [employing office] to articulate some legitimate, nondiscriminatory reason” for its action. If the office does so, then the employee must “be afforded a fair opportunity to show that [the employing office’s] stated reason...was in fact pretext” for unlawful discrimination. *Torres-Velez*, 2019 WL 10784232, at *5.

Focusing on the elements of a prima facie case is misplaced in a post-hearing appeal. Where a hearing has been held and the record is complete, the inquiry shifts to whether the employee has demonstrated by a preponderance of the evidence that the employing office’s proffered reason for its actions was pretext for discrimination – a burden of proof which remains at all times with the employee. *Evans v. Office of the Architect of the Capitol*, No. 16-AC-18 (CV, RP), 2018 WL 4382909, at *4 (OOC Sept. 12, 2018); *U.S. Postal Serv. Bd. of Governors v. Aikens*, 460 U.S. 711, 715 (1983).

In this case, the Hearing Officer rejected the appellant’s claims because, considering the record as a whole, he found substantial evidence that AOC had legitimate, nondiscriminatory reasons for not selecting the appellant, and the appellant failed to show that those reasons were pretext for discrimination. Specifically, the Hearing Officer, after thoroughly examining the selection process, found that the candidates were treated consistently and non-discriminatorily throughout the application and interview process; all three hiring panelists independently gave the highest scores to the selectee and the lowest scores to the appellant; and the selectee had “far superior” qualifications for the position than the appellant.

On appeal, the appellant asserts, among other things, that the Hearing Officer misapplied the law by relying too heavily on a comparison of his qualifications to those of the selectee, gave undue deference to subjective interview assessments, and ignored irregularities in the selection process. The appellant asserts that the Hearing Officer “substitute[d] a qualifications comparison for a proper pretext analysis, which constitutes a legal error.” Contrary to the appellant’s argument on appeal that his qualifications relative to the selectee’s qualifications are not relevant in determining pretext, we believe that they are directly relevant. The clear evidence that the selectee had significantly more relevant experience bolsters the credibility of AOC’s stated reason for its selection decision and in turn undermines the appellant’s assertions of pretext. *See Holcomb v. Powell*, 433 F.3d 889, 897 (D.C. Cir. 2006) (finding that in order to justify an inference of discrimination, the qualifications gap must be great enough to be inherently indicative of discrimination); *see also Fischbach v. District of Columbia Dep’t of Corrections*, 86 F.3d 1180, 1183 (D.C. Cir. 1996) (“The court must respect the employer’s unfettered discretion to choose among qualified candidates.”)

Further, the Hearing Officer did not, as the appellant contends, simply accept the interview scores at face value without further analysis. To the contrary, he examined how the scoring rubric was created and by whom, whether the interview questions were standardized across candidates and based on the job-related competencies, whether the same process was applied across candidates, whether the interview panelists conferred about their scores, and whether they changed their scores after submission. The Hearing Officer’s conclusions that AOC used a structured and neutral interview process, including a scoring rubric and interview questions that were pre-prepared by AOC administrative staff, and that the interview panelists independently scored the candidates are supported by substantial evidence and support a

conclusion that the assessments were based on merit. *See Leggett v. Library of Congress*, No. 20-LC-18 (CV), 2021 WL 4424091, at *4 (OCWR Sept. 20, 2021) (citing *Fischbach*, 86 F.3d at 1182 (employer's choice of one of two candidates “based solely upon their answers during the interview, as reflected in the score that the interview panel assigned to each applicant” was a sufficient nondiscriminatory explanation)). As the Hearing Officer aptly noted, federal courts have recognized that using structured interview processes, involving multiple independent evaluators, is strong evidence that a selection decision was based on legitimate considerations rather than discriminatory motive. *Adeyemi v. District of Columbia*, 525 F.3d 1222, 1227 (D.C. Cir. 2008).

Moreover, the purported irregularities in the process identified by the appellant in his appeal were considered by the Hearing Officer, and we agree that they are insufficient to establish pretext. For instance, the appellant’s assertion that the identical low scores given to him by the three interview panelists are evidence of collusion and pretext is unsupported by the record. The mere presence of similar scores is not sufficient to prove pretext. *See Wishnoff v. Brady*, EEOC DOC 01922497, 1992 WL 1371881 at *4 (1992); *see also McGowan v. Billington*, 281 F.Supp.2d 238, 249 (D.D.C. 2003) (finding identical scores as indicative of consistency in assessment rather than evidence of collusion). In this case, there is no evidence that the panelists colluded in their scoring or assessments of the appellant, the selectee, or any other candidates.

Upon review of the record, the appellant has not met his ultimate burden of showing discrimination on the part of AOC with respect to the non-selection, nor has the appellant shown that the Hearing Officer’s determinations were unsupported by substantial evidence. The CAA does not permit a reviewing body to act as a “super-personnel department” that reexamines an employing office’s personnel decisions. *Rouiller*, 2017 WL 106137, at *6; *see also McNally v. Norton*, 498 F.Supp.2d 167, 182 (D.D.C. 2007) (“Even if a court believes that the employer used poor selection procedures, it may not ‘second-guess an employer’s personnel decision absent [a] demonstrably discriminatory motive.’”). Here, the Hearing Officer carefully examined the selection process and AOC’s reasons for the non-selection and concluded based on substantial evidence that the appellant failed to show discrimination on the part of AOC.

We also reject appellant’s argument that the Hearing Officer failed to properly consider certain pieces of evidence in the record as well as his challenges to the Hearing Officer’s credibility determinations during the hearing. As we have repeatedly held, mere disagreement with the Hearing Officer’s conclusions is not a basis for overturning a decision, and even if the Hearing Officer failed to mention every piece of record evidence cited by the appellant, such failure to do so is not a basis for granting review. *George-Winkler v. Office of Congressman Robert D. (“Bobby”) Scott*, Nos. 19-HS-30 (DA, FM, RP), 19-HS-74 (DA, FM, RP), 2023 WL 8788936, at *4 (OCWR Dec. 12, 2023). Further, the appellant also fails to establish any grounds on appeal for disturbing the Hearing Officer’s credibility determinations. *See Cobbin*, slip op. at 5; *see also Bieber v. Dept. of the Army*, 287 F.3d 1358, 1364 (Fed. Cir. 2002) (credibility determinations of an administrative judge are virtually unreviewable on appeal); *Sheehan v. Office of the Architect of the Capitol*, No. 08-AC-58 (CV, RP), 2011 WL 332312, at *6 (OOC Jan. 21, 2011) (credibility determinations are entitled to substantial deference, because it is the Hearing Officer who “sees the witnesses and hears them testify, while the Board and the reviewing court look only at cold records”); *United Servs. Auto. Ass’n v. NLRB*, 387 F.3d 908,

913 (D.C. Cir. 2004) (court will uphold the Board’s adoption of an administrative judge’s credibility determinations unless “those determinations are hopelessly incredible, self-contradictory, or patently unsupportable.”).

In sum, having considered the appellant’s arguments on appeal, the appellant has not provided a sufficient basis for overturning the Hearing Officer’s determination that his non-selection was not discriminatory.

B. The Hearing Officer’s Determination that the Appellant Failed to Establish His Retaliation Claim is Supported by Substantial Evidence

Section 208 of the CAA governs retaliation claims. Section 208 provides that, “[i]t shall be unlawful for an employing office to intimidate, take reprisal against, or otherwise discriminate against, any covered employee because the covered employee has opposed any practice made unlawful by this chapter...” 2 U.S.C. § 1317(a).

To establish a *prima facie* claim of retaliation under the CAA, an employee is required to demonstrate that: (1) they engaged in activity protected by Section 208(a) of the CAA; (2) the employing office took action against them that was reasonably likely to deter protected activity; and (3) a causal connection existed between the two. If the employee meets this burden, the burden shifts to the employing office to articulate a legitimate non-retaliatory reason for its action. If the office does so, then the employee must show that the employing office’s reason was merely pretext for unlawful retaliation. *Torres-Velez*, 2019 WL 10784232, at *5.

The appellant engaged in protected activity. Prior to this case, the appellant filed two claims with OCWR against AOC in 2012 and 2013, which resulted in an OCWR Board decision in 2014. The appellant also filed suit against AOC in federal district court in 2015, which resulted in a federal circuit court decision in 2019. The appellant then filed two claims with OCWR against AOC in 2023, which resulted in a settlement in 2024. The appellant filed suit the same year against AOC in federal district court seeking enforcement of the 2024 settlement. One of the panelists on the hiring panel in the instant case (hereafter “Panelist”) served on hiring panels in 2014 and 2015 that later became the subject of the 2015 case, in which the appellant also alleged unlawful non-selection. As part of the 2015 case, the Panelist was deposed in 2017 and accused by the appellant of making discriminatory remarks about his accent prior to the 2014 and 2015 non-selections. During litigation in the instant case, the Panelist denied making such comments during that time period.² The Panelist was not the selecting official for the position at issue in the instant case.

In the decision, the Hearing Officer found no causal connection between the appellant’s protected activity – his prior cases against AOC – and the non-selection, determining that AOC proffered legitimate, non-retaliatory reasons for the non-selection and that the appellant did not provide evidence to refute those reasons. Regarding the appellant’s prior cases, the Hearing Officer found that in the absence of other evidence of retaliation, the appellant’s protected activities between 2012 and 2019 were too remote to infer causality on their own. Similarly, the

² The federal district court stated that the alleged comments by the Panelist were made in 2012. The federal circuit court did not specify when the alleged comments were made.

Hearing Officer addressed at length the issue of the Panelist's past involvement with the appellant and found that the Panelist's alleged comments prior to the 2014 and 2015 non-selections were too far removed to provide evidence of pretext in the present case. *See Paige v. Office of the Architect of the Capitol*, No. 16-AC-17 (CV, RP), 2018 WL 4382908, at *6 (OOC Sept. 12, 2018) (finding that temporal proximity alone did not establish pretext in light of the employing office's articulated nondiscriminatory reason for its actions); *see also Dines*, 2025 WL 1019270, at *1 n.2 (citing *Woodruff v. Peters*, 482 F.3d 521, 530 (D.C. Cir. 2007) (employee's claim failed because she failed to present "positive evidence beyond mere proximity" to defeat employer's proffered explanations)). The Hearing Officer noted that the Panelist did not mention the appellant's prior protected activity during the selection process, and that the other two panelists, including the selecting official, had no knowledge of the 2012 through 2019 protected activity. Finally, regarding the appellant's more recent protected activity in 2023 and 2024, the Hearing Officer found that none of the panelists were aware of the activity, and that in the absence of any other evidence of retaliation, temporal proximity alone was insufficient to establish pretext.

The appellant reiterates on appeal what is known as the "cat's paw" theory to argue that the Hearing Officer failed to consider whether the Panelist may have influenced the selection process without explicitly communicating retaliatory intent – that is, the Panelist may have influenced the selection process through facially neutral means, thereby disguising her retaliatory motives. Under a "cat's paw" theory, the appellant must show that (1) a supervisor performed an act motivated by discriminatory animus; (2) the supervisor intended the act to cause an adverse employment action; and (3) that act was a proximate cause of the ultimate employment action. *See Staub v. Proctor Hosp.*, 562 U.S. 411, 422 (2011); *see also Morris v. McCarthy*, 825 F.3d 658, 672–73 (D.C. Cir. 2016).

Upon review of the record, we find that the Hearing Officer did adequately consider the elements of a cat's paw theory, and that the appellant fails to show on appeal that the Hearing Officer's determinations were unsupported by substantial evidence. Beyond stating that the Panelist knew of some of the appellant's prior protected activity, the appellant did not demonstrate in any way during the hearing or on appeal that the Panelist was motivated by retaliatory or discriminatory animus in the selection process or attempted to sway the other panelists. To the contrary, the Hearing Officer specifically found that the Panelist did not influence the other panelists against the appellant, and indeed, the consistent interview scoring of the appellant and the selectee by all three panelists, and the neutral, uniform structure of the selection process, as meticulously outlined in the decision by the Hearing Officer, support this finding. *See Oliver-Simon v. Nicholson*, 384 F.Supp.2d 298, 316 (D.D.C. 2005) (rejecting a cat's paw theory in a non-selection case finding that a panelist merely having knowledge of the plaintiff's prior protected activity was insufficient to show causation, particularly when there was a significant gap between the protected activity and the non-selection). The appellant asks us to view the Panelist's knowledge of and involvement in his prior protected activity, in conjunction with various aspects of the hiring process that the appellant raises concerns over, to infer pretext on the part of AOC. We decline his invitation. As we have stated, even a poor selection process – which we do not state was the case here – does not permit us to overturn a Hearing Officer's findings for lack of substantial evidence. What is operative in any retaliation claim under the

CAA is the appellant's ultimate burden of persuasion to show that the adverse action in question was motivated by retaliation. The appellant fails to do so here.

Having considered the appellant's arguments on appeal, the appellant has not provided a sufficient basis for overturning the Hearing Officer's determination that the selection process was not retaliatory.

ORDER

For the foregoing reasons, the Board AFFIRMS the Hearing Officer's decision on the appellant's claims.

It is so ORDERED.

Issued, Washington, D.C., September 3, 2026