

OFFICE OF COMPLIANCE
Washington, DC

RICHARD A. DUNCAN

Complainant

v.

OFFICE OF THE ARCHITECT
OF THE CAPITOL

Respondent

)

)

)

)

Case No.: 02-AC-59(RP)

MEMORANDUM AND ORDER

After considering Respondent's motion to dismiss, Complainant's opposition and the oral arguments, the Hearing Officer finds and concludes that the complaint should be dismissed with prejudice

1. The complaint fails to state a claim upon which the requested relief may be granted
2. The claims of this complaint are not within the jurisdiction of the Office of Compliance as conferred on it by Congress

Congressional Accountability Act of 1995
1301,

2 USC.

Congress in enacting the CAA did not extend the remedies and protection afforded Congressional employees under Title II, Part A of the CAA, §201, et seq., 2 USC 1311, 109 Stat. 7, to Congressional employees who, like complainant Duncan, had other

protections and similar remedies under Title II, Part C of the CAA, §215, et. seq., 2 USC 1341, 109 Stat. 16.

Mr. Duncan does not allege any facts which bring him within Congressional employee groups in Part A of the CAA. Because he seeks Part A remedies without alleging Part A status, the relief requested by Mr. Duncan cannot be granted by the Office of Compliance.

Mr. Duncan's remedies lie, if any, under Part C of the CAA relating to Congressional employees who allege OSHA violations. The remedies include an order to cure the OSHA violation as well as remedies for discrimination by employers who violate OSHA and for denial of Worker's Compensation. By incorporating the 1970 enactment of OSHA, CAA, §215(a) extended to persons like Mr. Duncan remedies similar to those which he now asks under Part A of the CAA.

In accord with the law applicable to motions to dismiss the Hearing Officer takes the allegations of the complaint as facts well-pleaded and finds, inter alia, that:

1. The complainant seeks relief under Title II, Part A of the CAA, §207, 2 USC 1317, 109 Stat. 13, alleging "a hostile work environment" and "retaliation." Compl., para. 1, Counts I-III and p. 11.
2. This complaint does not allege that Mr. Duncan is a member of any of the employee groups who are identified in Part A of the CAA and who are accorded remedies for "hostile work environment" and "retaliation" under Part A of the CAA. He does not claim status under Part A based on race, color religion, sex, national origin, age, disability, family/medical leave protections, fair labor standards, employee polygraph protections, worker

adjustment and retraining provisions or as a veteran with employment/reemployment status.

3. The complaint does allege facts which identify Mr. Duncan as a Congressional employee to whom Congress extended OSHA protections and remedies. CAA, Part C, §215(a) and (b), 2 USC 1341, 109 Stat. 16.
 - a. On September 5, 2002, Mr. Duncan, an AC equipment mechanic employed by the Office of the Architect of the Capitol (AOC), was ordered to remove his "hard hat" in violation of OSHA regulations by an AOC employee. He was injured and received Worker's Compensation.
 - b. On September 19, 2002, Mr. Duncan sought counseling with the Office of Compliance under CAA, §402, 2 USC, 402, 109 Stat. 32 which applies to Part A of the Act. 1./
 - c. Subsequent to the request for counseling Mr. Duncan experienced further illness and disability but these claims for additional Worker's Compensation were denied. He attributes his disability and the denial of his second compensation claim to such

1./ The effort of the Office of Compliance to assist Mr. Duncan after his request for counseling, a Part A procedure, was consistent with its duties under Part C to investigate an alleged OSHA violation and to direct a litigant to the appropriate government department for the relief he sought - in this the Department of Labor.

discriminatory activity as "hostility" on the job and to threats of "retaliation" by AOC employees as well as misrepresentations by AOC employees concerning his disability claim.

Based on the findings set forth above and, after review of applicable law, the Hearing Officer concludes that:

Congress did not extend the remedies of Part A of CAA to Mr. Duncan under the circumstances alleged in this complaint.

a. Congress subdivided Title II of the CAA into distinct categories of Congressional employees

--Part A extends 8 previously enacted employment laws to Congressional employees and gives the Office of Compliance jurisdiction over some of the specific remedies granted to Congressional employees who are covered by those acts. E.g., CAA §207.

--Part B relates to Public Services and Accommodations and gives the Office of Compliance jurisdiction to perform inspections, etc., and to grant remedies which are specifically cross-referenced to §201 of Part A of the CAA. CAA §210(c), 2 USC 1331, 109 Stat. 14.

--Part C relates to OSHA violations and gives the Office of Compliance jurisdiction to issue an "order to correct the violation" and to do inspections, to issue citations and to make periodic inspections with reports. CAA Part C, §215(b), (c) and (d) 2 USC 1341, 109 Stat. 17-18. Remedies for discrimination and for denial of Worker's Compensation in OSHA matters fall within §215(a) of Part C, which extends the OSHA enactment of 1970 to Congressional employees along with its procedures. The Office of Compliance was not given jurisdiction over

discrimination by OSHA employers or denials of Worker's Compensation claims. The CAA contains no cross-reference for remedies between Part A and Part C.

-Part D extends Labor-Management protections and remedies to Congressional employees. It also specifies in detail the jurisdiction of the Office of Compliance and the remedies which it may grant. It, like Part C, has no cross-references to Part A.

b. Neither the structure of the CAA itself nor any known Congressional intent indicates that Part A remedies of the CAA were to be included in Part C of the CAA

--In dealing with OSHA protections, the CAA cross-references existing statutes for remedies if there are discriminatory acts by employers who violate OSHA or when Worker's Compensation is denied on OSHA claims. §215(a) of Part D, CAA.

--When Congress intended to extend Part A remedies, it did so by specific cross-reference. CAA, Part B, §210(c).

c. To extend to Mr. Duncan the remedies of Part A of the CAA would extend to him and other similarly situated Congressional employees' rights not accorded under OSHA to non-Congressional employees

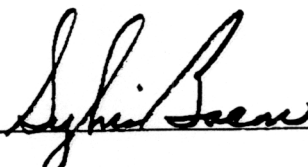
-The 1970 enactment of OSHA did not create a private right of action for employees experiencing OSHA violations. OSHA, 29 USC 653(b)(4) and cases collected 35 ALR Fed. 461, §2.

-The granting of Part A remedies to Congressional employees covered in Part C would give them a private right of action not accorded other

employees affected by OSHA. CAA §404, 2 USC
1404, 109 Stat. 33.

2. Mr. Duncan's claims under §207, Part A of the CAA are not within the jurisdiction of the Office of Compliance
 - a. Mr. Duncan is not a person covered by Part A of the CAA.
 - b. The provisions of Part A of the CAA do not extend the remedies of Part A to a person who like Mr. Duncan has remedies under Part C of the CAA and its provisions for remedies for Congressional employees under the existing statute.
 - c. The assistance given by the Office of Compliance prior to the filing of the complaint did not constitute an acceptance of jurisdiction
3. Under the terms of the CAA, Mr. Duncan fails, in this complaint, to state a claim on which the Office of Compliance may grant relief.
- 4 The Architect of the Capitol is entitled to judgment as a matter of

Therefore it is this 30th day of January, 2004,
ORDERED that the complaint filed herein on December 23,
2003 is dismissed with prejudice



SYLVIA BACON
Hearing Officer

Certificate of Service

See attachment

CERTIFICATE OF SERVICE

I, the undersigned employee of the Office of Compliance certify that on the date indicated below I served the following Memorandum And Order of the Hearing Officer upon the below named persons, addressed to them at the address indicated.

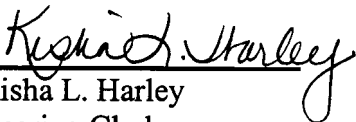
Christine Cooper, Esq.
McGuiness Norris & Williams, LLP
1015 Fifteenth Street, NW
Washington, DC 20005

By U.S. Postal Mail & Facsimile

Jeffrey H. Leib, Esq
Attorney for Complainant
5104 34th Street, NW
Washington, D.C. 20008

By U.S. Postal Mail

Signed in Washington, D.C. this 30th day of January 2004


Kisha L. Harley
Hearing Clerk