

63 FLRA No. 183

UNITED STATES
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C.
(Agency)

and

NATIONAL AIR TRAFFIC
CONTROLLERS ASSOCIATION
(Union)

0-AR-4048
(63 FLRA 492 (2009))

ORDER DENYING
MOTION FOR RECONSIDERATION

August 14, 2009

Before the Authority: Carol Waller Pope, Chairman
and Thomas M. Beck, Member

I. Statement of the Case

This matter is before the Authority on the Agency's motion for reconsideration of the Authority's decision in *United States Department of Transportation, Federal Aviation Administration, Washington, D.C.*, 63 FLRA 492 (2009) (*FAA*). The Union did not file an opposition to the Agency's motion.

The Authority's Regulations permit a party that can establish extraordinary circumstances to request reconsideration of an Authority decision. 5 C.F.R. § 2429.17. For the reasons that follow, we conclude that the Agency fails to establish extraordinary circumstances warranting reconsideration. Accordingly, we deny the Agency's motion for reconsideration.

II. Decision in FAA

In *FAA*, the Arbitrator awarded attorney fees for the services of a non-attorney, staff representative of the Union, and the Agency contended that the award

was contrary to 5 C.F.R. § 550.807(f).^{*} 63 FLRA at 492. The Agency asserted that the staff representative did not qualify for attorney fees because she was not an attorney, law clerk, paralegal, or law student, as required by § 550.807(f). The Agency also asserted that the Authority's decision in *Federal Deposit Insurance Corporation, Division of Information Resource Management, Atlanta, Georgia*, 53 FLRA 1657 (1998) (*FDIC*) was distinguishable. *Id.* at 492-93.

We denied the exception, concluding that *FDIC* supported the award and that § 550.807(f) did not impose requirements that precluded an award of attorney fees for the services of the staff representative. *Id.* at 494. We reiterated the holding in *FDIC* that the governing standards for an award of attorney fees for non-attorney representatives do not exceed the requirements of the existence of an attorney-client relationship and the functioning of the non-attorney representative under the supervision of, and as an agent for, the attorney. We specifically noted that § 550.807(f) does not define "paralegal" or "services of paralegals" and does not require professional training as a paralegal to be entitled to attorney fees. *Id.*

III. Agency's Motion for Reconsideration

The Agency contends that reconsideration is warranted because the Authority made erroneous conclusions of law and fact. Specifically, the Agency argues that the Authority erred by applying *FDIC* because, in the Agency's view, *FDIC* did not concern whether the non-attorney representative had the status of a paralegal. Motion at 5. The Agency further argues that the Authority erred by concluding that an individual becomes a paralegal solely by working for an attorney. *Id.* In addition, the Agency argues that the Authority made an erroneous factual conclusion that the Union's staff representative satisfied the definition of a "paralegal" under § 550.807(f). *Id.* at 8.

IV. Analysis and Conclusions

Section 2429.17 of the Authority's Regulations permits a party that can establish extraordinary

^{*} Section 550.807(f) provides:

The payment of reasonable attorney fees shall be allowed only for the services of members of the Bar and for the services of law clerks, paralegals, or law students, when assisting members of the Bar.

circumstances to request reconsideration of an Authority decision. The Authority has repeatedly recognized that a party seeking reconsideration under § 2429.17 bears the heavy burden of establishing that extraordinary circumstances exist to justify this unusual action. *E.g.*, *AFGE Local 491*, 63 FLRA 542, 542 (2009). The Authority has identified a limited number of situations in which extraordinary circumstances have been found to exist. These include situations where: (1) an intervening court decision or change in the law affected dispositive issues; (2) evidence, information, or issues critical to the decision had not been presented to the Authority; (3) the Authority erred in its remedial order, process, conclusion of law, or factual finding; and (4) the moving party has not been given an opportunity to address an issue raised *sua sponte* by the Authority in the decision. *Id.* (citing *United States Dep't of the Air Force, 375th Combat Support Group, Scott Air Force Base, Ill.*, 50 FLRA 84, 85-87 (1995)). The Authority has repeatedly advised that attempts to relitigate conclusions reached by the Authority do not establish extraordinary circumstances. *E.g.*, *United States Gen. Servs. Admin.*, 63 FLRA 254, 254 (2009).

The Agency makes exactly the same arguments considered and rejected by the Authority in *FAA*. In addition, we reiterate that § 550.807(f) does not define either “paralegal” or “services of paralegals.” Consequently, we reaffirm that an award of attorney fees to a non-attorney representative who functioned under the supervision of, and as an agent for, an attorney does not conflict with any requirements of § 550.807(f). Accordingly, we deny the Agency’s motion for reconsideration. *See id.* at 254-55.

V. Order

The Agency’s motion for reconsideration is denied.