

70 FLRA No. 67

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 2419
(Union)

and

UNITED STATES
DEPARTMENT OF HEALTH AND
HUMAN SERVICES
NATIONAL INSTITUTE OF HEALTH
(Agency)

0-AR-5278

ORDER DENYING
MOTION FOR RECONSIDERATION

September 14, 2017

Before the Authority: Patrick Pizzella, Acting Chairman,
and Ernest DuBester, Member

I. Statement of the Case

The Union has filed a motion for reconsideration of a prior, unpublished Authority order that dismissed the Union's exceptions to an arbitration award. For the reasons discussed below, the Union has not established extraordinary circumstances that warrant reconsideration of the prior order. Therefore, we deny the Union's motion.

II. Background

The Union filed exceptions to an award issued by Arbitrator James C. Peck, Jr. On June 29, 2017, the Authority's Office of Case Intake and Publication (CIP) ordered the Union to show cause why the Authority should not dismiss the exceptions for lack of jurisdiction. The order to show cause (show-cause order) directed the Union to file its response by July 13 and stated that a failure to respond by that date "may result in dismissal of the Union's exceptions."¹ The Union failed to timely respond.

On July 21, the Union filed with the Authority a request for additional time to respond to the show-cause order (Union's request). In the request, the Union

claimed that it had been unable to respond to the show-cause order by July 13 because it did not receive that order until July 19. The Union alleged that this delay in receipt was caused by the Authority sending the show-cause order to an incorrect address – specifically, the Union's old mailing address.

In a July 31 order (the dismissal order), CIP informed the Union that, under Authority precedent, the Union was responsible for ensuring that it provided the Authority with its correct address. CIP affirmed that it had sent the show-cause order, by certified mail, to the address that the Union had provided in its exceptions. Thus, CIP denied the Union's request and – based on the Union's failure to timely respond to the show-cause order – dismissed the Union's exceptions.

The Union now moves for reconsideration of the dismissal order.

III. Analysis and Conclusion: The Union has not established that extraordinary circumstances warrant reconsideration of the dismissal order.

The Union argues that extraordinary circumstances warrant reconsideration of the dismissal order.² Section 2429.17 of the Authority's Regulations permits a party to move for reconsideration of an Authority order if it can establish extraordinary circumstances.³ The Authority has repeatedly recognized that a party seeking reconsideration bears the heavy burden of establishing that extraordinary circumstances exist to justify this unusual action.⁴

Here, the Union does not contest that it "was responsible for ensuring that the Authority was provided with the correct mailing address."⁵ Nor does it dispute that the Authority mailed the show-cause order to the address that the Union had provided in its exceptions. Instead, the Union alleges that an extraordinary circumstance exists because its representative of record was out of the office for several days, starting on July 13, tending to a family medical matter.⁶ However, the evidence establishes that it was the Union's failure to provide the Authority with its correct address that delayed the Union's receipt of the show-cause order. As noted above, the Authority mailed the show-cause order

² Mot. for Recons. at 1-4.

³ 5 C.F.R. § 2429.17; see, e.g., *AFGE, Local 1770*, 43 FLRA 303, 304-05 (1991) (*Local 1770*).

⁴ See, e.g., *Int'l Ass'n of Firefighters, Local F-25*, 64 FLRA 943, 943 (2010) (citing *U.S. Dep't of Transp., FAA, Wash., D.C.*, 63 FLRA 653, 654 (2009)).

⁵ *Local 1770*, 43 FLRA at 305.

⁶ Mot. for Recons. at 1-2.

¹ Show-Cause Order at 2.

on June 29.⁷ Had the Union provided the Authority with the proper address, the representative would have received that order, and been able to respond, well before the expiration of the deadline, and the family medical matter that arose, on July 13.⁸

The Union further asserts that it had arranged for its mail to be forwarded, through the U.S. Postal Service (USPS), from its old address to its current address and that an extraordinary circumstance exists because it took USPS twenty days to forward the show-cause order to its current address.⁹ However, as noted above, the Union was responsible for ensuring that it provided *the Authority*, not USPS, with its correct mailing address.¹⁰ And, under Authority precedent, when the Authority mails an order to the address that it has been provided, an allegation that the Authority sent the order to an incorrect address does not establish an extraordinary circumstance under § 2429.17 of the Authority's Regulations.¹¹

Based on the above, we find that the Union has failed to establish an extraordinary circumstance that warrants reconsideration of the dismissal order. Thus, we deny the Union's motion for reconsideration.¹²

IV. Order

We deny the Union's motion for reconsideration.

⁷ Show-Cause Order at 1; Mot. for Recons., Ex. C (Tracking Information) at 1.

⁸ See Tracking Information at 1 (showing that on July 3 the U.S. Postal Service attempted to deliver the show-cause order to the address that the Union provided in its exceptions).

⁹ Mot. for Recons. at 4.

¹⁰ See *Local 1770*, 43 FLRA at 305.

¹¹ *Id.*

¹² See *id.*