

72 FLRA No. 30

UNITED STATES
DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
(Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
COUNCIL 200
(Union)

0-AR-5610

ORDER DENYING MOTION
FOR RECONSIDERATION

March 26, 2021

Before the Authority: Ernest DuBester, Chairman, and
Colleen Duffy Kiko and James T. Abbott, Members
(Chairman DuBester concurring)

I. Statement of the Case

In this case, the Agency has filed a motion for reconsideration of a prior, unpublished Authority order that dismissed the Agency's exceptions for failing to comply with an Authority order. For the reasons that follow, the Agency has not established extraordinary circumstances that warrant reconsideration of the prior order dismissing its exceptions. Therefore, we deny the Agency's motion.

II. Background and Order to Show Cause

The Agency filed exceptions to an award issued by Arbitrator Denis F. Gordon.¹ However, the award and the exceptions concerned the Agency's decision to remove the grievant from federal service.² Pursuant to § 7122(a) of the Federal Service Labor-Management Relations Statute (the Statute), the Authority lacks jurisdiction to review exceptions to an arbitration award "relating to a matter described in [§] 7121(f)" of the Statute.³ The matters described in § 7121(f) include adverse actions, such as removals, which are covered under 5 U.S.C. §§ 4303 or 7512.⁴ Consequently, the

Authority's Office of Case Intake and Publication (CIP) issued a show-cause order (SCO) directing the Agency to show cause why the Authority should not dismiss its exceptions for lack of jurisdiction.⁵ The SCO also stated that "[t]he Agency's failure to comply with this order by April 22, 2020, may result in dismissal of the Agency's exceptions."⁶ CIP sent the SCO to the Agency via certified mail.

Thereafter, the Agency failed to respond to the SCO.⁷ Consequently, the Authority dismissed the Agency's exceptions on June 1 because the Agency failed to timely respond to the SCO.⁸ The Agency now moves for a reconsideration of the dismissal order.⁹ The Agency argues that the circumstances warrant waiver of the expired Authority time limit because of complications caused by COVID-19 that prevented it from accessing mail and receiving the SCO.¹⁰ Additionally, the Agency argues that it did not receive the SCO because its representative is on extended leave and would have been the recipient of the SCO.¹¹

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

Section 2429.17 of the Authority's Regulations permit a party to move for reconsideration of an Authority order if it can establish extraordinary circumstances.¹² 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.¹³

Previously, the Authority has found that parties are solely responsible for providing the Authority with

¹ Order to Show Cause (SCO) at 1.

² *Id.* at 1-2.

³ 5 U.S.C. § 7122(a).

⁴ *AFGE, Loc. 491*, 63 FLRA 307, 308 (2009).

⁵ SCO at 1-2.

⁶ *Id.* at 2. All dates hereinafter are in 2020 unless otherwise indicated.

⁷ Order Dismissing Exceptions at 1.

⁸ *Id.* at 1-2.

⁹ Mot. for Recons. (Mot.) at 1-4. On June 24, the Agency filed a motion to extend the Authority's jurisdiction and for leave to file a response to the SCO. Mot. to Accept Resp. to Jurisdiction SCO at 1-3. However, because the Authority previously dismissed the Agency's exceptions in the dismissal order on June 1, Order Dismissing Exceptions at 2, we deny the motion and will only consider the Agency's motion for reconsideration.

¹⁰ Mot. at 2-4.

¹¹ *Id.*

¹² 5 C.F.R. § 2429.17; see *AFGE, Loc. 2419*, 70 FLRA 319, 319 (2017) (*Loc. 2419*); *AFGE, Loc. 1770*, 43 FLRA 303, 304-05 (1991) (*Loc. 1770*).

¹³ See *Loc. 2419*, 70 FLRA at 319; *Int'l Ass'n of Firefighters, Loc. F-25*, 64 FLRA 943, 943 (2010) (citing *U.S. Dep't of Transp., FAA, Wash., D.C.*, 63 FLRA 653, 654 (2009)).

the correct mailing address for service.¹⁴ Here, the Authority sent the SCO to the Agency, by certified mail, to the address provided by the Agency. In fact, the Agency concedes that the Authority served the SCO to the address that was provided by the Agency.¹⁵ Once the Agency was aware that its representative was on extended leave, it was the Agency's responsibility to provide the Authority with the proper mailing address for service.¹⁶ Additionally, 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.¹⁷ Therefore, the Agency's arguments regarding the absence of its representative do not establish extraordinary circumstances warranting reconsideration of the Authority's dismissal order.¹⁸ Moreover, the Union correctly asserts that the complications caused by COVID-19 did not prevent the Agency from receiving mail or from providing the Authority with a proper mailing address.¹⁹ Accordingly, we deny the Agency's motion for reconsideration.²⁰

IV. Order

We deny the Agency's motion for reconsideration.

Chairman DuBester, concurring:

I agree with the Order denying the Agency's Motion for Reconsideration.

¹⁴ *Loc. 2419*, 70 FLRA at 319-20 ("However, the evidence establishes that it was the [u]nion's failure to provide the Authority with its correct address that delayed the [u]nion's receipt of the show-cause order.").

¹⁵ Mot. at 3.

¹⁶ *Loc. 2419*, 70 FLRA at 319-20.

¹⁷ *Id.*; *Loc. 1770*, 43 FLRA at 305.

¹⁸ *Loc. 2419*, 70 FLRA at 319-20.

¹⁹ See Wash. D.C., Mayor's Order 2020-054 Stay at Home Order, 2020 WL 1932500, at *5-6 (Mar. 30, 2020) (stating that the order permits non-essential businesses to maintain "Minimum Basic Operations"); Opp'n to Mot. to Accept Resp. to Jurisdiction SCO at 5-6 ("On March 30, 2020, the Office of the Mayor of D.C. issued a stay-at-home order that continued to allow for 'minimum basic operations' for businesses. Thus, there was nothing that prevented the Agency from retrieving mail at the Agency's offices under the Mayor's orders; receiving legal documents is obviously an essential component.").

²⁰ See *Loc. 2419*, 70 FLRA at 319-20; *Loc. 1770*, 43 FLRA at 305.