

73 FLRA No. 3

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 1822
(Union)

and

UNITED STATES
DEPARTMENT OF VETERANS AFFAIRS
MEMBER SERVICES
(Agency)

0-AR-5674
(72 FLRA 595 (2021))

ORDER DISMISSING
MOTION FOR RECONSIDERATION

May 26, 2022

Before the Authority: Ernest DuBester, Chairman, and
Colleen Duffy Kiko and Susan Tsui Grundmann,
Members

I Statement of the Case

The Agency moves for reconsideration of the Authority's decision in *AFGE, Local 1822*.¹ Because the Agency filed its motion for reconsideration more than ten days after service of the Authority's decision, we dismiss the motion as untimely.

¹ 72 FLRA 595 (2021) (Chairman DuBester concurring).

² *Id.*

³ The Union filed an opposition to the reconsideration motion, but the Authority's Regulations do not provide for oppositions to motions for reconsideration. And, while a party may request leave to file additional documents under § 2429.26 of the Authority's Regulations, the Union did not do so here. 5 C.F.R. § 2429.26. Accordingly, we do not consider the Union's opposition. *Int'l Bhd. of Elec. Workers, Loc. 1002*, 71 FLRA 930, 931 (2020) (declining to consider opposition to motion for reconsideration where party did not request leave to file (citing *SPORT Air Traffic Controllers Org.*, 68 FLRA 107, 107-08 (2014))).

⁴ Recons. Mot. at 1 (acknowledging that postmark "predates the decision by [eleven] months"); see also *id.*, Attach., Copy of Envelope Addressed to Agency's Counsel (showing postmark dated January 14, 2021).

II Background

The Authority issued its original decision in this case on December 17, 2021.² When the Authority's Office of Case Intake and Publication (CIP) sent a copy of the decision to the Agency via certified mail, CIP's digital postage meter generated an erroneous, misdated postmark of January 14, 2021, on the mailing envelope. Nevertheless, tracking information from the United States Postal Service shows that the Agency's copy of the decision was deposited in the mail no later than December 21, 2021.

On January 24, 2022, the Agency filed its motion for reconsideration (reconsideration motion).³

III Analysis and Conclusion: We dismiss the reconsideration motion as untimely.

The Agency asserts that its reconsideration motion is timely because the mailing envelope for the original decision did not display an accurate postmark.⁴ To be timely, a motion for reconsideration must "be filed within ten . . . days after service of the Authority's decision or order."⁵ Concerning the service of documents by the Authority, "[w]hen service is by mail, the date of service shall be the day when the matter served is deposited in the United States mail."⁶

Here, the Authority accomplished service by certified mail, which is part of the United States mail.⁷ And, despite the erroneous postmark, tracking information shows that the decision was deposited in the United States mail no later than December 21, 2021, because the decision was moving through the mail on that date.⁸ Further, the Agency undoubtedly received the decision because the reconsideration motion includes a copy of the original decision's mailing envelope with the erroneous postmark.⁹

⁵ 5 C.F.R. § 2429.17.

⁶ *Id.* § 2429.12(c).

⁷ *E.g., Huey v. Dep't of HHS*, 782 F.2d 1575, 1577-78 (Fed. Cir. 1986) (treating certified mail as part of "the United States mail").

⁸ See https://tools.usps.com/go/TrackConfirmAction?qt_c_tLabels1=70210350000037074658 (retrieved Mar. 28, 2022) (showing that decision arrived at United States Postal Service regional distribution center on December 21, 2021); cf. *AFGE, Loc. 3438*, 49 FLRA 1145, 1147 (1994) (relying on United States Postal Service notices to determine that Authority properly served addressee via certified mail).

⁹ Recons. Mot., Attach., Copy of Envelope Addressed to Agency's Counsel. The Agency does not deny that it received the original decision.

Using December 21, 2021, as the date of service of the Authority's original decision, the Agency's January 24, 2022 reconsideration motion was filed outside the ten-day deadline.¹⁰ Therefore, we dismiss the reconsideration motion as untimely.¹¹

IV. Order

We dismiss the motion for reconsideration.

¹⁰ See 5 C.F.R. § 2429.21(a) (explaining how to compute the due date for filing documents with the Federal Labor Relations Authority).

¹¹ Cf. *Marine Corps Logistics Base Barstow, Cal.*, 52 FLRA 1039, 1043-44 (1997) (even when service of unfair-labor-practice complaint was not accomplished in accordance with § 2429.12 of the Authority's Regulations, Authority found that respondent was not entitled to prevail merely due to a "failure to serve the complaint in the manner specified in the Authority's Regulations").