

**68 FLRA No. 111**

UNITED STATES  
DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
FLIGHT STANDARDS SERVICE  
220 AND 230 BRANCHES  
NORTHWEST MOUNTAIN REGION  
RENTON, WASHINGTON  
(Agency)

and

PROFESSIONAL AVIATION SAFETY SPECIALISTS  
(Union/Petitioner)

DE-RP-14-0020

ORDER DENYING  
MOTION FOR RECONSIDERATION

June 17, 2015

Before the Authority: Carol Waller Pope, Chairman, and  
Ernest DuBester and Patrick Pizzella, Members

**I. Statement of the Case**

Acting Regional Director (RD) Timothy J. Sullivan of the Federal Labor Relations Authority issued a decision and order (decision) directing a representation election.<sup>1</sup> The Agency filed, with the Authority, an untimely application for review (application) of the RD's decision. The Authority then issued an order directing the Agency to show cause why the Authority should not dismiss its application as untimely (the show-cause order), and the Agency submitted an untimely response to that order. Because the Agency did not timely respond to the show-cause order, the Authority dismissed the Agency's application for failure to comply with that order. The Agency subsequently filed a motion for reconsideration (motion) requesting that the Authority reconsider that procedural dismissal.

The question before us is whether to grant the Agency's motion. For the reasons stated below, the Agency has failed to establish the extraordinary circumstances necessary to warrant reconsideration. Therefore, the answer is no.

**II. Background**

On November 28, 2014, the RD issued a decision directing an election. The decision noted that, under § 2422.31(a) of the Authority's Regulations, a party could file, with the Authority, an application for review within sixty days of the date of the decision.<sup>2</sup> Under § 2422.31(a) of the Authority's Regulations, the time limit for this filing "may not be extended or waived."<sup>3</sup> Because the decision was dated November 28, 2014, the Agency had to file its application no later than January 27, 2015, in order for it to be timely.<sup>4</sup> The Agency filed its application by certified mail on January 30, 2015.

On February 3, 2015, the Authority's Office of Case Intake and Publication (CIP) issued the show-cause order, directing the Agency to show cause why the Authority should not dismiss the Agency's application as untimely. The show-cause order stated that the Authority "must receive the Agency's response [to the show-cause order] no later than 5:00 p.m. E.T. on Friday, February 13, 2015,"<sup>5</sup> and that failure to comply with the show-cause order "will result in the Authority dismissing this case."<sup>6</sup>

The Agency submitted a response to the show-cause order. Although the Agency's response was *postmarked* on February 11, 2015, the Authority did not receive it until February 18, 2015.<sup>7</sup> CIP therefore found that the Agency's response was untimely, and dismissed the Agency's application for failure to comply with the show-cause order.<sup>8</sup>

The Agency filed a motion requesting reconsideration of CIP's procedural dismissal.

**III. Analysis and Conclusion**

Section 2429.17 of the Authority's Regulations permits a party "who can establish . . . extraordinary circumstances" to request reconsideration of an Authority decision.<sup>9</sup> A party seeking reconsideration bears the heavy burden of establishing that extraordinary circumstances exist to justify this unusual action.<sup>10</sup> When a moving party acknowledges that it received an

<sup>2</sup> *Id.* (citing 5 C.F.R. § 2422.31(a)).

<sup>3</sup> 5 C.F.R. § 2422.31(a).

<sup>4</sup> *Id.* §§ 2422.31, 2429.21, 2429.22(c), 2429.24.

<sup>5</sup> Show-Cause Order at 2.

<sup>6</sup> *Id.* (emphasis added).

<sup>7</sup> Dismissal Order at 1.

<sup>8</sup> *Id.* at 2 (citing *U.S. Dep't of the Navy, Fleet Readiness Ctr. Se., Jacksonville, Fla.*, 64 FLRA 12, 13-14 (2009); *AFGE, Local 1417*, 63 FLRA 349, 350 (2009) (*Local 1417*)).

<sup>9</sup> 5 C.F.R. § 2429.17.

<sup>10</sup> *U.S. DHS, U.S. CBP*, 68 FLRA 109, 110 (2014).

<sup>1</sup> RD's Decision at 10.

Authority decision or order containing a deadline, and therefore could have filed its submission in a timely manner, the Authority has not found that extraordinary circumstances exist to excuse an untimely filing.<sup>11</sup>

In its motion for reconsideration, the Agency argues that CIP's procedural dismissal amounts to a "repeal of [the Authority's] own [r]ules and [r]egulations."<sup>12</sup> In this regard, the Agency points to § 2429.21(b)(1)(i) of the Authority's Regulations, which states that "[i]f [a party's] mailing contains a legible postmark date, then that date is the date of filing."<sup>13</sup> The Agency asserts that, as it postmarked its response two days prior to the deadline specified in the show-cause order, its response to the show-cause order was timely.<sup>14</sup> The Agency also asserts that the filing date of its response constitutes "the official receipt by the [Authority] of the document so that it may be considered."<sup>15</sup> Further, the Agency argues that the Authority's Regulations do not contemplate the "receipt" of the document.<sup>16</sup> For these reasons, the Agency contends that the date of postmark controls for purposes of determining the timeliness of its submission, and that its response is therefore timely.<sup>17</sup>

The Authority previously has imposed "received-by" deadlines for parties' submissions in appropriate cases.<sup>18</sup> And, where the Authority has ordered that it must *receive* a document by a certain due date, and it has not received a document by that date, the Authority has declined to consider that document.<sup>19</sup> Moreover, the Authority has stated that, when the Authority issues an order directing a party to show cause why the Authority should consider a document, and the party's response does not comply with that order, the Authority will not consider the underlying document.<sup>20</sup>

<sup>11</sup> See, e.g., *AFSCME, Local 3870*, 50 FLRA 445, 448 (1995); *IRS, Indianapolis Dist.*, 32 FLRA 1235, 1236 (1988).

<sup>12</sup> Recons. Mot. at 3.

<sup>13</sup> 5 C.F.R. § 2429.21(b)(1)(i).

<sup>14</sup> Recons. Mot. at 6.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 8-9.

<sup>18</sup> E.g., *NASA, Goddard Space Flight Ctr., Wallops Island, Va.*, 67 FLRA 258, 260-61 (2014) (directing the parties to file certain briefs, and stating that the "Authority will consider briefs . . . that the Authority *receives* on or before March 31, 2014" (emphasis added)).

<sup>19</sup> *NASA, Goddard Space Flight Ctr., Wallops Island, Va.*, 67 FLRA 670, 672 (2014) (finding a union's brief untimely and declining to consider it after the Authority stated that the brief "must be *received* [by the Authority] on or before March 31, 2014," but it did not receive the brief until several days after the due date (internal quotation marks omitted)).

<sup>20</sup> *Local 1417*, 63 FLRA at 350 (dismissing exceptions for failure to comply with Authority deficiency order and subsequent order to show cause); cf. *U.S. Dep't of VA*,

The Agency correctly notes that, based upon the date of postmark, the filing date of its response preceded, by two days, the deadline set forth in the show-cause order.<sup>21</sup> Here, however, the show-cause order expressly imposed a "received-by" date, which the Agency concededly did not meet. Although the Authority's Regulations that the Agency cites speak in terms of "filing," nothing in these Regulations precludes the Authority from imposing received-by dates in appropriate cases. The Agency also argues that the RD gave the wrong due date for filing an application for review of his decision, and that this constitutes extraordinary circumstances.<sup>22</sup> However, the Agency does not explain how an incorrect date in the *RD's decision* establishes extraordinary circumstances regarding the Agency's failure to comply with *CIP's show-cause order*. Accordingly, the Agency's arguments provide no basis for finding extraordinary circumstances that warrant the Authority's reconsideration of CIP's procedural dismissal.<sup>23</sup>

#### IV. Decision

We deny the Agency's motion for reconsideration.

60 FLRA 479, 479 n.1 (2004) (declining to consider filing where party failed to respond to deficiency order and failed to comply with subsequent order to show cause).

<sup>21</sup> 5 C.F.R. § 2429.21(b)(1)(i).

<sup>22</sup> Recons. Mot. at 7.

<sup>23</sup> See, e.g., *SSA, Office of Disability Adjudication & Review, Balt. Md.*, 67 FLRA 297, 298 (2014) (argument unsupported by any statutory or regulatory authority did not establish extraordinary circumstances necessary to warrant reconsideration).