

**70 FLRA No. 86**

UNITED STATES  
DEPARTMENT OF THE AIR FORCE  
POPE AIR FORCE BASE, NORTH CAROLINA  
(Agency)

and

AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES  
LOCAL 1770  
(Union)

0-AR-4830  
(66 FLRA 155 (2012))

ORDER DENYING  
MOTION FOR RECONSIDERATION

March 6, 2018

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

**I. Statement of the Case**

After the Agency filed exceptions to an arbitration award, the Authority's Office of Case Intake and Publication (CIP) ordered the Agency to show cause, by a specific date, why the exceptions should not be dismissed as untimely (show-cause order). Although the Agency responded to the show-cause order, its response was untimely. Accordingly, CIP dismissed the Agency's exceptions (dismissal order).

Now, the Agency has filed a motion for reconsideration of the dismissal order. Because the Agency's arguments are untimely, we do not consider them. Therefore, we deny the Agency's motion.

**II. Background**

The Agency filed exceptions to an award issued by Arbitrator Stanley H. Sergent. A copy of the award, dated April 10, 2017, was attached to the exceptions. The exceptions were filed May 17, 2017, more than thirty days after the award's date. Under the Authority's regulations, the time limit for filing exceptions to an arbitration award is thirty days "after the date of service of the award."<sup>1</sup>

On June 23, 2017, CIP issued the show-cause order, which directed the Agency to demonstrate why the Authority should not dismiss the exceptions as untimely.<sup>2</sup> The exceptions appeared untimely because the Agency did not include any evidence of the date and method of service of the award with its exceptions.<sup>3</sup> The show-cause order directed the Agency to file a response by July 7, 2017, and advised that a failure to respond by that date may result in dismissal of the Agency's exceptions.<sup>4</sup>

The Agency did not file a response to the show-cause order until July 12, 2017. The Agency requested leave to file its response late,<sup>5</sup> asserting that the show-cause order was "mailed to and received by the Agency[']s counsel's office while the counsel was litigating an arbitration hearing in New Mexico."<sup>6</sup> Additionally, the Agency stated that "counsel was away from the office for several additional days and first learned of the [show-cause order] on July 11, 2017."<sup>7</sup> The Agency did not raise any additional arguments to support its request to untimely file its response.

On August 25, 2017, CIP issued the dismissal order, which denied the Agency's request to file a late response and dismissed the Agency's exceptions. The dismissal order stated that absence from the office because of work does not establish "extraordinary circumstances" for waiving an expired time limit under § 2429.23(b) of the Authority's Regulations.<sup>8</sup> As stated in the dismissal order, "the Agency representative was responsible for ensuring that someone monitored the Agency's mail during the representative's extended absence from the office."<sup>9</sup>

Accordingly, because the Agency had failed to timely respond to the show-cause order, or demonstrate that any "extraordinary circumstances" justified a waiver of the expired time limit, CIP denied the Agency's

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

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Resp. at 2.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Dismissal Order at 2 (citing 5 C.F.R. § 2429.23(b)); see *AFGE, Local 2419*, 70 FLRA 319, 320 (2017) (*AFGE*) (finding that party failed to establish extraordinary circumstances warranting reconsideration of dismissal order); *U.S. Dep't of the Air Force, Tinker Air Force Base, Okla.*, 46 FLRA 86 (2002) (same).

<sup>9</sup> Dismissal Order at 2 (citing *U.S. DOJ, Fed. BOP, Metro. Corr. Ctr., NYC, N.Y.*, 67 FLRA 442, 444 (2014) (denying request to waive expired time limit where party argued that personal and other circumstances prevented representative from timely responding to deficiency order)).

<sup>1</sup> 5 C.F.R. § 2425.2(b).

request to file a late response to the show-cause order and dismissed the Agency's exceptions.<sup>10</sup>

The Agency now moves for reconsideration of the dismissal order.

**III. Analysis and Conclusion: We deny the Agency's motion to reconsider the dismissal order.**

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.<sup>11</sup> 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.<sup>12</sup> Moreover, the Authority will not consider arguments raised for the first time in a reconsideration motion that could have been raised previously.<sup>13</sup>

The arguments that the Agency makes in its reconsideration motion are all arguments – made for the first time now – as to why the Authority should have considered its late response to the show-cause order.<sup>14</sup> These arguments are untimely raised at this stage, and we do not consider them.<sup>15</sup>

Accordingly, we deny the Agency's motion to reconsider the dismissal order.

**IV. Order**

We deny the Agency's motion for reconsideration.

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<sup>10</sup> *Id.*

<sup>11</sup> 5 C.F.R. § 2429.17; *see AFGE*, 70 FLRA at 319.

<sup>12</sup> *AFGE*, 70 FLRA at 319.

<sup>13</sup> *Id.*

<sup>14</sup> *See Motion* at 1, 5-7.

<sup>15</sup> *AFGE, Local 1547*, 68 FLRA 557, 561 (2015) (Authority will not consider arguments raised for the first time in a motion for reconsideration).