73 FLRA No. 53

INDEPENDENT UNION
OF PENSION EMPLOYEES FOR
DEMOCRACY AND JUSTICE
(Union)

and

PENSION BENEFIT
GUARANTY CORPORATION
(Agency)

0-AR-5792
(73 FLRA 65 (2022))

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ORDER DENYING
MOTION FOR RECONSIDERATION

September 29, 2022

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

I. Statement of the Case

The Union requests that we reconsider our decision in *Independent Union of Pension Employees for Democracy & Justice* (*IUPEDJ*).[1] In that case, the Authority found that the Union's exceptions to an award issued by Arbitrator C. Allen Foster did not provide a statement of the grounds on which the Union requested review as required by § 2425.4(a)(1) of the Authority's Regulations.[2] Accordingly, the Authority dismissed the Union's exceptions.

As further discussed below, we find that the Union's arguments in its motion for reconsideration (motion) fail to establish extraordinary circumstances warranting reconsideration. Therefore, we deny the Union's motion.

II. Background and Authority's Decision in *IUPEDJ*

The Arbitrator served the award on the parties on December 14, 2021. On January 14, 2022, the Union filed two exceptions forms using the Federal Labor Relations Authority's (FLRA's) eFiling system. With the first exceptions form (initial exceptions), the Union attached the award but did not upload an exceptions brief or include any arguments within the form.[3] The Union's second exceptions form (second exceptions) included several exhibits as attachments but, once again, the Union did not upload an exceptions brief or make any arguments within the form.[4] Later on the same day, the Union faxed the FLRA a motion to "strike the initial [exceptions]" and "accept the second [exceptions] . . . as timely."[5]

In *IUPEDJ*, the Authority determined that neither the initial exceptions nor the second exceptions set forth a ground for reviewing the Arbitrator's award under § 2425.4(a)(1) of the Authority's Regulations.[6] As there was no basis for reviewing the award, the Authority dismissed the exceptions.

On June 23, 2022, the Union filed this motion. On July 7, 2022, the Agency requested leave to file, and filed, an opposition under § 2429.26 of the Authority's Regulations.[7]

III. Analysis and Conclusion: We deny the motion.

Section 2429.17 of the Authority's Regulations permits a party that can establish extraordinary circumstances to move for reconsideration of an Authority decision.[8] The Authority has repeatedly held that a party seeking reconsideration bears the heavy burden of establishing that extraordinary circumstances exist to justify this unusual action.[9] Errors in the Authority's remedial order, process, conclusions of law, or factual findings may justify granting reconsideration.[10]

First, the Union claims that the confirmation emails sent by the FLRA's eFiling system led the Union to believe that it had successfully uploaded its exceptions brief.[11] However, the confirmation emails are autogenerated and show only that a "submission has been

[1] 73 FLRA 65 (2022).
[2] 5 C.F.R. § 2425.4(a)(1).
[3] For the Union's first filing, the section where the Union could upload a brief said "Empty but *[r]equired." Exceptions Form (Initial Exceptions Form) at 2.
[4] For the Union's second filing, the section where the Union could upload a brief said "Empty but *[r]equired." Exceptions Form (Second Exceptions Form) at 2.
[5] Union's Mot. to Strike at 2.
[6] 5 C.F.R. § 2425.4(a)(1).
[7] *Id.* § 2429.26. We grant the Agency's request to file an opposition, and we consider the Agency's opposition. *See U.S. Dep't of the Treasury, IRS, Wash., D.C.*, 61 FLRA 352, 353 (2005) ("Authority practice is to grant requests to file oppositions to motions for reconsideration").
[8] 5 C.F.R. § 2429.17.
[9] *U.S. Dep't of VA, John J. Pershing VA Med. Ctr., Poplar Bluff, Mo.*, 72 FLRA 419, 419 (2021).
[10] *Id.*
[11] Mot. Br. at 1-2.

filed."[12] Therefore, the autogenerated emails do not inform parties whether any documents they attempted to attach to their filing were uploaded onto the FLRA's eFiling system. After electronically filing the exceptions form, the Union's counsel could have accessed the FLRA's eFiling system and verified whether it had successfully uploaded its exceptions brief. The Union did not provide any evidence establishing that it uploaded its exceptions brief.[13] Consequently, the Union's argument fails to establish extraordinary circumstances warranting reconsideration.[14]

Next, the Union alleges its exceptions brief was "unavailab[le]" because of "a technical error in the [FLRA's eFiling] system or [an] Authority user error."[15] However, the Union neither provides evidence that an error occurred within the FLRA's eFiling system, nor explains how the Authority allegedly erred. Therefore, this argument fails to establish extraordinary circumstances warranting reconsideration.[16]

Lastly, the Union argues the Authority should have issued a show-cause order notifying the Union that it did not successfully upload its exceptions brief.[17] However, the Union cites no precedent that required the Authority to issue a show-cause order in this circumstance.[18] Moreover, the absence of a show-cause order did not deprive the Union of an opportunity to address its filing deficiencies. Through this motion, the Union provides several explanations as to why it failed to successfully upload its exceptions brief. Having fully considered the Union's motion, we find that the Union fails to establish extraordinary circumstances warranting reconsideration.[19] Therefore, we deny the motion.

IV. Order

We deny the Union's motion for reconsideration.

[12] Mot., Ex. 1 at 1 (noting that the email was being sent from an "auto-notification system"); Mot., Ex. 2 at 1 (same).

[13] *See U.S. Dep't of the Navy, Portsmouth Naval Shipyard*, 70 FLRA 429, 430 (2018) (*Dep't of the Navy*) (then-Member DuBester concurring) (dismissing untimely exceptions because the excepting party "failed to include any attachments to demonstrate the alleged network outage and eFiling issues").

[14] *See AFGE, Loc. 12*, 69 FLRA 28, 29-30 (2015) (*Loc. 12*) (denying motion for reconsideration where the moving party provided pertinent document with its motion that party failed to include when it originally filed its exceptions); *see also AFGE, Loc. 446*, 72 FLRA 54, 55 (2021) (Chairman Kiko concurring) (noting that the excepting party's "own clerical error and technical difficulties" resulted in the "failure to file timely, complete exceptions" – not the Authority's eFiling system (internal quotation marks omitted)).

[15] Mot. Br. at 2.

[16] *See Dep't of the Navy*, 70 FLRA at 430; *Loc. 12*, 68 FLRA at 29-30; *see also U.S. DHS, U.S. CBP, U.S. Border Patrol, Yuma Sector*, 68 FLRA 189, 190-91 (2015) (Member Pizzella dissenting) (finding extraordinary circumstances warranting waiving expired deadline for filing of opposition because party "include[d] printouts of the eFiling screens . . . show[ing] that there were not any open fields in which to enter the requested filing-party information, and the eFiling system generated an online time stamp for the opposition several hours before the midnight eFiling deadline").

[17] Mot. Br. at 2-3.

[18] *Cf. U.S. Dep't of VA, VA Med. Ctr., Hampton, Va.*, 63 FLRA 593, 595 (2009) (rejecting untimely filer's excuse that it had relied on inaccurate filing advice provided by an Authority agent, noting that the party was "responsible for having knowledge of the filing requirements set forth under the [Federal Service Labor-Management Relations] Statute and the Authority's Regulations" and "cited no authority which establishe[d] that Authority agents [were] responsible for correcting a party's filing error"). While the Union cites multiple cases in which the Authority issued a show-cause order based on the excepting party's failure to file exceptions, *e.g.*, Mot. Br. at 2-3 (citing *Dep't of the Navy*, 70 FLRA 429; *AFGE, Loc. 3961*, 68 FLRA 443 (2015) (then-Member DuBester dissenting)), none of the cited cases obligate the Authority to issue show-cause orders.

[19] *See Loc. 12*, 69 FLRA at 28-30 (denying motion for reconsideration where the moving party's exceptions had "failed to set forth in full its argument in support of its essence exception" by neglecting to provide a copy of the parties' agreement or excerpt of the relevant article (internal quotation marks omitted)).