RUTH BASKERVILLE v. U.S. General Accounting Office

Docket No. 93-02

Date of Decision: July 20, 1993

Cite as: Baskerville v. GAO, Docket No. 93-02 (7/20/93)

Before: Nancy A. McBride, Administrative Judge

Headnotes:

Exhaustion of Remedies

Failure to Prosecute

Request for Reconsideration

INITIAL DECISION

PERSONNEL APPEALS BOARD
U.S. GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C.

Ruth Baskerville, Petitioner, v. United States General Accounting Office, Respondent.	)	Docket No. 93-02

INITIAL DECISION

This matter arises on Petitioner's Motion for Reconsideration of Dismissal for Lack of Prosecution. The Petition was previously dismissed for lack of prosecution, for reasons set forth in the Memorandum and Order of June 3, 1993.

Petitioner filed a motion seeking reconsideration of the dismissal. Specifically, Petitioner requested that the case be reinstated and that the proceedings be stayed until the completion of a medical evaluation to determine the capability of Petitioner to participate in her case. By order dated July 2, 1993, oral argument was set for July 20, 1993 at 10:00 a.m. The hearing was convened at 10:20 a.m. Counsel for Respondent was present. Counsel for Petitioner did not attend, and he did not notify the Board of any reason why he would not be able to attend.

The matter, therefore, was considered on the basis of petitioner's written motion, with attachment, and the respondent's response thereto. Petitioner has not advanced any factual or legal basis in support of the motion to reconsider dismissal. The motion, filed on June 14, 1993, purported to seek an opportunity to

obtain a medical evaluation of petitioner. Yet, five weeks later, no evidence has been presented regarding such an evaluation. This, coupled with the failure of counsel for Petitioner to attend the oral argument on the motion or to give notice of an inability to participate in the scheduled argument, perpetuates the failure to prosecute the charge that led to the June 3, 1993 order of dismissal. Having fully considered Petitioner's motion and Respondent's response thereto, the Motion for Reconsideration for Lack of Prosecution is denied.

The dismissal of this action is fully warranted by the following instances of failure to prosecute:

(1) Petitioner repeatedly failed to cooperate in the scheduling of her deposition as noticed by Respondent. Respondent thereafter filed a Motion to Compel Discovery which resulted in an order compelling Petitioner to appear for deposition on May 13, 1993 as agreed to by Counsel for Petitioner. Petitioner failed to appear for deposition and did not offer an explanation for her failure to appear.

(2) Respondent filed a second Motion to Compel Discovery concerning Petitioner's failure to respond to Respondent's First Request for Production of Documents due on May 18, 1993. Petitioner was given until May 27, 1993 to respond to the second Motion to Compel and did not do so.

(3) Respondent filed a third Motion to Compel Discovery concerning Petitioner's failure to respond to Respondent's First Set of Interrogatories and [Second] Request for Production of

Documents due on May 24, 1993. Petitioner did not respond to the third motion to compel.

(4) Upon receipt by the Board of Respondent's Motion to Dismiss for Failure to Prosecute, Petitioner was advised that any written response thereto was to be in the office of the Personnel Appeals Board no later than noon on June 2, 1993. The Petitioner's response to the Motion to Dismiss was not filed within the prescribed time. A copy of Petitioner's Opposition to Respondent's Motion to Dismiss, marked as Attachment I to Petitioner's Motion for Reconsideration of Dismissal for Lack of Prosecution, was received by the Board, via facsimile, on June 30, 1993, only after inquiry by the Clerk of the Board occasioned by the absence of the referenced attachment to the Motion for Reconsideration filed on June 14, 1993.

(5) In seeking reconsideration of the dismissal, Petitioner supplemented the pattern of failure to prosecute by not putting forth any evidence in support of the assertions of Counsel for Petitioner concerning possible emotional problems of Petitioner and by failing to appear, without explanation, at the oral argument scheduled for Petitioner's motion.

Accordingly, pursuant to 4 C.F.R. §28.24(b), the Petition of Ruth Baskerville v. United States General Accounting Office is dismissed, with prejudice, for failure to prosecute.

SO ORDERED.

DATE: July 20, 1993

NOTICE

BOARD REVIEW:

Pursuant to 4 C.F.R. §28.87, this decision will become final on August 20, 1993 unless a request for reconsideration is filed by one of the parties on or before that date, or unless the Board decides to reconsider the decision on its own motion. The original and seven copies of any request for reconsideration shall be filed with the Board in person at the office of the Board or by mail (addresses listed below). When filed by mail, the postmark shall be deemed to reflect the date of filing. The party filing the request shall serve a copy of the request on all other parties. The request for reconsideration shall set forth objections to the decision, with references to applicable laws or regulations, and with specific reference to the record. The responding party shall have 30 days from receipt of the request for reconsideration to file any reply. Additional responsive pleadings may be filed only with the approval of the Board.

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MAILING ADDRESS:	**LOCATION:**
Personnel Appeals Board U.S. General Accounting Office Suite 830/UCP II 441 G Street, N.E. Washington, DC 20548	Personnel Appeals Board U.S. General Accounting Office Suite 830 820 First Street, N.E. Washington, DC 20002

Date: July 20, 1993

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*1 The mailing address and location listed in 4 C.F.R. §28.87(b) no longer apply.