

OFFICE OF CONGRESSIONAL WORKPLACE RIGHTS

LA 200, John Adams Building, 110 Second Street, S.E.
Washington, D.C. 20540-1999

Aaron West,)
Appellant,)
v.)
United States Capitol Police,) Case Number: 21-CP-18 (AG, DA, CV)
Appellee.)

Before the Board of Directors: Barbara Childs Wallace, Chair; Alan V. Friedman, Roberta L. Holzwarth, Susan S. Robfogel, Barbara L. Camens, Members.

DECISION OF THE BOARD OF DIRECTORS

This case is before the Board of Directors (Board) pursuant to a petition for review (PFR) filed by the pro se appellant, which seeks review of the Hearing Officer’s Order granting, pursuant to Procedural Rule § 7.02, the United States Capitol Police’s (USCP) Motion to Dismiss for Failure to Participate. Upon due consideration of the Hearing Officer’s Order, the parties’ briefs and filings, and the record in these proceedings, the Board affirms the Hearing Officer’s Order.

I. Relevant Procedural History

On October 22, 2021, the appellant filed a claim form with the Office of Congressional Workplace Rights (OCWR) in which he appeared to allege that the USCP had violated the Americans with Disabilities Act provisions of the Congressional Accountability Act when it discriminatorily failed to consider him for employment or provide him with a reasonable accommodation in the testing and application process. He repeated his summary allegations in his amended claim form.

The following facts concerning the processing of the appellant’s claims, as set forth in the Hearing Officer’s Order, are undisputed: On February 23, 2022, the Hearing Officer issued a scheduling order setting February 25 as the deadline for the exchange of initial disclosures and March 4 as the deadline for filing discovery requests. The appellant did not file initial disclosures or make discovery requests by those deadlines. On March

24 the Hearing Officer extended the deadline for the appellant to respond to the USCP's discovery requests to April 8.

On April 11 the USCP sent the appellant a "Discovery Overdue" letter, informing him that he had failed to respond to its discovery requests and requesting that he immediately do so. The appellant stated that he needed more time because of a pending surgery. On April 12, the Hearing Officer paused the discovery deadlines as a result of the appellant's surgery, and stated that new deadlines would be issued. The Hearing Officer convened a conference call on April 22 in which he emphasized to the appellant the importance of meeting deadlines, and warned him that his claim could be dismissed if he continued to fail to meet them. The appellant indicated that he understood. The Hearing Officer thereafter issued a revised scheduling order to allow the appellant more time to comply with the deadlines, which the appellant failed to meet as well.

On May 24, the USCP filed a "Motion to Dismiss for Failure to Participate" pursuant to Procedural Rule § 7.02(b)(1) and (2).¹ The appellant's subsequent submissions, dated June 2 and June 18, were nonresponsive to the substance of the USCP's arguments that the claim should be dismissed.

The Hearing Officer granted the USCP's motion to dismiss, finding that the appellant's lack of action amounted to failure to comply with the terms of the initial and revised scheduling orders in violation of OCWR Procedural Rule 7.02(b)(1). In addition, the Hearing Officer determined that the appellant had failed to prosecute his claim in violation of OCWR Procedural Rule 7.02(b)(2), noting that the appellant's nonresponsive submissions of June 2 and 18 proved that he was at least capable of presenting a rebuttal of the merits of the USCP's motion, but had chosen not to.

The Hearing Officer concluded that the circumstances of the appellant's violation of two OCWR procedural rules required final disposition of the case. In particular, the Hearing Officer stressed that he had warned the appellant during the joint conference call

¹ Procedural Rule § 7.02(b) states that "The Merits Hearing Officer may impose sanctions upon the parties and/or their representatives based on, but not limited to, the circumstances set forth in this section." Procedural Rule § 7.02(b)(1) states in relevant part that, "When a party fails to comply with an order (including an order to submit to a deposition, to produce evidence within the party's possession, custody, or control, or to produce witnesses), the Merits Hearing Officer may . . . direct judgment against the non-complying party in whole or in part." Procedural Rule § 7.02(b)(2) states that, "If a party fails to prosecute or defend a position, the Merits Hearing Officer may dismiss the action in whole or in part, with or without prejudice, or decide the matter when appropriate."

that a continuing failure to meet deadlines could result in dismissal. Following that warning, the Hearing Officer observed, not only did the appellant fail to meet his obligations in discovery, he also failed to rebut the merits of the USCP's motion to dismiss. Accordingly, the Hearing Officer concluded that there was no other appropriate sanction but to dismiss the case with prejudice.

Following the Hearing Officer's Order, the appellant sent numerous emails to the OCWR Clerk of the Board in which he expressed dissatisfaction with the result. The Clerk responded by email that none of his communications constituted a PFR within the meaning of the OCWR Procedural Rules, and provided him with guidance on filing a PFR if he chose to do so. On August 17 the appellant sent an email to the Clerk which stated simply: "I want to file . . . a Petition for Review." The Clerk docketed the appellant's submission as such and informed him that he was required by section 8.01 (c)(1) of the Procedural Rules to file by September 7 a supporting brief that identifies with particularity the parts of the decision being challenged. The appellant has not filed any additional materials in this case.

II. Standard of Review

The Board's standard of review requires it to set aside a Hearing Officer's decision if it determines the decision to be: (1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with the law; (2) not made consistent with required procedures; or (3) unsupported by substantial evidence. 2 U.S.C. § 1406(c); *Rouiller v. U.S. Capitol Police*, Case No. 15-CP-23 (CV, AG, RP), 2017 WL 106137, at *6 (Jan. 9, 2017). In making determinations under subsection (c), the Board shall review the whole record, or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error. 2 U.S.C. § 1406(d).

III. Analysis

The sanction of dismissal with prejudice may be imposed if a party fails to prosecute a claim. *Taiwo v. Architect of the Capitol*, No. 10-AC-25 (DA, RP), 2011 WL 1883058 (OOC May 13, 2011); *Rollins v. Office of the Clerk of the House of Representatives*, No. 03-HS-105 (CV, AG), 2004 WL 5658962 (OOC Dec. 23, 2004). We find no abuse of discretion in the Hearing Officer's decision to do so in this case.

We find no error in the Hearing Officer's determination that the appellant failed to comply with the terms of the initial and revised scheduling orders and also failed to proceed in this matter when he did not submit discovery materials pertaining to his case. We also agree with the Hearing Officer's conclusion that the appellant proffered no

substantive explanation for failing to meet the set deadlines. Based on the foregoing, we agree with the Hearing Officer's finding that the appellant failed to exercise basic due diligence in prosecuting his claim and that dismissal with prejudice was the appropriate sanction in this case. Accordingly, we affirm the Hearing Officer's dismissal of the appellant's claims with prejudice for failure to comply and failure to prosecute.

ORDER

For the foregoing reasons, the Hearing Officer's dismissal of the claim with prejudice is affirmed.

It is so ordered.

Issued: at Washington, D.C., November 17, 2022