

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FORT WORTH, TEXAS Respondent and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3320, AFL-CIO Charging Party	Case Nos. DA-CA-02-0224 DA-CA-02-0243

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard before the undersigned Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Authority, the undersigned herein serves his/her Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Federal Labor Relations Authority pursuant to 5 C.F.R. § 2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.40-2423.41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **OCTOBER 28, 2002**, and addressed to:

Office of Case Control
Federal Labor Relations Authority
607 14th Street, N.W., Suite 415
Washington, D.C. 20424

SUSAN E. JELEN
Administrative Law Judge

Dated: September 27, 2002
Washington, DC

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

MEMORANDUM
2002

DATE: September 27,

TO: The Federal Labor Relations Authority

FROM: SUSAN E. JELEN
Administrative Law Judge

SUBJECT: U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FORT WORTH, TEXAS

Respondent

and
CA-02-0224

Case Nos. DA-

CA-02-0243

DA-

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 3320, AFI-CIO

Charging Party

Pursuant to section 2423.27(c) of the Rules and Regulations
5 C.F.R. § 2423.27(c), I am hereby transferring the above
case to the Authority. Enclosed are copies of my Decision,
the service sheet, and the transmittal form sent to the
parties. Also enclosed are the Motions for Summary Judgment
and other supporting documents filed by the parties.

Enclosures

FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges OALJ 02-65
WASHINGTON, D.C.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FORT WORTH, TEXAS <p style="text-align:center">Respondent</p> and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3320, AFL-CIO <p style="text-align:center">Charging Party</p>	Case Nos. DA-CA-02-0224 DA-CA-02-0243

Melissa McIntosh, Esq.
For the General Counsel

Timothy J. Hartzler, Esq.
For the Respondent

Phillip Aguirri, President
For the Charging Party

Before: SUSAN E. JELEN
 Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On July 22, 2002, the Regional Director of the Dallas Region of the Federal Labor Relations Authority issued a Complaint and Notice of Hearing in Case No. DA-CA-02-0243, which was duly served by certified mail upon the U.S. Department of Housing and Urban Development, Fort Worth, Texas (the Respondent). The Complaint alleged that Respondent violated section 7114(b)(4) and 7116(a)(1), (5) and (8) of the Federal Service Labor-Management Relations Statute (the Statute), by refusing to provide the American Federation of Government Employees, Local 3320, AFL-CIO (the Union), with the requested information in relation to a job announcement for an Equal Employment Opportunity Specialist. The Complaint also specified that, in accordance with the Authority's Rules and Regulations, the Respondent must file an Answer to the Complaint no later than August 19, 2002,

and that a failure to file an answer shall constitute an admission of the allegations of the Complaint.

On August 7, 2002, the Regional Director issued a Consolidated Complaint and Notice of Hearing in Case No. DA-CA-02-0224, which was duly served by certified mail upon the Respondent, and consolidated Case No. DA-CA-02-0224 with Case No. DA-CA-02-0243. The Consolidated Complaint alleged that the Respondent violated section 7114(b)(4) and 7116(a)(1), (5) and (8) of the Statute by refusing to provide the Union with the requested information in relation to job announcement 03-UMC-2001-0026Z, Paralegal Specialist, GS-0950-07/07. The Consolidated Complaint also specified that, in accordance with the Authority's Rules and Regulations, the Respondent must file an Answer to the Consolidated Complaint no later than September 3, 2002, and that a failure to file an answer shall constitute an admission of the allegations of the Complaint.

Respondent did not file Answers in either of these cases.

On September 16, 2002, Counsel for the General Counsel filed a Motion for Summary Judgment, based on Respondent's failure to file a timely answer. A facsimile copy of this motion was received in the Office of Administrative Law Judges on September 16, 2002.

On September 24, 2002, Respondent's Counsel filed Respondent's Opposition to Summary Judgment and Motion For Leave To File Answers to the Complaints, which was received in the Office of Administrative Law Judges on September 25, 2002. Respondent's Counsel noted that he had been out of the country from September 7 to September 23, 2002, and received the Motion for Summary Judgment on September 24, 2002, the first day he was back in the office. Respondent's Counsel does not dispute that the answers were not filed by the dates required. He notes that a settlement conference was conducted on August 22, 2002, in which the parties and their representatives participated. Respondent's Counsel recollects that there was no mention during the settlement conference of delinquent answers, even though the answer in Case No. DA-CA-02-0243 was due on August 19, 2002. Respondent's Counsel argues that this situation would appear to fall within the well established standards utilized in federal court litigation that default judgments are not favored, and that a showing of excusable neglect will be a basis for setting aside a default. See Fed. R. Civ. P. 55; *Coon v. Grenier*, 867 F.2d 73, 76 (1st Cir. 1989). Respondent's Counsel requests that the Motion for Summary Judgment be denied, or, in the alternative, Respondent be

granted leave to file answers to the Complaints. Respondent submitted answers with its Opposition to Summary Judgment.

Counsel for the General Counsel objects to Respondent's Motion For Leave to File Answers to the Complaints.

Discussion of Motion for Summary Judgment

Section 2423.20(b) of the Authority's Rules and Regulations, 5 C.F.R. § 2423.20(b), provides, in pertinent part:

(b) Answer. Within 20 days after the date of service of the complaint, . . . the Respondent shall file and serve, . . . an answer with the Office of Administrative Law Judges. The answer shall admit, deny, or explain each allegation of the complaint. . . . Absent a showing of good cause to the contrary, failure to file an answer or respond to any allegation shall constitute an admission.

The Rules and Regulations also explain how to calculate filing deadlines and how to request extensions of time for filing the required documents. See, e.g., sections 2429.21 through 2429.23.

It is undisputed here that Respondent's answers were not timely filed. The answer in Case No. DA-CA-02-0243 was due on August 19, 2002; the answer in Case No. DA-CA-02-0224 was due on September 3, 2002. Therefore, the issue is whether the Respondent has shown "good cause" for its late submission. The Respondent, as noted above, has indicated that its Counsel was out of the country from September 7 through September 23, 2002. This explanation is apparently in reference to its response to the Motion for Summary Judgment, rather than its defense to the failure to file timely answers, since both were due by September 3, 2002, prior to his departure. Respondent appears to argue "excusable neglect" in the filing of the answers and requests that it be allowed to file such answers out of time.

In the text of the Complaints and Notice of Hearing, the Regional Director provided the Respondent with detailed instructions concerning the requirements for its answers, including the dates on which the answers were due, the persons to whom they must be sent, and references to the applicable regulations. The plain language of the notices leaves no doubt that Respondent was required to file answers to the Complaints.

Moreover, the Authority has held, in a variety of factual and legal contexts, that parties are responsible for being aware of the statutory and regulatory requirements in proceedings under the Statute. *U.S. Environmental Protection Agency, Environmental Research Laboratory, Narragansett, Rhode Island*, 49 FLRA 33, 35-36 (1994) (answer to a complaint and an ALJ's order); *U.S. Department of Veterans Affairs Medical Center, Waco, Texas and American Federation of Government Employees, Local 1822*, 43 FLRA 1149, 1150 (1992) (exceptions to an arbitrator's award); *U.S. Department of the Treasury, Customs Service, Region IV, Miami, Florida*, 37 FLRA 603, 610 (1990) (failure to file an answer due to a clerical error is not good cause sufficient to prevent a summary judgment).

In this case the Respondent has not filed answers as required by the Regulations. Nor has Respondent presented any "good cause" for its failure to do so. That the parties did not discuss whether an answer had been filed in a settlement discussion does not support a finding of good cause or relieve the Respondent of its responsibilities for being aware of statutory and regulatory requirements. In accordance with section 2423.20(b) of the Authority's Rules and Regulations, failure to file answers to the Complaints constitutes an admission of each of the allegations of the Complaints. *Department of Veterans Affairs Medical Center, Asheville, North Carolina*, 51 FLRA 1572, 1594 (1996). Accordingly, there are no disputed factual or legal issues in these consolidated cases.

Consequently, it can only be found that the Respondent has admitted that it has refused to comply with the provisions of section 7114(b)(4) of the Statute by failing to provide the Union with the requested information, specifically information in relation to a job announcement

for an Equal Employment Opportunity Specialist (Case No. DA-CA-02-0243)¹ and information in relation to a job

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On January 4, 2002, the Union requested the following information from the Respondent in relation to a job announcement for an Equal Employment Opportunity Specialist:

- a. SF-171s, OF-612s, resumes or other type applications, for all applicants, that were submitted for the above announcement.
- b. A copy of the list of all applicants who made Best Qualified, in ranking order, for the above announcement. A listing of all applicants not best qualified, eliminated, or declared ineligible and the reason for such determination.
- c. Information on the selection criteria utilized.
- d. A copy of the selection roster.
- e. The summary of listing of applicants.
- g. Pre-referral roster listing to include name, Ranking Score, Office, Name/Grade of Job/Title/Announcement.
- h. Candidate rating worksheet and method used. Indicate any veteran preference awarded.
- i. Merit Staffing (Competitive and Noncompetitive) Control System, Qualified Applicants with office preference listing.
- j. All recommendations and discussion notes/materials regarding all applicants.
- k. All notes, comments, regarding all applicants who met the minimum eligibility requirements.
- l. A copy of the questions which were asked of each and every applicant.
- m. A copy of the KSA's used to evaluate each applicant.
- n. A copy of the Crediting Plan used.
- o. A copy of each applicants ratings and ranking factors.
- p. The list of all qualified applicants with office preference listing and rating and rank.
- q. Date announcement issues and closing date.
- r. Date offer was made and offer accepted.
- s. The time that each applicant had at the next low grade level and how that was determined.
- t. The agency or company where the employee can [sic] from if not a current HUD employee.
- u. For each applicant, provide the number of years in federal service and their age, race and sex.
- v. The name, title, grade, age, race, sex, qualifications and office location of all officials/employees who reviewed the applications to determine eligibility, completeness, and the officials/employees who determined which applicants were best qualified/unqualified.

announcement 03-UMC-2001-0026Z, Paralegal Specialist, GS-0950-07/07. (Case No. DA-CA-02-0224).² Respondent has admitted that the requested data was: (1) normally maintained in the regular course of business; (2) reasonably available and necessary for collective bargaining; (3) devoid of any guidance, advice, counsel, or training provided for management officials or supervisors related to collective bargaining; and (4) not otherwise in conflict with any law, such as the Privacy Act. *Health Care Financing Administration*, 56 FLRA 503, 506 (2000).

Respondent has not shown good cause for its failure to file timely answers to the Complaints. Therefore its request to file answers out of time is, hereby, denied. I find that the Respondent violated section 7116(a)(1), (5) and (8) of the Statute, as alleged, and the General Counsel's Motion for Summary Judgment is, hereby, granted.

Remedy

Counsel for the General Counsel proposed a recommended remedy requiring the Respondent to provide the requested information and to post a facility-wide notice signed by the Regional Director.

Accordingly, I recommend that the Authority adopt the following Order:

ORDER

Pursuant to section 2423.41(c) of the Authority's Rules and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute, it is hereby ordered that the U.S. Department of Housing and Urban Development, Fort Worth, Texas, shall:

1. Cease and desist from:

(a) Failing and refusing to furnish the American Federation of Government Employees, Local 3320, AFL-CIO, information to which it is entitled to under the Federal Service Labor-Management Relations Statute, specifically information related to a job announcement for an Equal Employment Opportunity Specialist and information related to job announcement 03-UMC-2001-0026Z, Paralegal Specialist, GS-0950-07/07.

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On December 6, 2001, the Union requested Respondent furnish essentially the same information set out in footnote 1, but in relation to job announcement 03-UMC-2001-0026Z, Paralegal Specialist, GS-0950-07/07.

(b) In any like or related manner, interfering with, restraining or coercing its employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Furnish the American Federation of Government Employees, Local 3320, AFL-CIO, the requested information related to a job announcement for an Equal Employment Opportunity Specialist and information related to job announcement 03-UMC-2001-0026Z, Paralegal Specialist, GS-0950-07/07.

(b) Post at its Fort Worth, Texas facility, where bargaining unit employees represented by the American Federation of Government Employees, Local 3320, AFL-CIO, are located, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Regional Director, and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

(c) Pursuant to section 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Dallas Region, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, DC, September 27, 2002.

SUSAN E. JELEN
Administrative Law Judge

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the U.S. Department of Housing and Urban Development, Fort Worth, Texas, violated the Federal Service Labor-Management Relations Statute, and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT fail and refuse to furnish the American Federation of Government Employees, Local 3320, AFL-CIO, the exclusive representative of certain of our employees, information to which it is entitled to under the Federal Service Labor-Management Relations Statute, specifically information related to a job announcement for an Equal Employment Opportunity Specialist and information related to job announcement 03-UMC-2001-0026Z, Paralegal Specialist, GS-0950-07/07.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

WE WILL furnish the American Federation of Government Employees, Local 3320, AFL-CIO, the exclusive representative of certain of our employees, all information related to a job announcement for an Equal Employment Opportunity Specialist and information related to job announcement 03-UMC-2001-0026Z, Paralegal Specialist, GS-0950-07/07.

(Activity)

Date:

By:

(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director, Dallas Regional Office, Federal Labor Relations Authority, whose address is: 525 S. Griffin Street, Suite 926, Dallas, Texas 75202 and whose telephone number is: (214)767-4996.

CERTIFICATE OF SERVICE

I hereby certify that copies of this **DECISION** issued by SUSAN E. JELEN, Administrative Law Judge, in Case Nos. DA-CA-02-0224 & DA-CA-02-0243, were sent to the following parties:

CERTIFIED MAIL:

CERTIFIED NOS:

Melissa McIntosh, Esquire
7000-1670-0000-1175-6612
Federal Labor Relations Authority
525 S. Griffin Street, Suite 926
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801 Cherry Street
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REGULAR MAIL:

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800 Dolorosa Street, Rm. 306
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President
AFGE, AFL-CIO
80 "F" Street, N.W.
Washington, DC 20001

CATHERINE L. TURNER, LEGAL TECHNICIAN

DATED: SEPTEMBER 27, 2002
WASHINGTON, DC