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**Government of the District of Columbia  
Public Employee Relations Board**

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In the Matter of:	)	
	)	
	)	
Kenneth W. Johnson	)	
	)	
	)	PERB Case No. 15-U-40
Complainant,	)	
	)	Opinion No. 1567
v.	)	
	)	Motion for Reconsideration
	)	
District of Columbia Government	)	
and	)	
D.C. Metropolitan Police Department	)	
	)	
Respondents.	)	

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**DECISION AND ORDER**

**I. Statement of the Case**

On a Motion for Reconsideration (“Motion”), Kenneth W. Johnson (“Complainant”) appeals to the Board an Executive Director’s Administrative Dismissal (“Administrative Dismissal”) of an unfair labor practice complaint (“Complaint”),<sup>1</sup> pursuant to Board Rule 500.4. By a letter dated October 9, 2015, the Executive Director dismissed the Complaint for untimeliness and failure to state a violation under the CMPA. The Complainant filed the Motion on the grounds that the Executive Director erred in finding that the Complaint was untimely and that he was not reinstated for discriminatory reasons.<sup>2</sup> On February 17, 2016, Complainant filed a Motion For Brief Stay. Both the Motion for Reconsideration and the Motion to Stay are before the Board for disposition.

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<sup>1</sup> The Complaint alleged a “violation of Title 7 of the United States Code of Law” and that he was subjected to discriminatory treatment when he was refused reinstatement that was given to 217 other police officers.

<sup>2</sup> Complainant originally filed and proceeded in this case *pro se*. Complainant’s Motion for Reconsideration was filed on November 9, 2015. On December 4, 2015, Complainant’s newly retained counsel filed an Entry of Appearance and Motion for Leave to Supplement Pending Reconsideration Motion. Because the Complainant had previously proceeded *pro se*, the Executive Director granted the extension until January 15, 2016. On January 15, 2016, Petitioner’s Motion for Reconsideration was filed and received as a supplement to Complainant’s original Motion for Reconsideration.

For the following reasons, the Board denies the Motion for Reconsideration and the Motion for a Brief Stay, and dismisses the Complaint.

## II. Facts

Complainant was employed as a police officer by the District of Columbia Metropolitan Police Department (“MPD”) from November 20, 1989 until November 6, 1996.<sup>3</sup> No details were provided about when or under what circumstances he was terminated. Reference was made in the Complaint to a May 20, 2008 *Washington Post* article that mentioned 217 police officers who were ordered to be reinstated after having been terminated for misconduct. According to the article, D.C. Superior Court judges or arbitrators ruling on PERB cases ordered the reinstatements after MPD exceeded the 55 day limit to notify officers who were under investigation of the charges against them.<sup>4</sup> It was not until May 18, 2015 that Complainant asked MPD for a “trial board hearing for reinstatement.” That request was denied on May 27, 2015, because it was “not supported by any facts, circumstances, or other evidence” to support an Adverse Action Hearing by MPD.<sup>5</sup>

## III. Discussion

It is well settled that a mere disagreement with the Executive Director’s decision is not a valid basis for the Board to grant a motion for reconsideration.<sup>6</sup> Moreover, the Board will not grant a motion for reconsideration that does not assert any legal grounds that would compel overturning an Executive Director’s dismissal.<sup>7</sup> The Board will uphold an Executive Director’s dismissal where the decision is reasonable and supported by PERB precedent.<sup>8</sup>

### A. The Complaint was untimely filed.

Board Rule 520.4 states that “Unfair labor practice complaints shall be filed not later than 120 days after the date on which the alleged violations occurred.” The Complaint was filed on September 2, 2015. The Motion states that the operative date for the alleged unfair labor practice should be May 27, 2015, when complainant was refused reinstatement by MPD. However, that request for reinstatement was filed with MPD on May 18, 2015. Complainant’s last day of employment with MPD was November 6, 1996. Thus, it appears the Complainant sought to extend the 120 day period by waiting almost 19 years before applying for reinstatement. If complainant believed that he was unjustly terminated, he should have filed the unfair labor practice complaint within 120 days of being terminated.<sup>9</sup>

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<sup>3</sup> Complaint at 2, paragraph 2.

<sup>4</sup> Exhibit 1 to the Complaint. Allison Klein, 17 Officers Fired for Misconduct Reinstated, *Wash. Post*, May 20, 2008.

<sup>5</sup> Exhibit 2 to the Complaint.

<sup>6</sup> *Marcus Steele v. AFG Local 383*, 61 DCR 12373 (2014), Slip Op. No. 1492, PERB Case No. 14-U-16 (2014).

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

<sup>8</sup> *Id.*

<sup>9</sup> PERB Rule 520.4.

Included with the Complaint was a May 20, 2008 newspaper article stating that MPD was forced to rehire 17 officers because the department missed critical deadlines for taking action during disciplinary proceedings. The Complainant even stated, "I was subjected to discriminatory treatment when I was refused reinstatement that was formerly given to 217 other police officer [sic]."<sup>10</sup> If the Complainant believed that his case was the same as those rehired officers he should have filed for reinstatement or the unfair labor practice complaint in 2008 upon learning that he may have been treated differently from other officers. It is not reasonable to wait almost 19 years before seeking reinstatement with MPD or filing the Complaint.

B. There was no clear cause of action stated in the complaint.

Board Rule 520.3(d) requires, "A clear and complete statement of the facts constituting the alleged unfair labor practice, including the date, time and place of occurrence of each particular act alleged, and the manner in which D.C. Official Code § 1-617.04 (2001 ed.) of the CMPA is alleged to have been violated." The Complaint fails to state a claim under the CMPA. The Complaint does not allege any unlawful conduct by MPD. It states no facts about complainant's termination from employment with MPD in relation to the reinstated officers, or that he possessed the same qualifications for reinstatement as the other officers. Merely stating, he and others were terminated and some were reinstated while he was not, is not a clear and complete statement as required under Rule 520.3. The Complaint does not even allege that an unfair labor practice was committed, as is required under PERB Rule 520.3(d) for the Board to be authorized to consider the matter.

C. New argument cannot be filed in the Motion for Reconsideration.

In the supplement to his motion for reconsideration, complainant raises new arguments, namely that MPD violated the 55-day rule found in the operative Collective Bargaining Agreement ("CBA") and violated the 90-day rule of D.C. Official Code § 5-1031. The Complainant, therefore, believes that MPD has committed continuing violations by not abiding by these rules. "This Board has found that we will not permit evidence presented for the first time in a motion for reconsideration to serve as a basis for reconsidering [the Executive Director's dismissal] when the [Complainant] failed to provide any evidence at the afforded time."<sup>11</sup> Consistent with the Board's ruling in the *Lane* case, we will only consider evidence previously submitted and will not consider new evidence that was not before the Executive Director, as a basis for reversing the Executive Director's determination."<sup>12</sup> Similarly, the Board will not consider new arguments that are raised in the motion for reconsideration.<sup>13</sup>

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<sup>10</sup> Complaint at 1.

<sup>11</sup> *Lane v. University of the District of Columbia*, Slip Op. No. 862 at p. 4, PERB Case No. 03-U-45( 2002).

<sup>12</sup> *Horace Lomax v. Int'l Bhd. Of Teamsters, Local Union 639*, 59 DC Reg. 4611 (2012), Slip Op. No. 942, PERB Case No. 08-U-17 (April 30, 2008).

<sup>13</sup> *Am. Fed'n of Gov't Employees, Local 1547 and U.S. Dep't of the Air Force Like Air Force Base*, 68 F.L.R.A. 557, 68 FLRA No. 92. See also *Dyson v. DC*, 710 F.3d 415 (February 5, 2013) and *Pearson v. Thompson*, 141 F.Supp.2d 105 (May 9, 2001).

D. Motion for Brief Stay is denied.

On February 17, 2016, Complainant filed a Motion For Brief Stay of fourteen (14) days. The request was for Complainant to supplement his pending Motion for Reconsideration with information being sought from the D. C. Office of Human Rights. That information should have been submitted previously. As stated above, the Board will not consider new arguments or evidence in a motion for reconsideration.<sup>14</sup> Moreover, in this case, the Complainant filed a motion for reconsideration on November 9, 2015. Despite being given until January 15, 2016 to supplement his motion for reconsideration, the Complainant waited until February 17, 2016 to request a second extension to add more evidence and arguments to his motion. We find such a delay, under the circumstances as unreasonable. Consequently, the Motion to Stay is denied.

#### **IV. Conclusion**

The Board finds that complainant's Motion for Reconsideration fails to assert any legal grounds that compel the Board to overturn the Executive Director's decision and is nothing more than a mere disagreement with the Executive Director's decision to dismiss the Complaint. The decision was reasonable and supported by the record. Both the Motion for Reconsideration and the Motion to Stay are denied.

### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. Complainant's Motion for Reconsideration is denied.
2. Complainant's Motion for Brief Stay is denied.
3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

#### **BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

By unanimous vote of Chairman Charles Murphy, Member Yvonne Dixon, Member Ann Hoffman, and Member Keith Washington.

Washington, D.C.

February 18, 2016

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<sup>14</sup> Id. and *Horace Lomax v. Int'l Bhd. Of Teamsters, Local Union 639*, 59 DC Reg. 4611 (2012), Slip Op. No. 942, PERB Case No. 08-U-17 (April 30, 2008). See also, *Lane v. University of the District of Columbia*, Slip Op. No. 862 at p. 4, PERB Case No. 03-U-45( 2002).

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 15-A-09, Opinion No. 1567, was served by File & ServXpress on the following parties on this the 29<sup>th</sup> day of February, 2016.

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PERB