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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

In the Matter of:)	
)	
Yolanda Pauling,)	
)	
Complainant)	PERB Case No. 20-U-14
)	
v.)	Opinion No. 1813
)	
National Association of Government Employees, Local R3-05)	
)	
Respondent)	

DECISION AND ORDER

I. Statement of the Case

On December 7, 2021, Yolanda Pauling, *pro se*, (Complainant) filed a motion for reconsideration with the Board.¹ The Complainant requests reconsideration of the administrative dismissal of her unfair labor practice complaint (Complaint) issued by the Executive Director on November 10, 2021.² The Executive Director dismissed the Complaint on the grounds that the Complainant had failed to prosecute her case.³

For the reasons stated herein, the motion for reconsideration is granted.

II. Background

On January 31, 2020, the Complainant filed her Complaint alleging that the National Association of Government Employees, Local R3-05 (Respondent), had breached its duty of fair representation by refusing to represent the Complainant in disciplinary proceedings stemming from a workplace injury and resultant medical leave.⁴

¹ The Complainant filed a letter titled "Appeal Request." The Board will treat the letter as a motion for reconsideration.

² The Board did not receive an opposition to the Complainant's motion for reconsideration.

³ Board Rule 500.6(d): "The Executive Director is authorized to dismiss a case on motion of [a party] or for...failure to prosecute the case."

⁴ Complaint at 4. The Complainant filed an amended complaint on April 9, 2020, which corrected errors in the initial service that resulted in the Respondent not receiving the original complaint.

After mediation and a pre-hearing conference had been conducted, on November 13, 2020, the Executive Director served the parties with a notice for a December 28, 2020 hearing. Subsequently, on December 14, 2020, the Complainant retained an attorney, who filed a notice of appearance on December 17, 2020, and a motion to postpone the hearing the next day. The Complainant requested the postponement on the grounds that the search for legal representation had been difficult and aggravated the Complainant's health concerns. The motion asserted that the Complainant's "physician ordered that she be excused from work and is unable to return until January 4, 2021...."⁵ The motion also stated that the Respondent consented to the motion and proposed an alternate hearing date between March 1-4, 2021.⁶ The Executive Director granted the motion on December 22, 2020,⁷ and issued a notice on January 22, 2021, rescheduling the hearing to March 10, 2021.⁸

On March 8, 2021, the Complainant submitted a second postponement request, requesting postponement of the hearing on the grounds that she no longer had legal representation and needed time to "engage a new attorney and for him/her to prepare for the hearing."⁹ The Complainant's motion also asserted medical issues.¹⁰ The motion – titled "Consent Motion" – specifically asserted that the Complainant had conferred with the Respondent and that the Respondent had agreed to the request.¹¹ The Executive Director granted the postponement.¹² On August 27, 2021, the Executive Director notified the parties that a hearing would be held on October 22, 2021.¹³

On September 22, 2021, the Respondent submitted a motion to postpone the hearing because of a scheduling conflict.¹⁴ The Respondent noted that it had requested the Complainant's position on the motion but had not received a response.¹⁵ The Respondent proposed a hearing date between November 1-5, 2021.¹⁶ Prior to any ruling on the Respondent's motion, PERB staff reached out to the Complainant via email to request her availability for a rescheduled hearing.¹⁷ The Complainant responded, "I am currently out of the office on Medical Leave and under doctors supervision. At this time, I do not have a return to work date. Upon my return to work date, I will notify you timely [sic]."¹⁸ After PERB staff followed up with the Complainant on alternative dates, the Complainant reiterated that "I do not have [a] return date or have been medically released at this time. Once I have both notifications, I will reach out to your office. Until then, I would

⁵ December 18 Motion for Postponement at 1.

⁶ December 18 Motion for Postponement at 2.

⁷ Response to Motion to Reschedule Hearing.

⁸ January 22 Hearing Notice at 1.

⁹ March 8 Motion for Postponement at 1.

¹⁰ March 8 Motion for Postponement at 1.

¹¹ March 8 Motion for Postponement at 1.

¹² Letter in Response to Request for Extension.

¹³ August 27 Hearing Notice at 1.

¹⁴ Motion to Reschedule at 1.

¹⁵ Exhibit 1 to Motion to Reschedule.

¹⁶ Motion to Reschedule at 1.

¹⁷ Exhibit A to Respondent NAGE's Opposition and Motion to Dismiss at 2.

¹⁸ *Id.*

like to continue my recovery and notification will be given in a timely manner [sic].”¹⁹ Further, she alleged that the Respondent had not reached out to her directly.²⁰

On October 4, 2021, the Complainant submitted a third motion for postponement, again citing the need to engage a new attorney and allow preparation for the hearing.²¹ The Complainant’s motion also asserted that “I am currently on medical leave and under doctor’s supervision; however, I have not been released from my medical recovery.”²²

On October 8, 2021, the Respondent filed an opposition to the Complainant’s postponement request and a motion to dismiss on the grounds that the Complainant had failed to prosecute her case. The Respondent’s motion asserted that the Complainant had not conferred with the Respondent about postponing the hearing despite the Complainant again titling her motion “Consent Motion.”²³ The Respondent further alleged that the Complainant’s previous attorney had not sought the Respondent’s consent to reschedule the December 28, 2020 hearing despite the original motion for postponement stating otherwise. The Respondent stated that it “chose not to oppose the motion because it wanted Ms. Pauling to have an opportunity to present her case.”²⁴ In support of its motion to dismiss, the Respondent argued that the Complainant’s statements in her email exchange with the Respondent and PERB staff suggested that “Complainant does not intend to move forward with the hearing in sixty (60) days and intends to prolong these proceedings indefinitely.”²⁵ The Respondent further argued that it had provided the Complainant “numerous opportunities to secure legal counsel and to improve medically to move forward” with the case.²⁶

On October 15, 2021, the Executive Director notified the parties that the hearing had been cancelled and that the Complainant had until October 22, 2021, to file a response to the Respondent’s motion to dismiss. After receiving no response from the Complainant, the Executive Director dismissed the case with prejudice on November 10, 2021, for failure to prosecute under Board Rule 500.6. The dismissal stated that “as a *pro se* litigant, the party must be prepared to move forward without representation by legal counsel in proceedings before the Board.”²⁷

The Complainant submitted a motion for reconsideration on December 7, 2021. The Complainant requested that her “case remain opened until I have medical clearance in 2022 and can pursue my case.”²⁸

¹⁹ *Id.* at 1.

²⁰ *Id.*

²¹ October 4 Motion for Postponement at 1.

²² October 4 Motion for Postponement at 1.

²³ Opp’n at 1.

²⁴ Opp’n at 2. The Respondent’s motion to dismiss also refuted the Complainant’s allegation that the Respondent had not reached out regarding its own motion to reschedule.

²⁵ Opp’n at 4-5.

²⁶ Opp’n at 5.

²⁷ Dismissal Letter at 2.

²⁸ Motion for Reconsideration.

III. Discussion

The Board will uphold an Executive Director's dismissal where the decision is reasonable and supported by Board precedent.²⁹ Board Rule 500.6 authorizes the Executive Director to "dismiss a case on motion of the complainant or petitioner" for a complainant's failure to prosecute a case.³⁰ As required by Board Rule 500.6(d), *pro se* litigants "must be prepared to move forward without representation by legal counsel."³¹ However, the Board will also provide *pro se* complainants an opportunity to effectively argue their cases despite procedural deficiencies.³²

The instant case is distinguishable from the cases cited in which the Board dismissed for failure to prosecute. In the cited cases, complainants failed to pursue their claims after long periods without communicating with hearing officers or PERB and/or failed to proceed after clear notice that such failure would result in dismissal of their cases.³³ In the present case, the Board finds that this *pro se* filer did not fail to communicate with the administrative process for an extended period and was not put on clear notice that her case would be dismissed if she failed to proceed. The Board recognizes that *pro se* Complainants must be prepared to proceed with their claims whether or not they retain counsel and that failure to retain counsel cannot result in indefinite continuances.

Accordingly, the Board grants the Complainant's motion for reconsideration to allow Complainant up to ninety (90) calendar days to pursue her claim. If Complainant fails to proceed within those ninety days, Complainant's case will be dismissed for failure to prosecute.³⁴

²⁹ *But see Andebrhan Berhe v. WTU*, 66 D.C. Reg. 15811, Slip Op. No. 1723 at 2, PERB Case No. 19-U-08 (2019) (where the Board denied a motion for reconsideration because the motion raised new and untimely arguments).

³⁰ Board Rule 500.6.

³¹ Dismissal at 2.

³² *But see In the Matter of Vartan Zenian v. AFSCME, Local 2743 and Dept. of Insurance, Securities and Banking*, 59 D.C. Reg. 3601, Slip Op. No. 890 at 3, PERB Case No. 04-U-30 (2007) (noting that the Board recognizes *pro se* litigants' comparative lack of expertise and experience in legal filings and proceedings and, therefore, does not hold *pro se* parties to the same standards required of parties represented by counsel).

³³ Prior dismissals involved more egregious failures to prosecute over longer periods of time. *See Dianna Flowers-Hinnant v. AFSCME, Local 2095*, 60 D.C. Reg. 16248, Slip Op. No. 1431 at 2, PERB Case No. 04-S-03 (2013) (where the Complainants failed to prosecute their claim by failing to cure deficiencies for over two (2) years, failed to respond to a motion to show cause, and ultimately failed to appear at a scheduled hearing without notice); *Calvert Wilson v. WASA*, 59 D.C. Reg. 4623, Slip Op. No. 944 at 1, PERB Case Nos. 07-U-36 and 07-U-39 (2009) (where the Complainant failed to appear at the hearing or respond to a show cause order by the Hearing Examiner).

³⁴ The Board recognizes Respondent's preservation of evidence issues and potential growing liability needs to be balanced with the additional time for the hearing. Therefore, a hearing must be held within approximately ninety (90) days from issuance of this decision.

ORDER

IT IS HEREBY ORDERED THAT:

1. Complainant's Motion for Reconsideration is hereby granted;
2. PERB will provide a hearing date that is within approximately ninety (90) days of issuance of this Decision and Order; and
3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By vote of Board Chairperson Douglas Warshof and Members Renee Bowser, Mary Anne Gibbons and Peter Winkler.

May 19, 2022
Washington, D.C.