



**Office of Appeals  
U.S. Department of Housing and Urban Development  
Washington, D.C. 20410-0001**

In the Matter of:

**Steven Ramsey,**

Petitioner.

HUDOA No. 10-H-CH-AWG123  
Claim No. 250044146 OA

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For the Secretary

**RULING ON MOTION FOR RECONSIDERATION**

A Decision and Order, dated August 18, 2011, was issued in the above-captioned case in which it was held that the Secretary shall not seek to collect the claimed debt of Petitioner by means of administrative wage garnishment. (Decision and Order, at 7, dated August 18, 2011.)

The Secretary, in his Motion for Reconsideration, raises three issues as a basis for reconsideration: (1) the Secretary did not receive the Orders issued from this Court on October 19, 2010 and October 21, 2010; (2) the Secretary acted in good faith throughout this proceeding; and (3) the Court did not issue a Rule to Show Cause before rendering a decision. (Motion to Reconsider Dismissing Appeal and Prohibiting Offset. ("Sec'y's Mot. to Reconsider"), filed Aug. 30, 2011.)

Reconsideration of a prior decision is within the discretion of the administrative judge and will not be granted "in the absence of compelling reasons, e.g., newly discovered material evidence or clear error of fact or law." *See Paul Dolman*, HUDBCA No. 99-A-NY-Y41 (Nov. 4, 1999); *Anthony Mesker*, HUDBCA No. 94-C-CH-S379 (May 10, 1995); *William G. Grammer*, HUDBCA No. 88-3092-H607 (Mar. 7, 1988). Further, "it is not the purpose of reconsiderations

to afford a party the opportunity to reassert contentions that have been fully considered and determined.” See *Seyedahma Mirhosseini*, HUDBCA No. 95-A-SE-2615 (Jan. 13, 1995); *Charles Waltman*, HUDBCA No. 97-A-NY-W196 (Sept. 21, 1999).

In this case, the Secretary first claims that he did not receive either of the Orders dated October 19, 2010 or October 21, 2010, while noting, as an aside, that the dates for the October Orders were cited for the year 2011 in the Decision and Order issued August 18, 2011. (Sec’y’s Mot. to Reconsider ¶ 1.) While it is noted that the Decision and Order has, as a citation, a reference in error to an October Order of 2011, the dates reflected in the actual Orders of record previously issued to the Secretary reflected the year 2010.

Nonetheless, the more prevailing issue is that the Secretary requested an extension of time for the sole purpose of obtaining information regarding whether “the same Petitioner and the same debt may have been entered by the Office of Appeals in 2009 and the Secretary, through counsel, has been *diligently* attempting to obtain a copy of this order from both the staff of the Office of Appeals and Petitioner’s present attorney to ensure that a final disposition on this matter has not already been entered.” (Sec’y’s Mot. for Extension ¶ 3, dated Oct. 14, 2010) (emphasis added.) While copies of such decisions were readily available and accessible online, the Court granted the Secretary’s Motion for Extension to not only permit the Secretary to respond to the Notice of Docketing, but to also, as noted in the Secretary’s Motion, assess whether “the same Petitioner and the same debt may have been entered by the Office of Appeals in 2009.” When the Secretary subsequently filed his Statement, however, the Secretary failed to address whether a determination had been made, if any, regarding the 2009 Decision and its relevance to the proceeding at hand.

Additionally, the Secretary, to date, had acknowledged:

- In his Motion for Extension of Time, receipt of the Notice of Docketing issued September 14, 2010;
- In his Statement, receipt of the Court’s Ruling on Motion for Extension of Time issued on October 19, 2010;
- The November 19, 2010 deadline ordered in the October 19 Ruling on the Extension by filing, in a timely fashion, the Secretary’s Statement; and,
- In his Motion to Reconsider, receipt of the Decision and Order issued on August 18, 2011.

The Court is not persuaded by the Secretary’s claim that the Orders, dated October 19, 2010 and October 20, 2010, were not in fact received by the Secretary, especially given the fact that the Secretary had acknowledged receipt of all previously issued orders and rulings that were issued to the same address of record.

The Secretary next claims that:

the Secretary, through counsel[,] has acted in good faith through out [sic] this proceeding which is demonstrated by the fact that the Secretary did not seek to defend Petitioner’s appeal until after he was able to confirm that a prior wage

garnishment appeal filed under Case Number 06-D-CH-AWG05 was dismissed without prejudice.

(Sec'y's Mot. to Reconsider ¶ 2.)

In response, Petitioner, through counsel, states:

Perhaps most telling of the Secretary's failures is the fact that the Secretary has been given multiple time extensions and opportunities to diligently pursue this matter, both in the present case as well as in a previous action, and has continually failed to prosecute this cause each time. . . . [T]hese inactions by the Secretary do not in fact demonstrate good faith prosecution . . . .

(Pet'r's Resp. to Sec'y's Mot. ¶ 3, filed Sept. 2, 2011.)

An examination of the record shows that, to date, the Secretary has failed to produce any evidence confirming whether or not a final disposition had been entered in the 2009 *Ramsey* Decision, even after being ordered by this Court to specifically address Petitioner's collateral estoppel argument. (Ruling on Sec'y's Mot. for Extension of Time ("October 19, 2010 Order"), dated Oct 19, 2010; Decision and Order, at 3.) In addition, despite being granted an extension of time to file the Secretary's Statement to address this issue, the Statement subsequently filed was nevertheless incomplete as the Secretary had failed to address the issues set forth in Petitioner's Motion to Dismiss, as ordered by the Court, and also failed to advise the Court whether the Secretary had forwarded Petitioner copies of certain documents. (Ruling on Motion to Dismiss and Order ("October 21, 2010 Order"), dated Oct. 21, 2011.) Such actions were not considered to be actions that reflect proceeding in good faith.

The Secretary's lack of good faith is also demonstrated in footnote three of his own Motion to Reconsider. The footnote states:

The Secretary has been mailing responses to Petitioner's counsel at 14520 Memorial Drive, Suite M-105, Houston, TX 77079. However, it is noted that the Office of Appeals address for Petitioner's Counsel is 1795 North Fry Road, Suite 305, Katy, TX 77449-3347. This, in part, may explain why Petitioner's counsel has indicated that he has not been copied with what the Secretary has filed with the Court.

(Sec'y's Motion to Reconsider, ¶ 4 n.3.)

Petitioner correctly points out that Petitioner's counsel changed his address on August 15, 2011, which was "well after any of the Secretary's failures to send copies of documents and filings to Petitioner's counsel." (Pet'r's Resp. to Sec'y's Mot. ¶ 2, Ex. A.) The record shows that the Secretary was notified of the change of address of Petitioner's counsel and that, both before and after August 15, 2011, the record reflected that addresses for both counsel were, in large part, not an issue that was brought to the attention of the Court as interfering with this court proceeding.

As such, I find that the record does not support the Secretary's claim that he proceeded in good faith during this proceeding.

The Secretary next claims that this Court should have "issued a Rule [Order] to Show Cause before rendering a final decision." (Sec'y's Mot. to Reconsider ¶ 3.) The Secretary states that occasionally Orders are not received or they are incorrectly docketed, but that the Court:

[t]ypically . . . addresses this problem by issuing a Rule [Order] to Show Cause, which . . . always bring[s] a case back on track in a timely fashion. However, in this instance, a Rule [Order] to Show Cause did not issue and the Secretary's Counsel [was] completely [sic] unaware that all of the Orders of the Court were not fully complied with.

(*Id.*)

As support for his position, the Secretary cites no law that requires this Court to issue an Order to Show Cause after the Secretary has failed to comply with court issued Orders. In fact, 24 C.F.R. § 26.4(a)-(c) instead provides:

- (a) The hearing officer may sanction a person, including any party or representative, for failure to comply with an order, rule, or procedure governing the proceeding; failing to prosecute or defend an action; or engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.
- (b) Any sanction, including, but not limited to, those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.
- (c) If a party refuses or fails to comply with an order of the hearing officer, including an order compelling discovery, the hearing officer may enter any appropriate order necessary to the disposition of the hearing including a determination against the noncomplying party . . . .

24 C.F.R. § 26.4(a)-(c) (2010).

Consistent with the provisions under 24 C.F.R. § 26.4(d), the Secretary's failure to comply with this Court's Orders permitted this Court to exercise its authority under § 26.4(d) and, as such, the Court proceeded accordingly. This Court is not required to ensure that the Secretary complies, in a timely fashion, with orders or court procedures. It is the responsibility of counsel to ensure that court issued orders are fully complied with to "bring a case back on track in a timely fashion" when such diligence and timeliness is lacking.

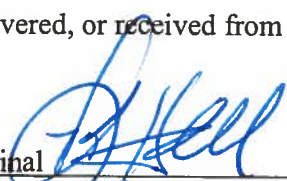
As a final point, this case was dismissed *with prejudice*. (Decision and Order, at 7). On motion for reconsideration, this Court has occasionally reinstated cases which have been dismissed with prejudice for failure to prosecute. For example, in *J & F Machine Works, Inc.*,

ASBCA No. 30485, 85-3 BCA P 18,419 (Sept. 20, 1985), the appellant's lawyer died before responding to an order to show cause. Similarly, in *Pembroke Machine Co., Inc.*, ASBCA No. 34819, 88-1BCA P 20,494 (Jan. 15, 1988), a written request for extension was not received until after the dismissal, although there was an oral request prior to the dismissal. Further, in *Willie Wood Mechanical Systems, Inc.*, VABCA No. 2808R, 89-3 BCA P 22,039 (June 30, 1989), the appellant timely responded, but to the wrong address, allowing the Court to determine that the appellant had not abandoned its appeal. However, in the instant case, no such circumstances exist that sufficiently warrant excusing the Secretary for his failure to comply with the Court's Orders, even for non-compliance with those Orders for which the Secretary acknowledged receipt. (Notice of Docketing, Order, and Stay of Referral, dated Sept. 14, 2011; October 19, 2010 Order.) This Court expects more of parties appearing before it with regard to their familiarity with the relevant procedural rules. See *Willie Wood Mech. Sys., Inc.*, VABCA No. 2808R, 89-3 BCA P 22,039 (June 30, 1989).

Therefore, based on the foregoing reasons, the Secretary's Motion for Reconsideration is hereby **DENIED**. It is hereby

**ORDERED** that the Decision and Order issued in this matter on August 18, 2011 is **AFFIRMED** and shall not be modified. It is hereby

**FURTHER ORDERED** that all sums withheld, recovered, or received from Petitioner by means of administrative wage garnishment be refunded.

  
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Vanessa L. Hall  
Administrative Judge

November 10, 2011