OFFICE OF COMPLIANCE
LA 200, John Adams Building, 110 Second Street, S.E.
Washington, DC 20540-1999

ANTOINE BODDIE,	)	
	)	
Appellant,	)	
	)	
v.	)	
	)	**Case Number: 05-AC-42(CV)**
OFFICE OF THE ARCHITECT OF THE CAPITOL,	)	
	)	
Appellee.	)	
	)	

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

DECISION OF THE BOARD OF DIRECTORS

Appellant Antoine Boddie filed a claim against the Architect of the Capitol, alleging wrongful termination under the Congressional Accountability Act, 2 U.S.C. 1317. The hearing officer dismissed the complaint after Appellant was sanctioned and prohibited from presenting any evidence at the hearing. Appellant filed a petition for review of the hearing officer's decision. For the reasons set forth below, we affirm the decision of the hearing officer.

I. Background

On January 30, 2006, Antoine Boddie ("Appellant" or "Boddie") filed a complaint with the Office of Compliance ("Office"), after having completed both the counseling and mediation requirements of the Office's Procedural Rules. The complaint, filed against the Architect of the Capitol ("AOC" or "Architect"), alleged that Appellant was wrongfully terminated but did not refer to any violations of the Congressional Accountability Act, 2 U.S.C. 1317.

On February 6, 2006, Hearing Office Warren R. King issued a Notice of Pre-hearing Conference, advising the parties that they must attend the conference in person at the Office of Compliance on February 14, 2006, at 1:00 p.m. Without explanation, Boddie requested that the pre-hearing conference be rescheduled from this date. Hearing Officer King granted the request and rescheduled the pre-hearing conference for February 22, 2006. Again at Boddie's request, the pre-hearing conference was rescheduled for March 1, 2006.

On February 7, the AOC submitted a notice to depose Appellant on February 21, 2006 at 9:30 a.m., requesting that Appellant bring certain documents to the deposition. Appellant failed to appear at the deposition on February 21, 2006.

At the pre-hearing conference on March 1, 2006, Hearing Officer King explained to Appellant his rights and responsibilities regarding discovery: that he had a right to obtain information from the AOC, and that the AOC had a right to obtain information from Appellant; and that Appellant had to attend the deposition, answer the questions posed by the AOC (unless they implicated Appellant in criminal activity), and provide documentation to the AOC. Appellant stated that he understood his responsibility and agreed to comply with the discovery request.

The Appellant's deposition was then scheduled for March 7, 2006. On March 13, 2006, the AOC filed its Motion to Compel or Dismiss Complaint or Grant Summary Judgment, arguing that during the March 7 deposition of Appellant, Appellant refused to continue answering the AOC's questions, and refused to provide any of the requested documentation, indicating that he would present his evidence at trial. After receipt of the motion, Hearing Officer King scheduled a preliminary hearing for March 17, 2006 at 10:00 a.m. On March 15, Appellant called the Office and left a message that he would not be able to attend the hearing on March 17, 2006. Appellant provided no justification for his anticipated absence, but instead requested that the hearing be rescheduled to March 21, 2006.

Hearing Officer King accommodated Appellant's request and rescheduled the preliminary hearing to March 21, 2006 at 9:30 a.m., indicating the parties' responsibility to attend the proceeding in person. Boddie arrived at the preliminary hearing at 10:39 a.m., having left a message at the Office at 9:45, saying that he was "running late." During the proceeding, Boddie agreed that he did not cooperate fully with the deposition, stating that he only wanted to answer questions at trial. Hearing Officer King informed Appellant that he must answer the questions asked of him during the deposition, and if he did not, he would not be able to present any testimony during the trial. The AOC indicated that its office could be available on a moment's notice if Appellant called the AOC to reschedule the deposition. Throughout this proceeding, Hearing Officer King admonished Appellant that if he did not participate fully in the deposition, that he would not be allowed to present any evidence at the hearing. Appellant stated that he understood and that he would comply. The hearing in the matter was then set for March 29, 2006 at 2:00 p.m.

On March 29, 2006, the day of the hearing, Boddie called the Office at 2:15 p.m., indicating that he was "on his way" and did not arrive at the hearing until 3:20 p.m. Once there, both parties indicated that Boddie did not make himself available for deposition. Based on that information, Hearing Officer King informed Boddie that, as previously explained, Boddie would not be able to present testimony at trial. Hearing Officer King asked Boddie to proffer the evidence he would have presented, had he been allowed to testify. Boddie indicated that he would have offered testimony in support of the written

statements attached to his complaint. As previously admonished, Hearing Officer King excluded Appellant from presenting evidence and continued the matter for his written decision.

On March 31, the hearing officer opined that denying Appellant the opportunity to present evidence at the hearing was an appropriate sanction for Appellant's failure to comply with the discovery process: Appellant had complete understanding of the consequences of not participating in the deposition, yet failed to cooperate. The hearing officer noted that Appellant was given more than one opportunity to comply with the discovery request, and each time he failed to do so. Hearing Officer King determined that the AOC was entitled to judgment because Appellant presented no evidence during the hearing. Consequently, Appellant failed to meet his burden of proof.[1]

On April 28, 2006, the appellant filed a notice of appeal with the Board of Directors of the Office of Compliance ("Board"). The appellant's notice of appeal indicated that Hearing Officer Warren R. King and Edgard Martinez, Esq. were carbon copied on the appellant's notice. No certificate of service was attached. Pursuant to Section 9.01 of the Office of Compliance Procedural Rules, Appellant was required to submit a supporting brief within twenty-one days of filing notice of his appeal.[2] Accordingly, Appellant's supporting brief should have been filed by May 19, 2006. Appellant submitted no brief in support of his appeal.

On June 12, 2006, the Architect of the Capitol filed with the Board of Directors Defendant's Motion to Dismiss Appeal. In its Motion, the AOC moved to dismiss the appellant's appeal for failure to serve the AOC. The AOC argued that because of the appellant's "continuing disregard for the requirements under the Congressional Accountability Act and the Procedural Rules", the Appellant's appeal should be dismissed. Appellant's response to the motion was due to be filed with the Office of Compliance no later than June 30, 2006. On July 3, 2006, Appellant filed his response to the motion, indicating that his notice of appeal was "presented to the proper person who [he] thought was Mr. Edgar Martinez." Appellant did not indicate the date or method of service to Mr. Martinez. Nor did Appellant attach either a certificate of service or any proof that he actually had served anyone at the AOC's office with his appeal. On July 5, 2006, the AOC filed its reply to Appellant's response.

II. Standard of Review

The Board's standard of review for appeals from a hearing officer's decision requires the Board to set aside a decision if the Board determines the decision to be: (1) arbitrary,

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[1] The hearing officer also determined that the AOC was entitled to judgment based on Appellant's failure to state a claim for which relief could be granted, and Appellant's failure to make a *prima facie* showing in his pleading. Those findings are not addressed in this decision, as the Board of Directors' ruling herein is narrowly tailored to the appropriateness of the hearing officer's sanction and ultimate procedural dismissal of the complaint.

[2] Section 9.01of the Procedural Rules refers to an appeal as a petition for review.

capricious, an abuse of discretion, or otherwise not consistent with law; (2) not made consistent with required procedures; or (3) unsupported by substantial evidence. 2 U.S.C. §1406 (c). The Board's review of the legal conclusions that led to the hearing officer's determination is *de novo*. *Nebblett v. Office of Personnel Management*, 237 F.3d 1353, 1356 (Fed. Cir. 2001).

III. Analysis

Appellant filed his notice of appeal with the Board of Directors on April 28, 2006. Included in his filing was a statement indicating that the hearing officer and the AOC's representative had been carbon copied on the notice of appeal. Approximately six weeks later, however, the AOC filed a motion to dismiss for Appellant's failure to serve the AOC with the notice of appeal, and for Appellant's "continuing disregard for the requirements under the Congressional Accountability Act and the Procedural Rules thereunder." Appellant's reply indicated his belief that the proper parties were served. Appellant failed to provide any documentation to support his belief.

Appellant did not include a signed certificate of service which would have indicated that he, in fact, served the AOC with the notice of appeal. Appellant did not include a fax transmittal sheet or receipt of certified mail, or any other documentation verifying that he sent the notice of appeal, as required, to the AOC. Without such supporting evidence, the arguments in the AOC's motion to dismiss are supported. *See Geiger v. Allen*, 850 F.2d 330, 333 (7th Cir. 1988)(motion to dismiss for failure to serve opposing party granted where plaintiff failed to show good cause for lack of service); *Lacey v. Wing*, 360 F.Supp.2d 31 (D.D.C. November 19, 2003)(motion to dismiss granted where *pro se* plaintiffs failed to properly serve defendants); *Bartz v. Adrian*, 169 Fed.Appx. 241 (5th Cir. 2006)(*pro se* status does not excuse plaintiff from effecting service), citing *Kersh v. Derozier*, 851 F.2d 1509, 1512 (5th Cir. 1988).

Although this appeal is procedurally defective and ripe for dismissal, the Board does not address granting the Architect's motion to dismiss the appeal. The Board notes that in light of the Appellant's belief that the AOC had been served, and the AOC's assertion that it had not been served, a factual dispute may exist with respect to service. Accordingly, the Board finds that it is not improper to decide the merits of the case. *See In re Gas Reclamation, Inc. Securities Litigation*, 659 F.Supp. 493, 521 (S.D.N.Y. April 9, 1987)(motion to dismiss denied where factual dispute exists on issue of timely service); *Rates Technology, Inc. v. Utt Corp*, 1995 WL 16788 (S.D.N.Y., January 18, 1995)(motion to dismiss cannot be granted where factual dispute exists as to whether service was sufficient).

In not addressing the AOC's motion, the Board does not suggest that a complainant, indeed a *pro se* complainant, may simply assert that proper service was made to avoid the service requirement. The Board recognizes that there may be instances where improper service may be acceptable grounds for dismissal of an appeal. In this particular case,

however, the Board finds it appropriate to address the hearing officer's decision, despite the Architect's position on the motion to dismiss the appeal.[3]

Throughout the proceedings, Appellant has demonstrated a disregard for procedural requirements, including a failure to follow the requirements of the procedural rules, as well as the orders of the hearing officer. On three occasions, two of which arose after having been admonished by the hearing officer as to his responsibilities, Appellant failed to cooperate fully with the taking of his deposition. In addition, Appellant twice requested that the pre-hearing conferences be rescheduled to suit his needs. Appellant requested to have the initial preliminary hearing rescheduled, only to appear over an hour late at both the initial preliminary hearing, and the subsequent hearing.

It could be argued that Appellant's failures are a result of his status as a *pro se* litigant as opposed to a willful disregard for the rules. The Board notes that Appellant's status as a *pro se* litigant during the hearing on this matter, as well as during the matter before the Board, grants him a certain amount of leniency with respect to the procedural rules. However, a litigant's *pro se* status does not relieve him of following the rules of procedure. *See Oviedo v. Lowe's Home Improvement*, 2006 WL 1602348 (5th Cir. 2006)(the right to represent oneself is not accompanied by the freedom to ignore procedural rules and substantive law); *Downs v. Westphal*, 78 F.3d 1252, 1257 (7th Cir. 1996)(*pro se* litigants are not entitled to disregard clearly communicated court orders); *FDIC v. Anchor Props.*, 13 F.3d 27, 31 (1st Cir. 1994)(*pro se* status does not absolve plaintiff of following Rules of Federal Procedure or District Court's rules).

The unique circumstances of this case suggest that Appellant has already been granted a certain amount of leniency with respect to the procedural rules, and has already been given ample opportunity to follow the rules and orders, but has decided not to do so. The record evidence establishes Appellant's admitted failures to comply with the rules and orders, even after admonishment by the hearing officer. Appellant's *pro se* status has been recognized and respected throughout the proceedings, and additional leniency is neither required nor likely to ensure future compliance with rules.

Appellant's argument on appeal that the hearing officer erred in disallowing Appellant to present evidence at the hearing is not supported by case law. Case law is clear that dismissal of a claim for failure to follow discovery orders is a proper sanction. *See Ladien v. Astrachan*, 128 F.3d 1051 (7th Cir. 1997)(dismissal of case as sanction for repeated discovery violations and violations of court orders is not abuse of discretion). The hearing officer's decision to prohibit Appellant from presenting evidence during the hearing is consistent with law and supported by the record evidence. In the case before the Board, Appellant received explanation from the hearing officer on March 1 about his

[3] A factor considered by the Board in determining the suitability of addressing the hearing officer's decision is the fact that Appellant did not file a brief in support of his appeal. Appellant had the opportunity to address the merits of his appellate claim but waived that opportunity by not filing a supportive brief. Accordingly, the Board finds it appropriate to address the merits of the hearing officer's decision.

obligation to participate in discovery with the AOC. After that explanation, Appellant still refused to participate, and the hearing officer gave him another chance, providing him clear communication that he would not be able to present evidence if he did not comply with discovery. Appellant repeatedly disobeyed the orders of the hearing officer, and dismissal of his case was an appropriate sanction. Appellant's failure to comply, even after repeated explanation and warning, warranted the sanction received, and the hearing officer acted within his discretion. *Downs v. Westphal*, *supra* at 1257.

ORDER

Pursuant to §406(e) of the Congressional Accountability Act and §801(d) of the Office of Compliance Procedural Rules, the Board affirms the hearing officer's decision in this matter, agreeing that the sanction given Appellant was appropriate, and upholding the hearing officer's dismissal for Appellant's failure to present evidence to support his claim.

It is so ORDERED.

Issued, Washington, DC
September 13, 2006

110 Second Street, S.E.
Washington, DC 20540-1999

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Complainant,	)	
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V.	)	**Case No. 05-AC-42 (CV)**
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Respondent.	)	
	)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing *Decision of the Board of Directors* was served this 13th day of September, 2006, upon the following:

BY FEDEX EXPRESS SAVER
Antoine Boddie (Appellant)
4642 Livingston Road, SE, #102
Washington, D.C. 20032

BY FACSIMILE AT (202) 226-8700 (ONLY the first page only of the final decision and cover letter) and
FOR PICK UP ON 9/13/06
Edgard Martinez, Esq. (Appellee's Representative)
Architect of the Capitol
Office of the Employment Counsel
2nd & D Street, SW
Room H2-202 Ford House Office Building
Washington, DC 20515

Respectfully Submitted,

Selviana B. Bates
Hearing Clerk