

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-03/16-255
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Appeal of)
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)

INTRODUCTION

Petitioner seeks to reopen an appeal administratively dismissed by the Board. The appeal was of several substantiations (resulting in his placement on the Child Protection Registry) by the Department for Children and Families ("Department"). The threshold issue is whether petitioner's appeal should be reopened under Board rules. Petitioner submitted a memorandum in support of reopening and the Department responded, with the record closing as of April 20, 2017.

FINDINGS OF FACT

1. Petitioner has eight substantiations by the Department, six for sexual abuse, one for physical abuse, and one for risk of harm. These substantiations occurred in primarily separate incidents spanning several years, from 1993 through 2003, and then again in 2015. The substantiations were all reviewed by the Department in

February of 2016, and upheld by a Commissioner's Review decision dated February 16, 2012.¹

2. The Board received a handwritten letter from petitioner which was originally dated February 10, 2016, but included a note on the bottom, dated February 14, 2016, that the letter had been returned due to an incorrect address and was being re-sent. However, the letter arrived in an envelope post-marked on March 9, 2016, and was received by the Board on March 10, 2016. The letter states (in pertinent part) that "I missed the most important date in my life February 8th," indicating that petitioner had to be on a work crew that day, and "now I'm writing to have one more chance to have my case heard" (which he believed would result in his substantiations being reversed).

3. Petitioner's letter was docketed as an appeal to the Board. An initial telephone status conference was scheduled for April 5, 2016 and petitioner was advised to contact the Board with a telephone number. Petitioner failed to do so and could not be reached at the time of his status conference. As a result, the Board Clerk mailed a letter to

¹ Notably, the Commissioner's Review decision states that petitioner remains free to request expungement of his name from the Child Protection Registry. The expungement process is a separate one from challenging a substantiation.

petitioner dated April 6, 2016, indicating that he had not provided a phone number, could not be reached for his status conference, and that he could contact the Board as to why he was unavailable. The letter further advised that if he failed to contact the Board within seven working days, his appeal would be dismissed.

4. Petitioner did not contact the Board; as a result, his appeal was dismissed by order entered April 18, 2016, signed by the Board Clerk and mailed to petitioner. Petitioner did not appeal this order nor contact the Board immediately following the order.

5. The Board eventually received contact from petitioner over nine months later, on February 2, 2017, via a letter from his attorney asking that his appeal (in effect) be reinstated and heard. This was docketed as a motion to reopen and scheduled for a telephone status conference with petitioner's attorney and Department counsel (leading to the briefing referenced above).

6. Petitioner asserts that he never intended to file a request for a Commissioner's Review, but rather had (initially) contacted the Governor's Office regarding his name being removed from the Child Protection Registry and that it was (allegedly) the Governor's Office which forwarded

his inquiry to the Department's Registry Review Unit to schedule a review meeting.

7. The Commissioner's Review decision specifically indicates that petitioner had agreed to schedule the review meeting on February 8. In any event, once the review was scheduled, petitioner alleges that he was unavailable for the review meeting due to his work schedule, and attempted to contact an unspecified person or office to reschedule, but was unsuccessful (petitioner does not specify whether he left a message or any further details about the nature and extent of his attempt to reschedule - the Commissioner's Review decision states that no contact had been received from petitioner about rescheduling).

8. The Registry Review Unit convened the meeting in petitioner's absence and, as described above, issued a decision upholding his substantiations. The decision contained information about appealing to the Board.

9. Petitioner alleges that he has cognitive and/or mental health issues (including ADHD) which makes it difficult for him to attend to basic tasks and deal appropriately with legal proceedings. He concedes that he received the notice for the status conference scheduled by the Board and alleges that he attempted to reschedule the

status conference, without specifying how he did so. The Board has no record of petitioner making such an attempt or making contact of any kind, apart from his initial letter of appeal. He further asserts that he did not receive or see any of the two following communications (the April 6 letter and April 18 notice of dismissal) sent by the Board; while not disputing the mailing address used by the Board, petitioner suggests his roommate may have thrown away his mail.

10. Petitioner's allegations are unsupported by affidavit or any other documentation. While accepted at face value for the purposes of his motion, they are undermined by the documentation *in* the record - which is, despite his alleged limitations, that he was able to draft and mail, and then re-send, a letter of appeal to the Board, following what appeared to be routine communications with the Department about the review of his substantiations. Petitioner furthermore acknowledges receipt of the notice for a status conference, and alleges a single, unspecified contact with the Board for which no record exists. Finally, petitioner's suggestion that his roommate interfered with his mail cannot be accepted as anything but pure speculation, and is deemed without support or weight.

11. Petitioner acknowledges having legal representation (in another matter) at the time of these events, and even assuming he has difficulty with legal processes, there is no evidence or explanation of why he was limited from communicating with his attorney about the Commissioner's Review meeting and/or Board notice(s).

ORDER

Petitioner's request to reopen is denied.

REASONS

The primary issue here concerns a request to reopen a dismissed appeal under the Board's rules:

Motions to reopen. Within 30 days of the Board's issuance of any order, a party may move the Board to reopen and reconsider that order. Motions to reopen shall be referred to the hearing officer for recommendation as to disposition in accordance with the above rules. Such motions shall be granted only upon a showing of good cause by the moving party.

HSB Fair Hearing Rule 1000.4.K.

Petitioner must not only establish good cause to reopen his appeal, but also - as a threshold matter - establish why the Board should consider an untimely request to reopen. Even assuming an exception to the 30-day time limit to reopen an appeal, nothing in the facts supports waiving that time frame here, more than a year after entry of the Board's

order. Petitioner inquired about having his name removed from the Registry, arranged for a Commissioner's Review on a date certain, filed a letter with the Board requesting a review of his case, and acknowledged receiving notice of the status conference scheduled by the Board - there is no evidence that anything compelling and out of his control led to his failure to make any contact with the Board during the pendency of his appeal or following dismissal (or, for that matter, failed to mention anything about the proceedings to his attorney).

As such, petitioner fails to establish why his request should not be rejected as untimely in the first instance, and - even if it were timely - good cause for reopening.² For these reasons, petitioner's request to reopen should be denied.³ See Fair Hearing Rule No. 1000.4.K.

² Even assuming that 33 V.S.A. § 4916b(d) - which allows for a good cause exception for an untimely appeal to the Board of a substantiation - is applicable, petitioner's claim would suffer from the same failure to show such good cause.

³As already stated, *supra* at note 1, petitioner appears to remain free to request expungement from the Child Protection Registry. It should also be emphasized that the issue addressed here is limited solely to reopening jurisdiction over a particular Board appeal.