

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



MICHELL A. STEWART,

Charging Party,

v.

STATE OF CALIFORNIA (STATE  
COMPENSATION INSURANCE FUND),

Respondent.

Case No. SA-CE-1969-S

PERB Decision No. 2383-S

June 27, 2014

Appearance: Michell A. Stewart, on her own behalf.

Before Martinez, Chair; Huguenin and Banks, Members.

DECISION<sup>1</sup>

MARTINEZ, Chair: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Michell A. Stewart (Stewart) of the dismissal (attached) by the Office of the General Counsel of Stewart's unfair practice charge. The Office of the General Counsel dismissed the charge for failure to comply with PERB Regulation 32615<sup>2</sup> in that the charge was missing a proof of service form showing proper service of the charge on the designated representative of the respondent.<sup>3</sup>

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<sup>1</sup> PERB Regulation 32320, subdivision (d) provides, in pertinent part: Effective July 1, 2013, a majority of the Board members issuing a decision or order pursuant to an appeal filed under section 32635 [Board Review of Dismissals] shall determine whether the decision or order, or any part thereof, shall be designated as precedential. Having met none of the criteria enumerated in the regulation, the decision herein has not been designated as precedential. (PERB Regulations are codified at Cal. Code Regs., tit. 8, § 31001 et seq.)

<sup>2</sup> PERB Regulation 32615, which governs the contents of an unfair practice charge, requires service and proof of service on the respondent.

<sup>3</sup> PERB Regulation 32142, subdivision (c)(2), provides that whenever a document is required to be served on a state employer, such as respondent here, the proper recipient shall be the Governor or his designated representative on behalf of the State of California.

The Board has reviewed the case file in its entirety. Based on this review, we find that Stewart was given adequate notice of the deficiency in the filing of her unfair practice charge<sup>4</sup> and at least three opportunities to correct the deficiency prior to dismissal of her charge.

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<sup>4</sup> Following the filing of the charge on October 23, 2013, the Office of the General Counsel sent Stewart a filing deficiency letter on October 28, 2013, stating that Stewart's charge was missing a completed proof of service form showing that the respondent was served with a copy of the charge. On November 1, 2013, Stewart filed another proof of service form. By letter from the Office of the General Counsel dated November 4, 2013, Stewart was informed that her charge was still deficient as it was missing the following information:

Completed proof of service form showing that the Respondent was served with a copy of the charge. The unfair practice charge form that you filed on October 23, 2013 was not properly served on the Respondent. Your Proof of Service, received October 30, 2013, is incorrect. If the respondent is the State of California (Dills Act), service must be on: Chief Counsel, Department of Human Resources, 1515 S Street, North Building, Suite 400, Sacramento, CA 95811-4124. Please properly serve the Respondent with a copy of the unfair practice charge form and file a new proof of service with PERB. (PERB Regulation 32142.)

On November 8, 2013, Stewart filed a new proof of service form, which showed that the designee for the respondent, as identified in the Office of the General Counsel's November 4, 2013, filing deficiency letter, had still not been served with a copy of the charge. The Office of the General Counsel sent Stewart a warning letter on November 25, 2013, giving Stewart until December 9, 2013, to correct the deficiency before her charge would be dismissed.

On December 2, 2013 and March 8, 2014, Stewart filed new proof of service forms, both deficient for the same reasons identified in the Office of the General Counsel's November 4, 2013, filing deficiency letter and November 25, 2013 warning letter. On March 25, 2014, the regional attorney assigned to the charge spoke with Stewart by telephone and informed Stewart about the deficiencies in her two then most recent proof of service forms. Stewart told the regional attorney that she would provide a corrected proof of service form by March 26, 2014. Stewart's charge was dismissed on April 4, 2014, after no corrected proof of service form was received.

We note that Stewart's appeal was accompanied by a proof of service form showing service of the appeal on respondent's designated representative as set forth in the Office of the General Counsel's filing deficiency letter of November 4, 2013.

Stewart's appeal does not address the filing deficiency upon which the charge was dismissed,<sup>5</sup> but instead reiterates her complaint against respondent regarding the calculation of service years for her disability retirement.<sup>6</sup> The Board's further review of this case is therefore unwarranted. The Board hereby affirms the dismissal of the charge and adopts the warning and dismissal letters as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. SA-CE-1969-S is hereby DISMISSED  
WITHOUT LEAVE TO AMEND.

Members Huguenin and Banks joined in this Decision.

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<sup>5</sup> In this regard, Stewart's appeal does not comply with PERB Regulation 32635, subdivision (a), which provides that an appeal from dismissal shall:

- (1) State the specific issues of procedure, fact, law or rationale to which the appeal is taken;
- (2) Identify the page or part of the dismissal to which each appeal is taken;
- (3) State the grounds for each issue stated.

<sup>6</sup> Attached to Stewart's appeal are copies of proof of service forms, unfair practice charge forms and supporting documentation filed by Stewart with PERB during the processing and investigation of her unfair practice charge in addition to copies of two proof of service forms purportedly showing service of the unfair practice charge on the designated representative prior to dismissal of the charge. These copies do not match any of copies of proof of service forms in the file, and the date these forms were executed pre-date the regional attorney's telephone conversation with Stewart on March 25, 2014. Presumably, if Stewart had already corrected the filing deficiency prior to that conversation, she would not have agreed that a corrected proof of service form was necessary. Moreover, the copy of the proof of service form executed on November 22 (or 27), 2013, shows a service date of March 25, 2014, a chronological impossibility, and the March 25, 2014, service date appears written over another date. Under the circumstances as presented, we conclude, along with the Office of the General Counsel, that Stewart did not comply with PERB Regulation 32615's requirement for service and proof of service on the respondent. (See *Los Angeles Community College District* (1984) PERB Decision No. 395 [service requirements are not merely ritualistic, but are basic to providing due process to the involved parties].)

## PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office  
1031 18th Street  
Sacramento, CA 95811-4124  
Telephone: (916) 327-8386  
Fax: (916) 327-6377



April 4, 2014

Michell Stewart

Re: *Michell A. Stewart v. State of California (State Compensation Insurance Fund)*  
Unfair Practice Charge No. SA-CE-1969-S  
**DISMISSAL LETTER**

Dear Ms. Stewart:

On October 23, 2013, Charging Party filed the above-referenced unfair practice charge with the Public Employment Relations Board (PERB or Board). The charge was not properly filed in accordance with PERB Regulation 32615.<sup>1</sup>

Charging Party was informed in a letter dated October 28, 2013, that the above-referenced charge was deficient, as it did not contain a proof of service form showing that the State of California (State Compensation Insurance Fund) (Respondent) was served with a copy of the charge. On November 1, 2013, our office received a defective proof of service form for the above-referenced unfair practice charge. In the attached Filing Deficiency Letter dated November 4, 2013, you were again informed that the charge was not properly filed in accordance with PERB Regulation 32615, in that the proof of service form you filed with PERB on November 1, 2013, did not show that the Respondent was served with a copy of the charge. The November 4, 2013 letter identified the designee of the Respondent who is to be served with a copy of the charge. You were further requested to properly serve the Respondent with a copy of the unfair practice charge form and file a new proof of service form with PERB.

On November 8, 2013, you filed with PERB a new proof of service form in the above-referenced charge. In the attached Warning Letter dated November 25, 2013, you were informed that the proof of service form you filed on November 8, 2013 was deficient for the same reason identified in PERB's November 4, 2013 letter, in that the proof of service form does not show that the designee for the Respondent was served with the charge. You were further informed that if the deficiency was not corrected via an amended charge by December 9, 2013, the charge would be dismissed.

On December 2, 2013 and March 8, 2014, you filed with PERB new proof of service forms in the above-referenced charge. The proof of service forms are again deficient for the same reason identified in PERB's November 4, 2013 and November 25, 2013 letters, in that the

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<sup>1</sup> PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq., and may be found at [www.perb.ca.gov](http://www.perb.ca.gov).

proof of service forms do not show that the designee for the Respondent was served with the charge.

On March 25, 2014, the undersigned spoke with Charging Party by telephone and informed her that both her December 2, 2013 and March 8, 2014 filings did not correct the deficiencies outlined in PERB's November 4, 2013 and November 25, 2013 letters. Charging Party was further informed that if PERB did not receive a corrected proof of service form, that the charge would be dismissed. Charging Party stated that she would provide a corrected proof of service form by March 26, 2014. However, to date, PERB has not received any further communication from Charging Party. Therefore, the charge is hereby dismissed based on the facts and reasons set forth herein, in the November 4, 2013 Warning Letter and in the November 25, 2013 Filing Deficiency Letter.

### Right to Appeal

Pursuant to PERB Regulations, Charging Party may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal. (Cal. Code Regs., tit. 8, § 32635, subd. (a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of PERB Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

The Board's address is:

Public Employment Relations Board  
Attention: Appeals Assistant  
1031 18th Street  
Sacramento, CA 95811-4124  
(916) 322-8231  
FAX: (916) 327-7960

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal. (Cal. Code Regs., tit. 8, § 32635, subd. (b).)

Service

All documents authorized to be filed herein must also be “served” upon all parties to the proceeding, and a “proof of service” must accompany each copy of a document served upon a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, § 32140 for the required contents.) The document will be considered properly “served” when personally delivered or deposited in the mail or deposited with a delivery service and properly addressed. A document may also be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs., tit. 8, § 32135, subd. (c).)

Extension of Time

A request for an extension of time, in which to file a document with the Board itself, must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party. (Cal. Code Regs., tit. 8, § 32132.)

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

M. SUZANNE MURPHY  
General Counsel

By \_\_\_\_\_  
Katharine Nyman  
Regional Attorney

Attachments



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If the deficiency discussed above is not corrected by December 9, 2013,<sup>3</sup> the charge will be **dismissed**. If you have any questions, please call me at the above telephone number.

Sincerely,

Ronald Pearson  
Senior Regional Attorney

RP

Attachment

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<sup>3</sup> Service, and proof of service, pursuant to PERB Regulation 32140 is required for the amended charge.