

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

ROBERT E. CLAYTON,

Charging Party,

v.

STATE OF CALIFORNIA (DEPARTMENT
OF SOCIAL SERVICES),

Respondent.

Case No. SA-CE-1157-S

Administrative Determination

PERB Order No. Ad-308-S

March 21, 2001

Appearances: Robert E. Clayton, on his own behalf; State of California (Department of Personnel Administration) by Nalda Keller, Attorney, for State of California (Department of Social Services).

Before Amador, Baker and Whitehead, Members.

DECISION

AMADOR, Member: This case comes before the Public Employment Relations Board (PERB or Board) on a request by Robert E. Clayton (Clayton) that the Board accept his late-filed request for reconsideration of State of California (Department of Social Services) (2000) PERB Decision No. 1413-S (Social Services).

BACKGROUND

The Board issued Social Services on October 19, 2000. Clayton's request for reconsideration was due on November 13, 2000. On November 24, 2000, he filed such a request, 11 days late. On November 27, 2000, PERB's appeals assistant issued an administrative determination that the request for reconsideration was denied as untimely filed.

On December 12, 2000, Clayton filed the instant appeal of the administrative determination, requesting that the Board excuse his late-filed request for reconsideration.

In his appeal, he states that "According to my physician, I have been seriously ill until November 22, 2000, and thus unable to appeal timely. If necessary, I can provide a physician statement."

Subsequently, Clayton submitted a one-page Visit Verification form documenting the fact that he was seen by a physician on September 27, 2000. The form indicates that Clayton was ill and unable to attend work, and states that he could participate in a modified work program starting November 22, 2000. Clayton submitted no other information to explain why this illness prevented him from making a timely filing on or before November 13.

After reviewing the entire record, the Board hereby DENIES Clayton's request to excuse the late-filed request for reconsideration.

DISCUSSION

PERB Regulation 32136¹ provides that:

A late filing may be excused in the discretion of the Board for good cause only. A late filing, which has been excused, becomes a timely filing under these regulations.

The Board has found good cause exists where a party has demonstrated that a conscientious effort to timely file was made. (See, e.g., North Orange County Regional Occupational Program (1990) PERB Decision No. 807 [good cause existed in a late filing which resulted from exceptions being directed to the wrong PERB office]; Trustees of the California State University (1989) PERB Order No. Ad-192-H [inadvertent, incorrect use of a postage meter resulting in late delivery represented good cause to excuse a late filing]; and State of California (Department of Forestry and Fire Protection) (1998) PERB Order No. Ad-286-S [good cause

¹ PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

found where party made a conscientious effort to timely file but inadvertently utilized an overnight mail delivery system not specified in PERB's regulation].)

When the late filing is caused by alleged physical illness, the party still must demonstrate a conscientious effort to timely file. (See, e.g., North Monterey County Unified School District (1996) PERB Order No. Ad-274.)

In the case at bar, Clayton has not met this burden. Although he submitted proof of his illness, he has not explained how that illness prevented him from making a conscientious effort to timely file. For that reason, we find that good cause has not been shown to excuse this late filing.

ORDER

Robert Clayton's request to accept his late-filed request for reconsideration in Case No. SA-CE-1157-S is hereby DENIED.

Members Baker and Whitehead joined in this Decision.