

appeal of the dismissal was due to be filed no later than September 14. On August 31, Kok timely filed an appeal. However, on September 16, two days after the filing deadline, Kok filed an amendment to his appeal. On September 17, the PERB appeals assistant rejected the amendment as untimely filed.

On September 28, Kok filed the instant appeal of the rejection of his untimely September 16 filing. Kok states that the delay in filing resulted from "postal or clerical delay," because his appeal amendment is dated September 12, prior to the filing deadline. Since September 12 was a Saturday, Kok asserts that his filing should have been postmarked no later than Monday, September 14, the filing deadline.

DISCUSSION

PERB Regulation 32135 states:

All documents shall be considered "filed" when actually received by the appropriate PERB office before the close of business on the last date set for filing or when sent by telegraph or certified or Express United States mail postmarked not later than the last day set for filing and addressed to the proper PERB office.

Kok used regular United States mail, postmarked September 14, in filing his appeal amendment, which was received by PERB on September 16, two days after the filing deadline.

PERB Regulation 32136 states, in pertinent part:

headquarters office, and shall be signed by the charging party or its agent. Except as provided in Section 32162, service and proof of service of the appeal on the respondent pursuant to Section 32140 are required.

A late filing may be excused in the discretion of the Board for good cause only.

In applying this regulation, the Board has found good cause to excuse a late filing which resulted from exceptions being directed to the wrong PERB office. (North Orange County Regional Occupational Program (1990) PERB Decision No. 807.) The Board has found that the inadvertent, incorrect use of a postage meter resulting in an incorrect postmark represented good cause to excuse a late filing. (Trustees of the California University (1989) PERB Order No. Ad-192-H.) The Board has also accepted late filings where a party made a good faith attempt to file in a timely manner but inadvertently used a delivery service not listed in PERB Regulation section 32135. (State of California (Department of Forestry and Fire Protection) (1998) PERB Order No. Ad-286-S; The Regents of the University of California (Davis, Los Angeles, Santa Barbara and San Diego) (1989) PERB Order No. Ad-202-H.) In this case, however, Kok provides no justification for the lateness of his filing, referring only to some unspecified "postal or clerical delay." Where a party provides no justification for his late filing, the Board is precluded from finding that good cause exists. (See, e.g., State of California (Department of Insurance) (1997) PERB Order No. Ad-282-S.)

The Board agent's August 20 letter dismissing Kok's unfair practice charge clearly describes the requirements for timely filing an appeal pursuant to PERB Regulation 32135. Kok failed to comply with those requirements. The Board concludes that Kok

has not demonstrated good cause to excuse his September 16 filing of an amendment to his appeal.

ORDER

Philip A. Kok's request that the Board accept his late filed amendment to his appeal of the dismissal in Case No. LA-CE-3822 is hereby DENIED.

Members Dyer and Amador joined in this Decision.