

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

CHERYL HENDERSON,

Charging Party,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT,

Respondent.

Case No. LA-CE-4535-E

Administrative Appeal

PERB Order No. Ad-334

April 12, 2004

Appearances: Cheryl Henderson on her own behalf; Scott Barer, Associate General Counsel, for Los Angeles Unified School District.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on request by Cheryl Henderson (Henderson) that the Board excuse her late-filed appeal or, alternatively, on appeal of an administrative determination that her appeal in the above-named matter was untimely filed.

The Board agent's dismissal of Henderson's unfair practice charge was served on August 12, 2003.¹ The dismissal letter fully explained the procedures for filing an appeal. Under PERB Regulation 32635(a)², Henderson had 20 calendar days to file an appeal of the dismissal. The appeal was therefore due to be filed in the Board's headquarters office no later

¹Unless otherwise noted, all dates refer to 2003.

²PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

than close of business September 8.³ On September 11, PERB's San Francisco regional office received a letter dated August 18 and postmarked on September 9. The regional office forwarded the letter to headquarters where it was filed with the Board on September 16. By letter dated September 24, the Appeals Assistant informed Henderson that the August 18 letter did not refer to case numbers or include a proof of service, and were not timely filed. The Appeals Assistant also advised Henderson that she had 10 days to appeal the administrative determination to the Board itself (due October 9) or, alternatively, could file a request with the Board to excuse the late filings.

On October 8, 2003, Henderson filed what appears to be an amended charge in this matter and for Case No. LA-CO-1144-E, a companion case. By letter dated October 9, 2003, the Appeals Assistant reminded Henderson of the September 24 letter and noted that if Henderson wanted the amended charges accepted as an appeal, she would have to file a request with the Board to accept the late filings. The Appeals Assistant further warned Henderson that the documents must be filed by October 23 or both cases would be closed.

In both the September 24 and October 9 letters, the Appeals Assistant explained all pertinent procedures and regulations to Henderson regarding filing, service and proof of service and suggested that Henderson call if she had any questions.⁴

On October 23, Henderson filed a letter with the Board asking the Board to rehear both matters. In this letter, she stated that she does not understand the procedures for filing appeals

³PERB Regulation 32130(c) allows for a five-day extension of time for any filing made in response to documents such as the dismissal, which are served by mail within California. September 8, therefore includes this five-day extension.

⁴There is no notation in the record that Henderson ever called the Appeals Assistant for help.

and proof of service. She further requests to be at all meetings for determining her cases and notes that she has been unable to retain an attorney.

On November 10, the Los Angeles Unified School District (District) filed a response to Henderson's filings. The District asserts that Henderson did not show good cause to excuse the late filings, as required by PERB Regulation 32136. If Henderson was attempting to file an administrative appeal, she did not follow the requirements of PERB Regulation 32635 by filing within 20 days of the dismissal of her action and by failing to serve the District. The District finally argues that even if Henderson had timely filed an appeal of the dismissal and properly served the appeal, under PERB Regulation 32635(b), she cannot raise new allegations or new supporting evidence in the appeal. The District did not identify what new allegations it was referring to or discuss any prejudice arising out of the late filings.

By email and letter dated November 14, Henderson sent a letter to General Counsel Bob Thompson asking the status of her charges. On November 25, the Appeals Assistant attempted to call Henderson at the phone number listed on the November 14 letter, but Henderson's phone had been disconnected. By letter of November 25, the Appeals Assistant responded that the cases were pending before the Board.

DISCUSSION

Under PERB Regulation 32136, a late filing may only be accepted for good cause. The Board has found good cause in a variety of situations where the justification was "reasonable and credible." (Barstow Unified School District (1996) PERB Order No. Ad-277 (Barstow); State of California (Department of Transportation) (2003) PERB Order No. Ad-326-S (Transportation)). This means that, looking at the surrounding circumstances, it is evident that the party made a conscientious effort to timely file and the delay caused no prejudice to any party in the case. (United Teachers of Los Angeles (Kestin) (2003) PERB Order No. Ad-325.)

The Board has deemed “honest mistakes,” such as mailing and clerical errors, to show good cause. (Barstow; Transportation.) However, in cases in which the Board has found good cause, the filings were at most a few days late. (See e.g., State of California (Department of Forestry and Fire Protection) (1998) PERB Order No. Ad-286-S; Barstow; North Orange County Regional Occupational Program (1990) PERB Decision No. 807; Trustees of the California State University (1989) PERB Order No. Ad-192-H; The Regents of the University of California (Davis, Los Angeles, Santa Barbara and San Diego) (1989) PERB Order No. Ad-202-H.) If the Board finds the justification to be “reasonable and credible,” then the Board evaluates whether there is prejudice to the opposing party in excusing the late filing. (Barstow; Transportation.)

We know of no cases where the Board has excused a late filing in which the party states that she misunderstood the procedures but did not demonstrate any effort to understand the procedures. (Compare Los Angeles Unified School District (2003) PERB Order No. Ad-318.) There have been cases in which late filings were excused in which the filing was inadvertently sent to the wrong office. (See e.g., North Orange County Regional Occupational Program (1990) PERB Decision No. 807.) In this case, not only was the August 18 letter sent to the wrong office but it neither identified case numbers nor showed evidence of being served on the District. Consequently, the first documents correctly filed with the Board were the amended charges received by the Board on October 8, approximately one month after the original deadline to file an appeal. There is no evidence in the record of any attempt by Henderson to contact the Appeals Office for assistance with the timelines and service procedures. The August 12 dismissal letters also fully explained the procedures and requirements for filing appeals, service and requesting an extension of time. There is no evidence that Henderson requested an extension or sought assistance from any Board staff to timely and properly file

her appeal. Whether the filed documents comprise an administrative appeal under PERB Regulation 32360 or a request to excuse late-filed documents under PERB Regulation 32136, none of Henderson's filings show any efforts to timely or properly file the appeals.

Henderson's only explanation is that she does not understand the Board's procedures. We find this explanation insufficient to show good cause to excuse her appeal. We conclude that Henderson has not provided good cause to excuse her late-filed appeals and deny her request to accept the late-filed documents or alternatively, dismiss the appeal of the administrative determination.

ORDER

Cheryl Henderson's request that the Board accept her late-filed documents or, alternatively, grant her appeal of an administrative determination in Case No. LA-CE-4535-E, is hereby DENIED.

Chairman Duncan and Member Neima joined in this Decision.