

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

ELIZABETH GEISMAR,

Charging Party,

v.

MARIN COUNTY LAW LIBRARY,

Respondent.

Case No. SF-CE-159-M

Administrative Appeal

PERB Order No. Ad-338-M

July 2, 2004

Appearances: James Baker, Labor Relations Specialist, for Elizabeth Geismar; Murchison & Cumming by Michael B. Lawler and Ronda Crowley, Attorneys, for Marin County Law Library.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

DUNCAN, Chairman: This case is before the Public Employment Relations Board (Board) on appeal of the administrative determination denying Elizabeth Geismar's (Geismar) "Motion to Amend Unfair Practice Charge."

The Board has reviewed the entire record in this matter including Geismar's appeal and the Marin County Law Library's response and denies the motion to amend.

BACKGROUND

Geismar was advised in the Board agent's warning letter of January 29, 2004, that she had until February 5, 2004, to amend the charge. An amended charge was filed but still did not state a prima facie case and the charge was dismissed on March 1, 2004. On March 22, 2004, Geismar filed a "Motion to Amend Unfair Practice Charge." The appeals assistant advised Geismar this amendment was untimely as the charges had been dismissed and the Board agent no longer had jurisdiction to consider an amendment.

DISCUSSION

Geismar objected to this with an argument based on “American Common Law” and “Basic American Civil Procedure” without citing any actual authority. Geismar had an opportunity to amend the charge and did so timely. She did not state a prima facie case and the charge was dismissed. After an unfair practice charge is dismissed, it is untimely to attempt to amend it.¹

The key here is that the amendment must be filed before the complaint issues or is dismissed. In this case the dismissal had already issued. The Board agent no longer had jurisdiction and the charge could not be further amended.

In conclusion, good cause has not been shown as to why the amendment filed six weeks after the warning letter should be accepted by the Board.

ORDER

The administrative appeal in Case No. SF-CE-159-M is hereby DENIED.

Members Whitehead and Neima joined in this Decision.

¹See PERB Regulation 32621. (PERB regs. are codified at Cal. Code Regs., tit. 8, sec. 31001, et seq.)