

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



MASOUD MOHSENI,

Charging Party,

v.

UNITED TEACHERS OF LOS ANGELES,

Respondent.

Case No. LA-CO-1165-E

Administrative Appeal

PERB Order No. Ad-348

June 10, 2005

Appearances: Masoud Mohseni, on his own behalf; Geffner & Bush by Kathleen M. Erskine, Attorney, for United Teachers of Los Angeles.

Before Duncan, Chairman; Whitehead and Shek, Members.

DECISION

SHEK, Member: This case is before the Public Employment Relations Board (PERB or Board) on a request by Masoud Mohseni (Mohseni) that the Board accept his late-filed exceptions to the proposed decision of a PERB administrative law judge (ALJ).

BACKGROUND

The ALJ's proposed decision in Case No. LA-CO-1165-E was served on the parties on December 31, 2004. The cover letter accompanying the proposed decision explained that PERB Regulation 32300¹ requires that any exceptions must be filed with the Board itself within 20 days of the date of service of the proposed decision. Additionally, PERB Regulation 32130(c) provides a five-day extension of the filing deadline for documents filed by mail. The letter also explained that a party may request an extension of time to file exceptions and stated that an extension request must be filed at least three days before the date

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

exceptions are due. (PERB Reg. 32132(a).) Accordingly, absent an extension of time, any exceptions to the ALJ's proposed decision in this case were due to be filed with the Board on or before January 25, 2005.

On March 17, 2005, Mohseni filed exceptions to the ALJ's proposed decision along with a request that the Board accept his late filed appeal. Mohseni's request stated, in relevant part:

The reason for my decision to appeal this case after the deadline is because in late December (2004) and most of the winter (2005) I was sick and in a lot of pain. I visited several doctors and if necessary verifications can be provided.

DISCUSSION

PERB Regulation 32136 provides that the Board may excuse a late filing for good cause. The Board has found good cause to exist in situations where the explanation was "reasonable and credible." (Barstow Unified School District (1996) PERB Order No. Ad-277.) The Board has interpreted this to mean that the party made a conscientious effort to timely file and the delay did not cause prejudice to any party. (United Teachers of Los Angeles (Kestin) (2003) PERB Order No. Ad-325.)

When a late filing is caused by an alleged illness, the party must still demonstrate a conscientious effort to timely file. (North Monterey County Unified School District (1996) PERB Order No. Ad-274 (North Monterey County); State of California (Department of Social Services) (2001) PERB Order No. Ad-308-S (Social Services).) In Social Services, the party claimed a "serious illness" which prevented his timely filing. A doctor visit verification form indicated that the party was unable to work for a specified period of time. Although the party submitted proof of his illness, the Board found he did not explain how the illness prevented him from making a conscientious effort in timely filing. (See also, State of California (State

Teachers Retirement System) (1999) PERB Order No. Ad-296-S [a party's attorney claimed he was ill but did not explain how his illness affected his ability to timely file]; State of California (2001) PERB Order No. Ad-309-S [party did not explain how depression and anxiety prevented a timely filing]; North Monterey County [no explanation how family illness impacted timely filing].)

In the present case, Mohseni claims that he was ill for several months. He offered to provide verification that he had visited several doctors. Evidence of his visits with several doctors, uncorroborated by a reasonable and credible explanation of how his illness prevented his prompt filing, does not reasonably excuse Mohseni from his obligation to make a conscientious effort to file timely.

ORDER

Masoud Mohseni's request that the Board accept his late-filed exceptions in Case No. LA-CO-1165-E is hereby DENIED.

Chairman Duncan and Member Whitehead joined in this Decision.