

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



MARC Z. KATZ,

Charging Party,

v.

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT,

Respondent.

Case No. LA-CE-5125-E

Administrative Appeal

PERB Order No. Ad-373

May 9, 2008

Appearances: Marc Z. Katz, on his own behalf; Parker & Covert by Steven Montanez, Attorney, for Newport-Mesa Unified School District.

Before McKeag, Wesley and Dowdin Calvillo, Members.

DECISION

WESLEY, Member: This case is before the Public Employment Relations Board (PERB or Board) on an administrative appeal by Marc Z. Katz (Katz) of the PERB Appeals Assistant's determination that his appeal of the dismissal of his unfair practice charge was untimely filed.

The Board has reviewed the entire record in this matter, including the administrative appeal filed by Katz. Katz fails to state good cause for his late filed appeal as discussed below.

BACKGROUND

On October 15, 2007, Katz's unfair practice charge was filed with PERB. His charge alleged that the Newport-Mesa Unified School District (District) discriminated against him because of his participation in protected activity. On October 31, 2007, a Board agent issued a warning letter informing Katz that his charge was deficient in that he failed to properly file a proof of service and failed to state a prima facie case. The letter stated that the Board agent telephoned Katz on two occasions leaving messages with Katz's friend and the friend's son

requesting that Katz return the call. The Board agent was told that Katz was traveling but that any correspondence should be sent to Katz's mailing address. When Katz did not respond to the warning letter, the Board agent dismissed the charge on November 13, 2007.

On March 5, 2008, Katz submitted a letter to the Board agent which he referred to as "First Amended Unfair Practice Charge No. LA-CE-5125-E." On March 25, 2008, the Appeals Assistant sent a letter to Katz acknowledging his letter, informing him that his appeal of the Board agent's dismissal was untimely as it was due no later than December 10, 2007,¹ and therefore his appeal was denied.

On April 1, 2008, Katz responded to the Appeals Assistant's letter with his account of what transpired since his charge was initially filed. He argues that he was "traveling out of the country and unavailable for reasons of personal necessity" at the time the Board agent reviewed his charge. Katz further stated that he did not return to Oregon until March 2008 and that the Board agent was aware that he had not received any of his letters. Katz also made a vague reference to health issues to excuse the delay, stating "there are compelling personal reasons of health for the long delay in filing this petition."

The Appeals Assistant notified Katz on April 8, 2008 that his April 1 correspondence would be considered by the Board as an administrative appeal. On April 23, 2008, the District filed its opposition to Katz's administrative appeal arguing that Katz failed to show good cause under PERB Regulation 32136.² The District further argued that it would be prejudiced if Katz

¹Katz's appeal of the Board agent's dismissal was actually due on or before December 13, 2007, as his filings are from out of state.

²PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq. PERB Regulation 32136 states:

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.

were allowed to file late, as the allegations relate to matters that occurred in 1999 and 2000 and many of the individuals named in the charge were no longer with the District.

DISCUSSION

Under PERB Regulation 32136 late filings may be excused by the Board for “good cause.” Generally, good cause is shown where the late-filing has been caused by circumstances beyond the party’s control. (United Teachers of Los Angeles (Kestin) (2003) PERB Order No. Ad-325.) The Board has found good cause in situations where the justification was “reasonable and credible.” (Barstow Unified School District (1996) PERB Order No. Ad-277.)

In the instant case, Katz argues that he did not timely file an appeal of the dismissal of his charge because he was traveling out of “personal necessity.” He offers no further explanation or documentation to support or explain a delay of almost three months. The Board finds his argument neither reasonable nor credible under the circumstances outlined. Katz also asserts, without explanation, that “reasons of health” caused the delay in filing. In AFT College Staff Guild, Local 1521 (Mrvichin) (2005) PERB Order No. 349, the Board held that a party must explain how an illness precluded timely filing. Katz does not satisfy this requirement. Therefore, Katz has not demonstrated good cause to excuse the late-filed appeal.

ORDER

The request by Marc Z. Katz that the Board excuse his late-filed appeal of the dismissal of his unfair practice charge in Case No. LA-CE-5125 is hereby DENIED.

Members McKeag and Dowdin Calvillo joined in this Decision.