

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



LEO FRANCIS SMYTH,)
)
 Charging Party,) Case No. LA-CE-1669
)
 v.) PERB Decision No. 413
)
 LOS ANGELES COUNTY SUPERINTENDENT) October 9, 1984
 OF SCHOOLS,)
)
 Respondent.)
 _____)

Appearances; Barbara Smyth for Leo Francis Smyth (deceased).
Before Hesse, Chairperson; Jaeger and Morgenstern, Members.

DECISION

MORGENSTERN, Member: Barbara Smyth, on behalf of her deceased father, Charging Party Leo Smyth, has filed an untimely appeal of the dismissal of this case by an agent of the Public Employment Relations Board (PERB or Board). For the reasons discussed herein, we affirm the dismissal.

FACTS AND PROCEDURAL HISTORY

On November 1, 1982, Leo Smyth filed an entirely unintelligible charge against the Los Angeles County Superintendent of Schools. Finding the charge "ambiguous, vague and unintelligible," on May 17, 1983, the Board agent issued a letter serving notice of leave to amend, requesting that the charge be amended to contain a "clear and concise statement of facts and conduct alleged to constitute an unfair

practice," as required by PERB regulation 32615.¹ Charging Party submitted no response and, on June 22, 1983, PERB issued a notice of Refusal to Issue Complaint and Dismissal of Unfair Practice Charge. The notice stated that the dismissal could be appealed before July 12, 1983. Again, Charging Party submitted no response and, on July 21, 1983, PERB issued a Notice of Closure of Case.

On August 29, 1983, Charging Party's daughter, Barbara Smyth, responded by letter, indicating that her father had died on July 13, 1983, but that "his family intended to carry on with the proceedings," and requesting advice as to what procedures to follow.

On September 1, 1983, PERB advised Ms. Smyth that an untimely appeal may be filed with the Board pursuant to PERB regulation 32136.²

On September 19, 1983, Ms. Smyth filed an appeal, claiming that her father's death constituted extraordinary circumstances justifying the delay in appealing the dismissal. The appeal states as follows:

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

²PERB regulation 32136 provides that:

A late filing may be excused in the discretion of the Board only under extraordinary circumstances. A late filing which has been excused becomes a timely filing under these regulations.

My father's last contact with us was on Monday, July 11, 1983, when he left for Los Angeles. On Wednesday, July 13, 1983, we were notified that my father had collapsed and had been taken by paramedics to the Greater El Monte Hospital emergency room where he never regained consciousness.

Ms. Smyth further urges that we take into consideration the distances between family residences which caused delay in compiling information needed in filing this appeal.

DISCUSSION

In Anaheim Union High School District (7/17/78) PERB Order No. Ad-42, the Board defined the "extraordinary circumstances" standard for acceptance of late filings as circumstances that are

. . . out of the ordinary, remarkable, unpredictable situations or occurrences far exceeding the usual which prevent timely filing.³

Thus, the purpose of rule 32136 is to excuse a late filing where extraordinary circumstances have prevented a timely filing. It is, therefore, clear that such extraordinary circumstances must occur prior to the final filing date.

³ In Anaheim, supra, the Board held that mail delays are ordinary, commonly accepted occurrences and generally will not serve to excuse a late filing. See also Ocean View School District (6/10/80) PERB Decision No. 131 (counsel's illness on the day prior to the deadline for filing exceptions did not constitute extraordinary circumstances to excuse the filing of exceptions a week late), and Regents of the University of California (8/24/83) PERB Decision No. 340-H (pending settlement discussions do not constitute extraordinary circumstances for the late filing of an "at issue" memorandum).

The present appeal argues that the Charging Party's death on July 13, 1983, a day after the final date to appeal the dismissal, constitutes an extraordinary circumstance to excuse the late filing. Ms. Smyth's appeal states that the distances between family residences contributed to her delay in compiling the information needed in filing the appeal before PERB. However, neither Mr. Smyth's death, the day after the final filing date, nor Ms. Smyth's conduct thereafter, serves to explain Mr. Smyth's failure to appeal the dismissal before his death.

While illness could have prevented Mr. Smyth from filing a timely appeal before his death, Ms. Smyth's appeal does not indicate that illness preceded her father's death.

Because Ms. Smyth's claim of extraordinary circumstances is based on her father's death, rather than a disabling illness preceding death, and because his death occurred after the time for appeal had elapsed, we find here no allegation of facts indicating extraordinary circumstances to justify acceptance of a late appeal.⁴

⁴Finding no extraordinary circumstances that excuse the late filing of this appeal, we need not decide whether this charge is of such character as to survive the death of Charging Party. (See California Code of Civil Procedure, section 385; California Probate Code, section 573; Allen v. Western Airlines, Inc. (1980) 110 Cal.App.3d 767; Skelly v. State Personnel Board (1975) 15 C.3d 194.)

Moreover, the wholly unintelligible nature of the charge compels a finding that the charge was properly dismissed for failure to state a prima facie case.

ORDER

Based upon the foregoing findings of fact and conclusions of law, and the entire record in this case, Barbara Smyth's appeal in Case No. LA-CE-1669 is hereby DENIED.

Chairperson Hesse and Member Jaeger joined in this Decision.