

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



JOYCE FOX,)
)
 Charging Party,) Case No. S-CE-720-S
)
 v.) Administrative Appeal
)
 STATE OF CALIFORNIA (DEPARTMENT OF) PERB Order No. Ad-267-S
 PERSONNEL ADMINISTRATION),)
)
 Respondent.)
)
)
)

Appearances: Cathy R. Hackett for Joyce Fox; Joan E. Branin, Labor Relations Counsel, for State of California (Department of Personnel Administration).

Before Blair, Chair; Garcia and Johnson, Members.

DECISION

JOHNSON, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Joyce Fox (Fox) of the PERB appeals assistant's rejection of her untimely filed appeal of the Board agent's dismissal of her unfair practice charge.

The dismissal of Fox's unfair practice charge was served on the parties by mail on December 9, 1994. Including weekends, holidays and the five-day extension provided by PERB Regulation 32130(b) and (c),¹ the appeal of the Board agent's

¹PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Regulation 32130 states, in pertinent part:

(b) Except for filings required during a "window period" as defined in sections 33020, 40130 or 51026, whenever the last date to file a document falls on Saturday, Sunday, or a holiday, as defined in Government Code

dismissal was due to be filed no later than January 3, 1995.

Fox's appeal was sent by regular mail, received and filed with PERB on January 4, 1995, one day late.

The Board has reviewed the appeal filed by Cathy R. Hackett (Hackett) on behalf of Fox, and finds that good cause does not exist to excuse the late filing.² Hackett maintains that the late filing of Fox's appeal should be excused because she did not receive notice of the dismissal of Fox's charge until December 30, 1994. PERB Regulation 32142 mandates, in pertinent part:

Whenever a document is required to be "filed" or "served" with any of the below listed entities, the proper recipient shall be:

(e) An individual - the named person or to the person's representative of record.

According to Hackett, the Board agent knew that she represented Fox and, therefore, she should have been served with the decision

sections 6700 and 6701, or PERB offices are closed, the time period for filing shall be extended to and include the next regular PERB business day. The extension of time provided herein shall be applied subsequent to the application of any other extension of time provided by these regulations or by other applicable law.

(c) The extension of time provided by California Code of Civil Procedure section 1013, subdivision (a), shall apply to any filing made in response to documents served by mail.

²PERB Regulation section 32136 states, in pertinent part:

A late filing may be excused in the discretion of the Board for good cause only.

to dismiss Fox's charge. However, Fox did not file a written notice of appearance or representation indicating that Hackett was Fox's representative of record prior to the issuance of the dismissal. While the Board agent acknowledged that Hackett was "assisting" Fox, that did not establish Hackett as the representative of record.

Accordingly, good cause does not exist to excuse the late filing of Fox's appeal.

ORDER

Fox's appeal of the PERB appeals assistant's rejection of her appeal of the Board agent's dismissal of her unfair practice charge in Case No. S-CE-720-S is hereby DENIED.

Chair Blair and Member Garcia joined in this Decision.