

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



LYDIA RAMIREZ,)
)
 Charging Party,) Case Nos. SA-CE-890-S
) SA-CE-920-S
 v.)
) Administrative Appeal
 STATE OF CALIFORNIA (STATE)
 TEACHERS RETIREMENT SYSTEM),) PERB Order No. Ad-296-S
)
 Respondent.) July 22, 1999

Appearance: Law Offices of Raymond A. Mills by Raymond A. Mills, Attorney, for Lydia Ramirez.

Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

AMADOR, Member: This case is before the Public Employment Relations Board (PERB or Board) on a request by Lydia Ramirez (Ramirez) that the Board accept her late-filed exceptions to an administrative law judge's (ALJ) proposed decision.

BACKGROUND

The ALJ rendered a proposed decision in Case Nos. SA-CE-890-S and SA-CE-920-S on December 17, 1998. The original due date for filing exceptions to the proposed decision was January 6, 1999.¹ Two extensions of time were subsequently granted to Ramirez and exceptions were due to be filed no later than March 2, 1999.

¹PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Regulation 32135 provides, in pertinent part, that documents are "considered 'filed' when actually received by the appropriate PERB office before the close of business on the last date set for filing."

On February 26, 1999, Ramirez made a third request for an extension. The PERB appeals assistant denied the request and informed Ramirez's attorney by telephone that the final due date remained at March 2, 1999. On March 2, 1999, Ramirez made a fourth request for additional time to file the exceptions.² On March 4, the appeals assistant denied this fourth request for an extension.

Ramirez filed exceptions on March 5, 1999, three days late. By letter dated March 10, 1999, the appeals assistant informed Ramirez that her exceptions were untimely filed.

RAMIREZ'S APPEAL

On March 18, 1999, Ramirez filed the instant appeal of the appeals assistant's determination for both cases. In the appeal, Ramirez's attorney asserts that good cause exists to excuse the late filings because: (1) the attorney was ill and unable to come to the office from February 16 through February 22; and (2)

²The fourth request for an extension of time to file exceptions was filed on March 2, 1999, 3 days late. PERB Regulation section 32132(a) states:

A request for an extension of time within which to file any document with the Board itself shall be in writing and shall be filed at the headquarters office at least three days before the expiration of the time required for filing. The request shall indicate the reason for the request and, if known, the position of each other party regarding the extension. Service and proof of service pursuant to Section 32140 are required. Extensions of time may be granted by the Board itself or an agent designated by the Board itself for good cause only.
(Emphasis added.)

the attorney's office had computer problems on March 1 and 2 and he was unable to complete work on the exceptions.

DISCUSSION

PERB Regulation 32136 provides that:

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.

The Board has found good cause to exist where a party made a conscientious effort to complete its filing in a timely manner but failed to do so because of a clerical or postal error, provided the delay caused was brief and no prejudice resulted to any party in the case. (See, e.g., State of California (Department of Forestry and Fire Protection) (1998) PERB Order No. Ad-286-S [good cause found where party made a conscientious effort to timely file but inadvertently utilized an overnight mail delivery system not specified in PERB regulation]; Trustees of the California State University (1989) PERB Order No. Ad-192-H, at p. 5 [good cause found where employer plausibly explained that postage meter was set to wrong date and union claimed no prejudice]; North Orange County Regional Occupational Program (1990) PERB Decision No. 807 [good cause found where exceptions were filed well before the deadline, but they were inadvertently filed in the PERB Los Angeles Regional Office rather than the Sacramento headquarters office].)

Here, the final due date for filing exceptions was March 2. Ramirez requested a third extension of time on February 26. Her attorney was informed by the appeals assistant that no further

extensions would be granted. The exceptions were not filed until March 5, seven days after the February 26 request for an extension was denied.

Neither of the reasons offered to excuse the late filing meets the good cause standard. In the appeal, the attorney states he returned to work from an illness on February 23. At that point, he still had seven calendar days to complete the exceptions (February 23 - March 2). The attorney does not explain how his being ill prior to February 23 rendered him incapable of filing the exceptions by March 2.

Ramirez's attorney also claims his office had unspecified "computer problems" on March 1 and 2. He fails to describe those problems in detail or to explain how those problems prevented him from making a timely filing. Additionally, we note that multiple extensions were granted to Ramirez. Considering all these factors, we find that good cause has not been shown to excuse this late filing.

ORDER

Lydia Ramirez's request to accept her late-filed exceptions in Case Nos. SA-CE-890-S and SA-CE-920-S is hereby DENIED.

Chairman Caffrey and Member Dyer joined in this Decision.