

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



GEORGE V. MRVICHIN,

Charging Party,

v.

AFT COLLEGE STAFF GUILD, LOCAL 1521,

Respondent.

Case No. LA-CO-1185-E

Administrative Appeal

PERB Order No. Ad-349

June 17, 2005

Appearance: George V. Mrvichin, on his own behalf.

Before Duncan, Chairman; Whitehead and Shek, Members.

DECISION

SHEK, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by George Mrvichin (Mrvichin) of the PERB Appeals Assistant's denial of his request for a second extension of time to file an appeal of the dismissal of his unfair practice charge.

BACKGROUND

Mrvichin's unfair practice charge was dismissed by a PERB Board agent on November 29, 2004. On December 13, 2004, Mrvichin requested an extension of time to file an appeal of the dismissal of his charge. Mrvichin stated, "This request is part [sic] based upon my medical condition, holyday [sic] calendar, and additional research necessary to appeal." On December 14, 2004, the PERB Appeals Assistant granted the request for an extension of time to file an appeal on or before January 10, 2005.

By letter dated January 20, 2005, the Appeals Assistant notified the parties that no appeal had been filed and therefore the case was closed.

Mrvichin filed a second request for an extension of time which was received at PERB on January 20, 2005, after the Appeals Assistant issued her letter to the parties.

On January 24, 2005, the Appeals Assistant informed Mrvichin that his second request for an extension of time was denied as untimely filed. The Appeals Assistant notified Mrvichin that his request was required to be filed at least three days before the expiration of the time set for filing the appeal. To meet this requirement, Mrvichin's second extension request must have been filed on or before January 18, 2005.¹ By filing his extension request on January 20, 2005, his request was filed two days late.

On February 3, 2005, Mrvichin filed this administrative appeal of the Appeals Assistant's denial of his second request for an extension of time. The appeal states, in relevant part:

This request is part based upon my medical condition (Both mental and physical), additional research necessary to appeal (National Labor Relations Board US Air v. Flight Attendants-NLRB U.S. Air..., and pending related litigation (NLRB U.S. Air... 'Contract Coverage of Retired Employees'. As well as misapplication of time limits and disability accommodation. (Quoted verbatim.)

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

¹This date includes five days for documents served by mail plus additional time to the next business day. (PERB Reg. 32130(c); PERB regulations are codified at Cal. Code Regs., tit. 8, sec. 31001, et seq.)

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].)

The Board has also exercised its discretion in declining to find good cause where a party claimed that a recent ruling on litigation in another forum excused a late filing. The Board stated that a decision rendered by another forum under the provisions of a different statute, where there is no connection with PERB's decision in the case at hand, would be unduly burdensome to the respondent. (California State Employees Association, Local 1000 (Janowicz) (1996) PERB Order No. Ad-276-S.)

In the present case, Mrvichin asserts that his late filed request for a second extension of time was based on his medical condition, the need to conduct additional research and "pending

related litigation". Mrvichin does not explain how his medical condition prevented him from timely filing. Nor does he explain how litigation pending before the National Labor Relations Board is relevant to his case before PERB and why it should excuse his late filing. In addition, we note that Mrvichin has previously been granted an extension of time to file his appeal for nearly identical reasons. Absent any information specifically describing how these conditions continued to prevent him from making a conscientious effort in timely filing, good cause has not been shown to excuse the late filing.

ORDER

George Mrvichin's request to excuse his late-filed request for a second extension of time to file an appeal of the Board agent's dismissal in Case No. LA-CO-1185-E is hereby DENIED.

Chairman Duncan and Member Whitehead joined in this Decision.