

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



SAMWEL OSEWE,

Charging Party,

v.

LONG BEACH COMMUNITY COLLEGE
DISTRICT,

Respondent.

Case No. LA-CE-5040-E

Administrative Appeal

PERB Order No. Ad-369

December 21, 2007

Appearances: Samwel Osewe, on his own behalf; Parker & Covert by Barbara J. Ginsberg, Attorney, for Long Beach Community College District.

Before Shek, McKeag and Rystrom, Members.

DECISION

SHEK, Member: This case is before the Public Employment Relations Board (PERB or Board) on an appeal by Samwel Osewe (Osewe) requesting that the Board accept his late filed appeal of the dismissal of his unfair practice charge.

BACKGROUND

Osewe's unfair practice charge was dismissed by a PERB Board agent on July 31, 2007. On August 28, 2007, Osewe filed an appeal of the Board agent's dismissal along with a request that the Board accept his late filed appeal. Osewe alleges that he called "M/S Hernandez^[1] 3 weeks ago," attempting to obtain an extension of time to file the appeal, but a recording stated that she was out of the office until August 20, 2007. "In the meantime, Terri^[2] the new court administrator" had called him to inform him that the proof of service in his

¹This appears to be a reference to the Board agent, Anita Martinez.

²This appears to be a reference to the Appeals Assistant.

separate unfair practice charge in Case No. LA-CO-1291-E, against the Long Beach Council of Classified Employees, AFT, AFL-CIO, was filed incorrectly. We take official notice that the case file in Case No. LA-CO-1291-E includes a letter dated August 16, 2007, from the Appeals Assistant to Osewe, affording him until August 24, 2007, to provide PERB with a proper proof of service in that matter.³ Osewe contends that he assumed the Appeals Assistant had granted an extension of time to his filing of a proper proof of service in Case No. LA-CO-1291-E, and to his appeal in the present case. Osewe also states that he “had been hospitalized since last week and [he] just came home.”

DISCUSSION

Osewe’s unfair practice charge was dismissed on July 31, 2007 and his appeal of the dismissal was due to be filed no later than August 27, 2007. (PERB Regs. 32635(a) and 32130(b) and (c).⁴) He allegedly attempted to obtain an extension of time within which to file

³See Antelope Valley Community College District (1979) PERB Decision No. 97, at p. 23, stating that an administrative agency may take official notice of matters within its own files and records.

⁴PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq. PERB Regulation 32635 states, in pertinent part:

- (a) Within 20 days of the date of service of a dismissal, the charging party may appeal the dismissal to the Board itself. The original appeal and five copies shall be filed in writing with the Board itself in the headquarters office, and shall be signed by the charging party or its agent. Service and proof of service of the appeal on the respondent pursuant to Section 32140 are required.

PERB Regulation 32130 states, in pertinent part:

- (b) Whenever the last date to file a document falls on Saturday, Sunday, or a holiday, as defined in Government Code 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.

his appeal of the dismissal, by telephone on or about August 6, 2007. Under Regulation 32132, his attempted verbal request for extension did not satisfy the requirement for a written request to be submitted at least three days before the expiration of the time required for filing, or no later than August 24, 2007.⁵

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 “reasonable and credible” to mean that the party made a conscientious effort to timely file, and that the delay did not cause prejudice to any party. (United Teachers of Los Angeles (Kestin) (2003) PERB Order No. Ad-325 (Kestin), citing State of California (State Teachers Retirement System) (1999) PERB Order No. Ad-296-S (State Teachers Retirement System)). The Board has generally “excused a late filing where a non-prejudicial delay of short duration resulted from circumstances beyond the control of the filing party or from excusable misinformation.” (Kestin, at p. 4.)

(c) A five day extension of time shall apply to any filing made in response to documents served by mail if the place of address is within the State of California, ten days if the place of address is outside the State of California but within the United States, and twenty days if the place of address is outside the United States. No extension of time applies in the case of documents served in person, or by facsimile transmission as defined in Section 32090.

⁵PERB Regulation 32132(a) states:

(a) 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.

In the present case, Osewe's misunderstanding that the Appeals Assistant's grant of an extension of time in Case No. LA-CO-1291-E to correct the proof of service in that case, would also apply to his appeal in the present case does not constitute "excusable misinformation," or circumstances beyond Osewe's control. (Kestin.) The Appeals Assistant's correspondence in Case No. LA-CO-1291-E made no reference to the present matter, and contained no substance which would have caused a reasonable person under similar circumstances to reach a similar conclusion as Osewe.

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 to timely file. (See also, State Teachers Retirement System [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]; and North Monterey County [no explanation how family illness impacted a timely filing].)

In the present case, Osewe claims that he was hospitalized "since last week and ... just came home." He offered no verification of his hospitalization. Even assuming that he had

been hospitalized for a week prior to the filing of his appeal, received and filed⁶ August 28, 2007, and was able to verify his hospitalization, such assumption, uncorroborated by a reasonable and credible explanation of how his hospitalization prevented his prompt filing, it does not reasonably excuse Osewe from his obligation to make a conscientious effort to file timely.

ORDER

Samuel Osewe's request that the Board accept his late-filed appeal in Case No. LA-CE-5040-E is hereby DENIED.

Members McKeag and Rystrom joined in this Decision.

⁶PERB Regulation 32135(a) states:

- (a) All documents shall be considered "filed" when the originals, and the required number of copies, if any, are actually received by the appropriate PERB office during a regular PERB business day.

