

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



MIGUELINA VILLASENOR,

Charging Party,

v.

NATIONAL SCHOOL DISTRICT,

Respondent.

Case No. LA-CE-5144-E

Administrative Appeal

PERB Order No. Ad-389

December 21, 2010

Appearance: Melinda S. Shapiro, Attorney, for Miguelina Villasenor.

Before Dowdin Calvillo, Chair; McKeag and Wesley, Members.

DECISION

McKEAG, Member: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by Miguelina Villasenor (Villasenor) of the Appeals Assistant's administrative determination rejecting her appeal because it was not timely filed.

We have reviewed the Appeals Assistant's determination and the record and find good cause does not exist to excuse Villasenor's late filing. Consequently, the Board declines to accept the untimely appeal of the dismissal of the charge, as set forth below.

BACKGROUND

Villasenor filed her unfair practice charge on November 26, 2007, alleging the National School District retaliated against her for filing a grievance regarding her employment status. On March 26, 2009, Villasenor received a warning letter informing her that her charge did not state a prima facie case. After requesting, and being granted, an extension of time, Villasenor filed an amended charge on April 23, 2009.

The Board agent concluded that Villasenor's amended charge did not address the deficiencies outlined in the warning letter and dismissed the charge for failure to state a prima facie case.

By letter dated August 7, 2009, Villasenor requested, and was granted, an extension of time in which to file her appeal. The letter granting Villasenor's extension clearly stated that the new due date for filing her appeal would be Monday, August 24, 2009. Villasenor's appeal was mailed to PERB by certified mail on August 31, 2009, and received on September 3, 2009.

#### VILLASENOR'S APPEAL

In her appeal, Villasenor requests the Board to find good cause to accept and consider her late-filed appeal. According to Villasenor, although she lives in Tijuana, Mexico, she keeps a post office box in San Diego because she does not trust mail delivery in Mexico. Villasenor claims that due to safety concerns she has difficulty regularly checking her San Diego post office box and, therefore, was unable to file a timely appeal.

#### DISCUSSION

As indicated above, Villasenor requested, and was granted, an extension to file her appeal. The extended due date was August 24, 2009. PERB Regulation 32130(c)<sup>1</sup> extends that filing deadline by five days. Consequently, Villasenor's appeal was required to be filed at PERB no later than August 31, 2009. Since the appeal did not arrive until September 3, 2009, the Appeals Assistant properly concluded the filing was three days late and denied the appeal.

PERB Regulation 32136 provides that the Board may excuse a late filing for good cause. The Board has found good cause when the explanation for the late filing was "reasonable and credible" and the delay did not cause prejudice to any party. (*Barstow Unified*

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<sup>1</sup> PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

*School District* (1996) PERB Order No. Ad-277.) Good cause is typically found when the late filing was caused by circumstances beyond the party's control. (*United Teachers of Los Angeles (Kestin)* (2003) PERB Order No. Ad-325.)

In the instant case, Villasenor claims that due to safety concerns she has difficulty regularly checking her San Diego post office box. However, she fails to explain how these unspecified safety concerns prevented her from timely filing her appeal, even with the additional time granted by the Appeals Assistant. Accordingly, we find Villasenor has not demonstrated good cause to excuse her late-filed appeal. (*Newport-Mesa United School District* (2008) PERB Order No. Ad-373.)

#### ORDER

Miguelina Villasenor's request that the Public Employment Relations Board accept her late-filed appeal in Case No. LA-CE-5144-E is hereby DENIED.

Chair Dowdin Calvillo and Member Wesley joined in this Decision.