

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



JEFFREY ESTES,

Charging Party,

v.

REGENTS OF THE UNIVERSITY OF
CALIFORNIA,

Respondent.

Case No. LA-CE-1120-H

Administrative Appeal

PERB Order No. Ad-396-H

November 27, 2012

Appearances: Jeffrey Estes, on his own behalf; Carl D. Smith, Labor and Employee Relations Consultant, for Regents of the University of California.

Before Martinez, Chair; Dowdin Calvillo and Huguenin, Members.

DECISION

DOWDIN CALVILLO, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Regents of the University of California (University) from the administrative determination by the PERB Appeals Assistant finding that the University failed to file a timely response to exceptions filed by Jeffrey Estes (Estes) to a proposed decision of an administrative law judge. For the reasons set forth below, we find good cause to accept the University's filing.

PERB Regulation 32310¹ provides that any party may file a response to the statement of exceptions to the proposed decision of a Board agent within 20 days following the date of service of the exceptions. PERB Regulation 32130(c) provides a five-day extension to file a response to documents served by mail.

¹ PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

Estes served his statement of exceptions by mail on August 27, 2012. Pursuant to the above regulations, the University had until September 21, 2012, to file a response to the exceptions. On September 24, 2012, PERB received the University's response to the statement of exceptions. That response was dated September 21, 2012. By letter dated September 25, 2012, the PERB Appeals Assistant notified the parties that the University's response had been received but was denied as untimely filed.

On October 1, 2012, the University filed an appeal from the determination of the Appeals Assistant and requested that PERB file its response dated September 21, 2012. The letter stated that the University had prepared the response for facsimile filing on September 21, 2012, but that, due to an error, the facsimile filing was placed in the United States mail with proof of service on September 21, 2012, in accordance with PERB Regulations 32310 and 32135(c).

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 School District* (1996) PERB Order No. Ad-277.) The Board has historically excused late filings caused by "honest mistakes" such as mailing or clerical errors. (See, e.g., *Kern Community College District* (2008) PERB Order No. Ad-372 [clerical employee served appeal on respondent but did not file appeal with PERB]; *Trustees of the California State University* (1989) PERB Order No. Ad-192-H [mailroom employees incorrectly set postage meter causing exceptions to be filed late]; *San Francisco Unified School District* (2009) PERB Decision No. 2048 (*SFUSD*) [late filing excused as a result of clerical error in counsel's office].) Based on the facts stated in the University representative's letter and the representative's conscientious effort to comply with PERB's requirements for filing a document by facsimile,

we find the University has provided a “reasonable and credible” explanation for its late filing. (*SFUSD*.) Further, there is no indication that the late filing prejudiced Estes in any way, particularly since the University’s response was served on the due date and PERB regulations do not provide for a party to file a reply to another party’s response to a statement of exceptions. Accordingly, we find the University has demonstrated good cause under PERB Regulation 32310 for the Board to accept its late-filed response to the statement of exceptions.²

ORDER

The administrative appeal of the Regents of the University of California from denial of filing its response to the statement of exceptions in Case No. LA-CE-1120-H is hereby GRANTED. The response to statement of exceptions dated September 21, 2012, is deemed timely filed.

Chair Martinez and Member Huguenin joined in this Decision.

² In reaching this determination, we note that the University has not requested leave to file any additional pleadings. Accordingly, we determine only that the response dated and served on September 21, 2012, and received by the Board on September 24, 2012, shall be deemed timely filed. No further filings will be accepted.