

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CLIFTON JOHNSON,

Charging Party,

v.

CITY & COUNTY OF SAN FRANCISCO,

Respondent.

Case No. SF-CE-1006-M

Administrative Appeal

PERB Order No. Ad-407-M

January 28, 2014

Appearance: Clifton Johnson, on his own behalf.

Before Martinez, Chair; Winslow and Banks, Members.

DECISION

MARTINEZ, Chair: This case is before the Public Employment Relations Board (PERB or Board) on administrative appeal by Clifton Johnson (Johnson) of the PERB Appeals Assistant's denial of Johnson's request for an extension of time to appeal the dismissal of his unfair practice charge. The charge, as amended, alleges that the City & County of San Francisco (CCSF) violated the Meyers-Milias-Brown Act (MMBA)¹ with respect to Johnson's dismissal from employment.

Johnson's request for an extension of time was filed one day late. It was therefore denied as untimely filed. Johnson filed a timely administrative appeal. The CCSF did not file a response.

The issue before us is whether there is good cause to excuse the late filing. The Board has reviewed the entire record on administrative appeal. For the reasons set forth below, the Board finds that good cause exists to excuse the late filing.

¹ The MMBA is codified at Government Code section 3500 et seq.

BACKGROUND

On November 6, 2012, Johnson filed an unfair practice charge with PERB. On March 25, 2013, the Office of the General Counsel issued a warning letter informing Johnson of the deficiencies in the charge. In response, on April 17, 2013, Johnson filed an amended charge. The Office of the General Counsel ultimately determined that the amended charge did not cure the deficiencies and, on July 8, 2013, dismissed the charge for failure to state a prima facie case.

By letter from Virginia Taylor (Taylor), an attorney at Bayview/Hunters Point Community Legal, dated July 31, 2013, Taylor requested on Johnson's behalf an extension of time to file an appeal of the dismissal. The letter states that the PERB Appeals Assistant incorrectly informed Johnson that the appeal would be due on August 5, 2013, when the appeal was actually due on August 2, 2013, and that as a result of the misinformation, Johnson's request for an extension of time was one day late.

By letter from the PERB Appeals Assistant dated August 2, 2013, Johnson's request for an extension of time was denied as untimely filed. The letter explains that the request for an extension of time was due in the PERB headquarters office no later than July 30, 2013. It was filed, however, on July 31, 2013, one day late. Johnson was informed that he could file an administrative appeal and that it had to be filed within ten days of service of her administrative determination denying his request. A notice of appearance was enclosed with the instruction that it be completed and filed in the event Johnson was to be represented by counsel in future filings with the Board.²

By letter dated August 16, 2013, Johnson timely filed an administrative appeal. Attached to his letter was a declaration signed by Johnson under penalty of perjury. The

² A completed notice of appearance was not filed. Johnson appears in these administrative appeal proceedings in propria persona.

declaration states that Johnson consulted with the PERB Appeals Assistant in mid-July regarding the deadline for filing an appeal and was informed that the deadline was August 5, 2013. The declaration next states that on or around July 31, 2013, he sought the advice of an attorney regarding his appeal and the attorney informed him that his appeal was due on August 2, 2013. The declaration finally states that attorney immediately sent a letter to PERB on Johnson's behalf requesting an extension of time to file an appeal of the dismissal, explaining that Johnson had been misinformed by the PERB Appeals Assistant as to the correct deadline.

DISCUSSION

PERB Regulation 32132, subdivision (a), states that any request for an extension of time within which to file a 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:"³ Under PERB Regulation 32136, a late filing may only be accepted for good cause.

PERB Regulation 32136 states:

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.

Good cause exists where it is evident that the party made a conscientious effort to timely file and the delay caused no prejudice to any party in the case. (*United Teachers of Los Angeles (Kestin)* (2003) PERB Order No. Ad-325.) Generally, the Board has 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, and where the filing party's explanation was either credible on its face or was corroborated by other facts. (*Ibid.*)

³ PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

The Board has found good cause to exist in a variety of situations where the justification was found to be “reasonable and credible.” (*Barstow Unified School District* (1996) PERB Order No. Ad-277.) For example, the Board has found good cause to exist for “honest mistakes” such as mailing or clerical errors. (*Ibid.*) If the Board finds the justification to be “reasonable and credible,” the Board next evaluates whether there is prejudice to the opposing party in excusing the late filing. (*Ibid.*)

In *Los Angeles Unified School District* (2003) PERB Order No. Ad-318 (*LAUSD*), the Board excused an appeal that was filed one day late. The charging party had contacted the PERB Appeals Office to clarify the filing deadline and asserted she was not told to send the appeal by express or certified mail. The Board found the untimely appeal was the result of honest error based on “misunderstood communications” and there was no evidence of prejudice due to the one day delay.

The circumstances involved here are similar. We have no reason to believe that the Appeals Assistant provided Johnson with incorrect information regarding the deadline for filing an appeal given her long experience in processing appeals and the routine nature of the information requested. Given, however, Johnson’s sworn declaration, the short duration of the delay and the immediate action he took to correct the problem, we give Johnson the benefit of the doubt and accept his proffered justification as “misunderstood communications,” as the Board did in *LAUSD*. As there is no evidence of prejudice due to the brief one day delay, the Board finds good cause to excuse Johnson’s late-filed request for an extension of time.

ORDER

Clifton Johnson’s request for an extension of time to file an appeal of the dismissal of his unfair practice charge in Case No. SF-CE-1066-M is deemed timely filed. An appeal of the

dismissal shall be accepted as timely filed if received in the PERB headquarters office on or before February 18, 2014.

Members Winslow and Banks joined in this Decision.