

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

CRAIG MEYER,
Appellant,

and

STATE OF IOWA (DEPARTMENT
OF CORRECTIONS),
Appellee.

CASE NO. 102465

RULING AND ORDER

On September 10, 2020, Appellant Craig Meyer filed this state employee disciplinary action appeal with the Public Employment Relations Board (PERB or Board) pursuant to Iowa Code section 8A.415(2) and PERB rule 621—11.2. The State of Iowa subsequently moved to dismiss the appeal alleging Meyer's appeal to PERB was filed untimely.

Oral arguments on the motion were heard by telephone conference call on December 21, 2020. Attorney Andrew Hayes represented the State, Craig Meyer represented himself pro se.

Background Facts and Proceedings

The pertinent filings in this case are as follows: Meyer's appeal form; a copy of the suspension letter issued June 24, 2020; a copy of the Department of Administrative Services (DAS) third step response to Meyer's discipline appeal issued on August 10, 2020; and the State's pre-answer motion to dismiss. These submissions, considered with the parties' arguments, reveal the following facts.

Meyer is employed by the State of Iowa, Department of Corrections (DOC) as a correctional officer at the Mount Pleasant Correctional Facility. On June 24, 2020, Meyer received a one-day paper suspension for allegedly violating work rules concerning internet activity and computer usage.

Meyer timely appealed his one-day paper suspension to DAS at step three of the prescribed discipline resolution procedure. On August 10, 2020, the DAS director's designee issued a response denying Meyer's appeal and upholding the one-day paper suspension. DAS's response informed Meyer of his appeal rights if he was not satisfied with the third step response. Referencing DAS subrules 61.2(5) and 61.2(6), DAS's response included language that an appeal of the DAS response may be filed with PERB within thirty calendar days.

On September 10, 2020, Meyer electronically filed his appeal with PERB, which was accepted and the appeal was time-stamped the filing date of September 10, 2020. Subsequently, the State filed its motion to dismiss Meyer's appeal alleging it was filed untimely.

At oral arguments on the State's motion, Meyer said that he had tried twice to file his appeal with PERB two days before the thirty-day filing deadline. However, he said on both occasions he received emails notifying him that his filings were rejected. When asked whether he still had copies of the emails, Meyer said he no longer had the emails because the State automatically deletes emails after thirty days.

Discussion

For disciplinary action cases such as this, the appeal process to PERB is set out by statute and administrative rules. Iowa Code section 8A.415(2) governs state employee disciplinary action appeals, and provides, in relevant part:

8A.415. Grievance and discipline resolution procedures.

2. Discipline Resolution

a. A merit system employee...who is discharged, suspended, demoted, or otherwise receives a reduction in pay, except during the employee's probationary period, may bypass steps one and two of the grievance procedure and appeal the disciplinary action to the [DAS] director within seven calendar days following the effective date of the action. The director shall respond within thirty calendar days following receipt of the appeal.

b. If not satisfied, the employee may, *within thirty* calendar days following the director's response, file an appeal with the public employment relations board...

Iowa Code § 8A.415(2) (emphasis added).

Chapter 11 of PERB's administrative rules addresses state employee appeals of grievance decisions and disciplinary actions. See Iowa Admin. Code Ch. 621—11. PERB's administrative rule 621—11.1 incorporates the 30-day statutory deadline for both grievance and disciplinary action appeals:

621—11.1(8A,20) Notice of appeal rights. When the director of the Iowa department of administrative services (hereinafter referred to as the director) issues a response to an employee pursuant to Iowa Code section 8A.415 and the response does not grant the relief sought by the employee, the response shall include a notice to the affected employee that the employee may appeal the response by filing an appeal with the public employment relations board within 30 days of the date of the director's response.

Iowa Code section 8A.415(2) state employee disciplinary action appeals, such as Meyer's, must be filed within thirty days following the DAS director's response for PERB to have jurisdiction. PERB has consistently recognized that the 30-day appeal period prescribed by 8A.415(2) is mandatory and jurisdictional. See *Smith & State of Iowa (Dep't of Human Serv.)*, 2018 ALJ 102204 at 4; See also *Custis & State of Iowa (Dep't of Corr.)*, 92 MA 02, 92 MA 31 at 6 (PERB 1993).

Iowa Code section 4.1(34) governs the computation of the 30-day appeal period, which states, in relevant part, "[i]n computing time, the first day shall be excluded and the last included, unless the last falls on Sunday, in which case the time prescribed shall be extended so as to include the whole of the following Monday." Therefore, pursuant to Iowa Code section 4.1(34), when computing Meyer's 30-day appeal period, August 10 is excluded from the computation and the thirtieth calendar day following August 11 is September 9, 2020. As such, Meyer's deadline for appealing to PERB was Wednesday, September 9, 2020.

Meyer's appeal was time-stamped the filing date of September 10, 2020, one day after the filing deadline. Meyer acknowledges the time-stamped appeal was filed after the deadline. However, Meyer contends the proper appeal date for purposes of section 8A.415(2) is two days prior to September 10, when he allegedly electronically filed, and PERB allegedly rejected, two appeals.

As noted above, Meyer was unable to provide copies of the alleged emails notifying him of his rejected filings. Moreover, PERB's electronic document filing system does not reflect there were any rejected filings in the two-week period

prior to September 10, 2020. Thus, the record is absent any evidence corroborating Meyer's claim that he tried twice, unsuccessfully, to file his appeal with PERB prior to September 10, 2020.

Even assuming *arguendo* there was evidence supporting Meyer's claim, his argument that the date of the rejected filing being the appropriate filing date is unpersuasive. Several PERB rules are relevant to the time Meyer filed his appeal. Subrule 16.4(3) states, "The electronic transmission of a document to the [EDMS] consistent with the procedures specified in these rules, together with the production and transmission of a notice of electronic filing, constitute filing of the document." Subrule 16.4(4) provides:

Electronic documents are officially filed when affixed with an electronic file stamp. Filings so endorsed shall have the same force and effect as documents time-stamped in a nonelectronic manner.

Iowa Admin. Code r. 621—16.4(4). Rule 16.6 addresses the date and time:

16.6(1) *Date of filing.* An electronic filing may be made any day of the week, including holidays and weekends, and any time of the day the electronic document management system is available.

16.6(2) *Time of filing.* A document is timely filed if it is filed before midnight on the date the filing is due.

16.6(3) *Returned filing.* A rejected filing is not filed. In such instances, the date and time of filing will be when the filer submits a corrected document and it is approved.

Id. r. 621—16.6.

Thus, Meyer's argument that the date of his rejected filing being the appropriate filing date is contrary to PERB's administrative rules. Taken together, these rules establish: (1) an electronic document is not "officially filed" until it is approved and affixed with an electronic file stamp; (2) a rejected filing

is not “filed;” and (3), when a filing is rejected, “the date and time of filing will be when the filer submits a corrected document and it is approved.” *Id.* rs. 621—16.4, 16.6.

As such, under PERB’s rules, Meyer’s alleged rejected appeals were not “filed” and “the date and time of filing” occurred when Meyer submitted his corrected appeal and it was approved. In this case, the record shows Meyer’s appeal was submitted, approved, and affixed with an electronic file stamp on September 10, 2020. Consequently, pursuant to PERB’s rules, I conclude Meyer’s appeal was filed on September 10, 2020—31 days following the DAS director’s response issued on August 10, 2020.¹

Therefore, Meyer’s appeal was not filed within the 30-day period prescribed by Iowa Code section 8A.415(2)(b) and administrative rules, DAS subrules 11—61.2(5) and (6) and PERB rule 621—11.1. Because Meyer did not file his appeal within thirty calendar days following the DAS director’s third step response, PERB lacks jurisdiction to adjudicate the merits of this appeal.

Accordingly, I propose entry of the following:

¹ The Iowa Supreme Court has held that a resubmitted electronic petition may relate back to the original submission date when (1) the document was returned for only “minor errors,” (2) after the deadline, and (3) the filer promptly corrected the errors and resubmitted the document. See *Jacobs v. Iowa Dep’t of Transp.*, 887 N.W.2d 590 (Iowa 2016). Even if applicable to PERB’s electronic filings, as discussed *supra*, the record is absent any evidence supporting Meyer’s claim of prior rejected filings. Thus, the record does not show PERB rejected Meyer’s appeal for only “minor errors.” Moreover, during the oral argument, Meyer alleged he submitted the appeals and received the emails notifying him they were rejected two days before the deadline. Thus, it does not appear PERB returned Meyer’s appeal after the September 9 deadline or that Meyer promptly corrected and resubmitted the appeal as required by the Court’s holding in *Jacobs*. For these reasons, I conclude Meyer’s appeal does not relate back to the date of his alleged prior rejected filings.

ORDER

The State's motion to dismiss is GRANTED and this state employee disciplinary action appeal filed by Craig Meyer is hereby DISMISSED.

DATED at Des Moines, Iowa this 29th day of January, 2021.

A handwritten signature in cursive script, reading "Patrick B. Thomas", is written over a horizontal line.

Patrick B. Thomas
Administrative Law Judge

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