

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:

Kenneth M. Lemons,

Petitioner,

and

The District of Columbia
Department of Human Services,

Agency.

PERB Case No. 84-A-03
Opinion No. 137

DECISION AND ORDER

On October 10, 1985, the Honorable Robert A. Shuker of the D.C. Superior Court, remanded to the D.C. Public Employee Relations Board (Board) for further consideration, its September 24, 1984 order denying Mr. Kenneth Lemons' Request for Reconsideration of his Arbitration Review Request. Judge Shuker ruled that Mr. Lemons' Motion for Reconsideration was a request for an extension of time to file his original appeal before the Board. Judge Shuker also ruled that, under Board Rule 100.13, the Board has the discretion to grant or deny Mr. Lemons' request for an extension of time to file his original appeal. The case was remanded for the limited purpose of the Board's determination of whether or how it will exercise its discretion under Board Rule 100.13.

The case originally came before the Board on March 6, 1984, when Mr. Lemons requested review of a February 6, 1984 Arbitration Decision which held that Mr. Lemons' grievance contesting his discharge from his job during his probationary period was not arbitrable. Mr. Lemons had been hired as a Social Insurance Claims Examiner by the D.C. Department of Human Services (DHS) under the standard first year probation period for all city employees. During his probation period, Mr. Lemons received three (3) evaluations rating his performance as marginal. After being given sixty (60) days to improve, Mr. Lemons was terminated for unsatisfactory performance a few days before the end of his probation period. At the hearing before the Arbitrator, Mr. Lemons was represented by the American Federation of State, County and Municipal Employees, District Council 20 (AFSCME). After the Arbitrator's ruling, AFSCME declined to participate in Mr. Lemons' Review Request because it did not think his case was legally sound.

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On July 17, 1984, the Board issued PERB Opinion No. 83 in which it denied Mr. Lemons' Arbitration Review Request on the grounds that it was untimely filed. On July 25, 1984, Mr. Lemons wrote to the Board contending that Opinion No. 83 was based on errors of fact and requested reconsideration and a decision on the merits. On September 24, 1984, the Board issued an Order denying the Request for Reconsideration on the ground that PERB rules do not provide for entertaining a Motion to Reconsider a Final Board Order. On October 30, 1984, Mr. Lemons filed a civil lawsuit against the PERB in D.C. Superior Court.

The issue before the Board is whether Mr. Lemons' explanation for the late filing of his Review Request, as set forth in his July 25, 1984 letter to the Board, is sufficient to extend the filing period under Board Rule 100.13.

After carefully reviewing this matter, the Board denies Mr. Lemons' request for an extension of time on the grounds that the request for an extension was filed after the original period for filing the Review Request had elapsed. Because D.C. Code, Section 1.618.14 imposes on the Board a requirement to issue a decision no later than 120 days after a case is filed, the Board has developed a firm policy of interpreting Board Rule 100.13 to require that all requests for extensions of time be filed with the Board prior to the due date of all pleadings. This policy also requires that the party requesting an extension of time agree, in writing, to waive its rights under D.C. Code, Section 1.618.14 as a condition of a request for an extension of time being granted. In this instance, Mr. Lemons' original Review Request was due on February 26, 1984 under Board Rule 107.2, yet his request for an extension of time was not made until July 25, 1984. Accordingly, the request for extension of time is denied.

O R D E R

IT IS ORDERED THAT:

The request for extension of time to file the Arbitration Review Request pursuant to Board Rule 100.13 is hereby denied.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

April 7, 1986