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This Court has jurisdiction to hear this matter pursuant to 3 V.I.C. § 530a, which provides:

[a]ny party aggrieved by any final order of the PERB issued under section 530 or 531 of this chapter, may appeal to the Superior Court of the Virgin Islands. An application for review must be filed within 30 days after the date of the Final Order and name the PERB as a party respondent.

A court's review of "administrative bodies extends not only to the legality of the proceeding and the application of the law by the agency, but also to the factual findings and conclusions reached."¹ "All questions of fact determined by the PERB shall be conclusive"² and the board's legal findings are afforded plenary review.³

Petitioner timely filed his notice of appeal within thirty days from the date PERB issued its final decision and order.

ANALYSIS

PERB dismissed Petitioner's appeal based on 3 V.I.C. § 530, which establishes that a government "employee shall have ten days following the date of receipt of the [written] statement of charges [against him] to appeal the proposed action to the Public Employees Relations Board." When computing the ten day period, PERB relied on 3 V.I.R.R. 530-1(h)(1), which provides: "[w]hen a period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and holidays shall be excluded from the computation." Because the appeal period in 3 V.I.C. § 530 is more than seven days, PERB did not exclude weekends and holidays from its computation, and found Petitioner filed his notice of appeal one day late.

¹ *TURNBULL v. HOLDER*, 1974 U.S. Dist. LEXIS 5659, *6, 11 V.I. 93, 98 (D.V.I. Dec. 18, 1974).

² 3 V.I.C. § 530a(b).

³ Plenary review is a full or complete review. See Black's Law Dictionary, Eighth Edition.

Petitioner challenges PERB's computation of the appeal period, asserting that, under Superior Court Rule 9, holidays and weekends should be excluded when calculating a ten day appeal period.

Prior to its repeal by virtue of the enactment of the Virgin Islands Rules of Civil Procedure on March 31, 2017, V.I. Super. Ct. Rule 9 was the procedural rule governing the computation of time and excluded weekends and holidays when computing time periods less than eleven days.⁴ V.I. R. Civ. P. 6 now excludes weekends and holidays when computing time periods less than fifteen days.⁵ In the absence of a "specific finding that applying [the Virgin Islands Rules of Civil Procedure] in a particular previously-pending litigation would be 'infeasible' or would 'work an injustice,'" the Virgin Islands Rules of Civil Procedure "will apply to all actions that are pending on the date the Rules become effective."⁶ In this pending matter, there has been no showing that a specific injustice would result if V.I. R. Civ. P. 6 is applied instead of Superior Court Rule 9.

Regardless, the Virgin Islands Rules of Civil Procedure are inapplicable to this case. V.I.R. Civ. P. 1 establishes that "these rules govern the practice and procedure in all civil actions and proceedings in the Superior Court of the Virgin Islands." In addition, rules of court procedure are

⁴ V.I. Super. Ct. Rule 9 provided that: "[i]n computing any period of time prescribed or allowed by these rules, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until end of the next day which is neither a Saturday, Sunday nor a holiday. When a period of time prescribed or allowed by these rules is less than eleven days, intermediate Saturdays, Sundays and holidays shall be excluded from the computation."

⁵ V.I. R. Civ. P. 6 states that: "[t]he following rules apply in computing any time period specified in these rules, in any court order, or in any statute that does not specify a method of computing time. ... (B) when the period is 15 days or more, count every day, including intermediate Saturdays, Sundays, and legal holidays; when the period is 14 days or less, do not count intermediate Saturdays, Sundays, and legal holidays."

⁶ *In re Adoption of the V.I. Rules of Civ. Procedure*, 2017 V.I. Supreme LEXIS 22, *4 (VI. Apr. 3, 2017) (Note to V.I. R. Civ. P. 1-1).

generally inapplicable in administrative proceedings.⁷ As a result, PERB correctly relied on 3 V.I.R.R. 530-1(h)(1) when it computed the ten day appeal period described in 3 V.I.C. § 530.

PERB also correctly found that Petitioner's untimely notice of appeal deprived PERB of jurisdiction to hear the merits of the appeal. The Supreme Court of the Virgin Islands has found that "when the time to appeal or seek review is established by statute, timeliness is a jurisdictional issue."⁸ Petitioner's failure to follow the statutory procedure for invoking PERB's jurisdiction deprived PERB of its ability to hear the appeal. In addition, because 3 V.I.C. § 530 is a jurisdictional rule, PERB was "without authority to apply equitable principles to disregard the time limits established by statute for prosecuting appeals."⁹

For the reasons stated, PERB did not commit reversible error by dismissing Petitioner's notice of appeal, and PERB's final order will be affirmed.

⁷ See, e.g., *Old Republic Ins. Co. v. Federal Crop Ins. Corp.*, 947 F.2d 269, 279-280, 1991 U.S. App. LEXIS 26331, *28-29 (7th Cir. Ill. Nov. 4, 1991) ("Federal Rules of Civil Procedure are generally inapplicable to the informal setting of an administrative hearing"); *Bell v. State Med. Bd. of Ohio*, 1986 Ohio App. LEXIS 7131, *7, 1986 WL 6698 (Ohio Ct. App., Lucas County June 13, 1986) ("Rules of Civil Procedure do not apply in an agency hearing"); *Molden v. Mississippi State Dep't of Health*, 730 So. 2d 29, 40, 1998 Miss. LEXIS 443, *35 (Miss. Sept. 17, 1998) ("Rules of Civil Procedure, including the rules of discovery, were not applicable to the administrative hearing before the hearing officer").

⁸ *Public Emples. Rel. Bd. v. United Indus. Workers-Seafarers Int'l Union*, 56 V.I. 429, 434-435, 2012 V.I. Supreme LEXIS 19, *7-9 (VI. Mar. 5, 2012).

⁹ *Pichardo v. Commissioner of Labor*, 49 V.I. 447, 450, 2008 V.I. Supreme LEXIS 5, *6, 2008 WL 2329303 (VI. May 27, 2008).

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An Order consistent with this Opinion shall follow.

Dated: May 26, 2017

ATTEST: Estrella H. George

Clerk of Court

by:

Donna D. Donovan

Court Clerk Supervisor


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

5 30, 2017