

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



WENJIU LIU,

Charging Party,

v.

TRUSTEES OF THE CALIFORNIA STATE
UNIVERSITY (EAST BAY),

Respondent.

Case No. SF-CE-995-H

Request for Reconsideration
PERB Decision No. 2391-H

PERB Decision No. 2391a-H

April 14, 2015

Appearance: Wenjiu Liu, on his own behalf.

Before Martinez, Chair; Huguenin and Winslow, Members.

DECISION

WINSLOW, Member: This case is before the Public Employment Relations Board (PERB or Board) on a request for reconsideration by Wenjiu Liu (Liu) of the Board's decision in *Trustees of the California State University (East Bay)* (2014) PERB Decision No. 2391-H (*Trustees*). In that decision, the Board upheld the administrative law judge's (ALJ) proposed decision dismissing Liu's allegation that the Trustees of the California State University (East Bay) (CSUEB) retaliated against him by denying him tenure and promotion and by restricting him from campus grounds. The Board also affirmed the ALJ's interlocutory order deferring Liu's allegations concerning his suspension and dismissal to arbitration and the ALJ's determination that the arbitrator's award was not repugnant to the Higher Education Employer-Employee Relations Act (HEERA).¹

¹ HEERA is codified at Government Code section 3560 et seq.

Liu now requests reconsideration of our decision, claiming that: (1) the decision of the Board itself contains prejudicial errors of fact; (2) Liu has newly discovered evidence which was not previously available and could not have been discovered with the exercise of reasonable diligence.

The Board has reviewed Liu's request for reconsideration in light of the relevant law. Based on this review, and for the reasons discussed below, the Board denies Liu's request for reconsideration.

DISCUSSION

Requests for reconsideration of a final Board decision are governed by PERB Regulation 32410(a)² which states, in pertinent part:

- (a) Any party to a decision of the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision within 20 days following the date of service of the decision. . . . [T]he request for reconsideration . . . shall state with specificity the grounds claimed and, where applicable, shall specify the page of the record relied on. . . . The grounds for requesting reconsideration are limited to claims that: (1) the decision of the Board itself contains prejudicial errors of fact, or (2) the party has newly discovered evidence which was not previously available and could not have been discovered with the exercise of reasonable diligence. A request for reconsideration based upon the discovery of new evidence must be supported by a declaration under the penalty of perjury which establishes that the evidence: (1) was not previously available; (2) could not have been discovered prior to the hearing with the exercise of reasonable diligence; (3) was submitted within a reasonable time of its discovery; (4) is relevant to the issues sought to be reconsidered; and (5) impacts or alters the decision of the previously decided case.

² PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

Because reconsideration may only be granted under "extraordinary circumstances," the Board applies PERB Regulation 32410 strictly. (*Regents of the University of California* (2000) PERB Decision No. 1354a-H.) A request for reconsideration "is not simply an opportunity to ask the Board to 'try again.'" (*Chula Vista Elementary School District* (2004) PERB Decision No. 1557a.) The limited grounds on which a party may request reconsideration preclude a party from using the reconsideration process to re-argue or re-litigate issues that have already been decided. (*Redwoods Community College District* (1994) PERB Decision No. 1047a.) Neither may a party use the reconsideration process to register disagreement with the Board's legal analysis. (*California State Employees Association (Hard, et al.)* (2002) PERB Decision No. 1479a-S.)

On its face, PERB Regulation 32410 is intended to provide a party the opportunity to call to the Board's attention prejudicial errors of fact or newly discovered evidence that was previously unavailable and could not have been discovered with reasonable diligence.

We note that Liu timely filed his initial request with PERB on September 22, 2014. Liu then filed a second request on September 26, 2014. We held in *County of Santa Clara* (2013) PERB Order No. Ad-398-M that "a party may file only one request for reconsideration of a Board decision, except in those cases where a prior request for reconsideration has resulted in the issuance of a completely revised decision." (*Id.* at p. 5.) Since Liu's initial request for reconsideration did not result in the issuance of a completely revised decision, we disregard Liu's procedurally defective request filed on September 26, 2014, and solely consider his request filed on September 22, 2014.

In his September 22, 2014, request Liu alleges that evidence generated in a whistleblower retaliation superior court trial held in March and April 2014 shows that CSUEB

President Mohammad Qayoumi (Qayoumi) had full knowledge of the grievances that Liu filed during his employment at CSUEB, that Qayoumi was dishonest, that Qayoumi's excuses to deny Liu tenure were solely pre-textual, that Provost James Houpis (Houpis) had full knowledge of Liu's protected activities, that Houpis stated that he hated Liu for filing 46 grievances, and that Liu was qualified to receive tenure and promotion.

The evidence submitted by Liu does not meet the requirements under PERB Regulation 32410(a), either because it is not relevant to the issues sought to be reconsidered under PERB Regulation 32410(a)(4), and/or it does not impact or alter the decision of the previously decided case under PERB Regulation 32410(a)(5). Although Liu attached multiple transcripts of depositions of Qayoumi and Houpis taken during the course of litigation before the superior court for the County of Alameda, Liu fails (with one exception) to cite to specific pages of any of the transcripts in support of his request. One page citation he does give (for the proposition that Houpis hated Liu for filing grievances) does not reflect any testimony supporting that proposition. A citation he gives to an e-mail (for the proposition that Houpis had full knowledge of Liu's protected activities) is irrelevant, since there is no evidence that Houpis had any input or decision-making authority in denying tenure and promotion to Liu, and since Houpis was not on the threat assessment team which recommended Liu's exclusion from the campus under Penal Code section 626 and was not involved in the decision to issue the exclusion order. (*Trustees, supra*, PERB Decision No. 2391-H, p. 32, fn. 26.)

Liu also attached various documents to show that he played a leading role in protected faculty group activities to oust Dean Teresa Swartz. Some of the documents consist of e-mails dated prior to the PERB hearing. However, Liu does not explain why he did not present these documents at the hearing **that commenced** on May 18, 2012. Liu attached various documents,

including grievances, grievance responses, and e-mails to show that CSUEB's administration had full knowledge of his protected activities. However, all of the documents are dated prior to the PERB hearing date of May 18, 2012. Despite his assertion that he obtained them in court proceedings subsequent to the PERB hearing, Liu fails to explain why he could not have discovered these documents prior to the hearing with the exercise of reasonable diligence. For these reasons, Liu's request for reconsideration does not comply with PERB Regulation 32410(a)(1) (evidence "was not previously available"), subdivision (a)(2) (evidence "could not have been discovered prior to the hearing with the exercise of reasonable diligence"), and subdivision (a)(3) (evidence "was submitted within a reasonable time of its discovery"), and we reject the request on that basis.

Liu also alleges that the Board's decision contains a prejudicial error of omitting reference to retaliation against Liu by CSUEB Interim Associate Provost Linda Dobb and by incorrectly applying PERB precedent. Liu's allegation that PERB incorrectly applied PERB precedent is a legal argument that does not meet the requirements under PERB Regulation 32410(a). We therefore deny Liu's request.

ORDER

Wenjiu Liu's request for reconsideration in *Trustees of the California State University (East Bay) (Liu)* (2014) PERB Decision No. 2391-H is hereby DENIED.

Chair Martinez and Member Huguenin joined in this Decision.