

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



PATRICIA L. WOODS,

Charging Party,

v.

STATE OF CALIFORNIA (DEPARTMENT OF
CORRECTIONS & REHABILITATION),

Respondent.

Case No. SA-CE-1640-S

Request for Reconsideration
PERB Decision No. 2136-S

PERB Decision No. 2136a-S

January 27, 2011

Appearances: Patricia L. Woods, on her own behalf; State of California (Department of Personnel Administration) by Kevin A. Geckeler, Labor Relations Counsel, for State of California (Department of Corrections & Rehabilitation).

Before Dowdin Calvillo, Chair; McKeag and Wesley, Members.

DECISION

DOWDIN CALVILLO, Chair: This case is before the Public Employment Relations Board (PERB or Board) on a request for reconsideration by Patricia L. Woods (Woods) of the Board's decision in *State of California (Department of Corrections & Rehabilitation)* (2010) PERB Decision No. 2136-S. In that decision, the Board affirmed an administrative law judge's (ALJ) dismissal of a complaint which alleged that the State of California (Department of Corrections & Rehabilitation) (State or CDCR) rejected Woods on probation because she sought and received assistance from her union, SEIU Local 1000 (SEIU), regarding numerous workplace issues.

The Board has reviewed Woods' request for reconsideration and supporting documentation, and CDCR's response thereto, in light of the relevant law. Based on this review, the Board denies Woods' request for reconsideration for the reasons discussed below.

DISCUSSION

Requests for reconsideration of a final Board decision are governed by PERB Regulation 32410(a),¹ which states in full:

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. An original and five copies of the request for reconsideration shall be filed with the Board itself in the headquarters office and shall state with specificity the grounds claimed and, where applicable, shall specify the page of the record relied on. Service and proof of service of the request pursuant to Section 32140 are required. 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.

Because reconsideration may only be granted under “extraordinary circumstances,” the Board applies the regulation’s criteria strictly. (*Regents of the University of California* (2000) PERB Decision No. 1354a-H.)

Most of Woods’ request for reconsideration restates arguments she made before the ALJ and before the Board on appeal. As the Board stated in *Chula Vista Elementary School District* (2004) PERB Decision No. 1557a, “a request for reconsideration is not simply an opportunity to ask the Board to ‘try again.’” Accordingly, PERB Regulation 32410(a) does not allow a party “to reargue or relitigate issues which have already been decided.” (*Redwoods*

¹ PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

Community College District (1994) PERB Decision No. 1047a.) We thus find no basis for granting reconsideration in these sections of Woods' request.

Woods also claims that the Board's decision contains a prejudicial error of fact because it applies PERB's "own case law standard of inquiry" to determine whether CDCR departed from its established procedures and standards in rejecting her on probation. She asserts that this determination is instead governed by the memorandum of understanding between SEIU and the State. Woods' argument does not raise a factual error but merely states her disagreement with the legal standard applied by PERB. Moreover, even if PERB's application of its own case law constituted a prejudicial error of law, it would not be a ground for reconsideration. (*California State Employees Association (Hard, et al.)* (2002) PERB Decision No. 1479a-S.)

Along with her request for reconsideration, Woods submitted a declaration claiming that three attached exhibits constitute "newly discovered evidence" that justify reversal of the Board's decision. In order to constitute "newly discovered evidence" under PERB Regulation 32410(a), Woods must show that the documents "could not have been discovered prior to the hearing with the exercise of reasonable diligence."

Two of the documents clearly fail to meet this standard. Exhibit B to Woods' declaration is a copy of the California Code of Judicial Ethics, submitted in support of her argument that the ALJ in this case violated Canons 2(A) and (B) of the Code.² Although Woods' declaration asserts that these are "newly passed state laws," the California Supreme Court adopted the Code of Judicial Ethics effective January 15, 1996. (*Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1097, fn. 5.) Canon 2(A) has remained unchanged since then, while Canon 2(B) was last amended effective January 1, 2008. Thus, both canons existed in their current form when Woods filed her exceptions raising

² Pursuant to Government Code section 11475.20, the Code of Judicial Ethics applies to administrative law judges.

allegations of misconduct by the ALJ. That her research failed to discover the Code until after the Board issued its decision does not make the Code “newly discovered evidence” under PERB Regulation 32410(a).

The same is true of Exhibit C to Woods’ declaration, a copy of the California Department of Personnel Administration’s Orientation for the State Employee handbook. The cover page of the handbook is dated December 2006, well before the hearing in this matter was held in May and October 2008. Woods does not explain why she could not have discovered this handbook through the exercise of reasonable diligence prior to the hearing. Consequently, this document does not constitute “newly discovered evidence.”

Woods’ final exhibit is a letter from the Board’s Appeals Assistant to Woods dated February 2, 2010. The letter states that the Board is returning Exhibit A to Woods’ exceptions unopened, along with an envelope containing an exhibit submitted by Woods under seal to the ALJ and apparently opened by the ALJ before the matter was submitted for decision. Obviously the Appeals Assistant’s letter did not exist before the hearing in this matter. However, despite Woods’ speculative claims to the contrary, there is no evidence in the record that the ALJ relied on the returned exhibit in reaching her decision. Thus, because the letter does not “impact[] or alter[] the decision of the previously decided case,” it cannot serve as a basis for granting reconsideration.

For the above reasons, Woods’ request for reconsideration must be denied because it fails to establish either of the grounds for reconsideration set forth in PERB Regulation 32410(a).

ORDER

Patricia L. Woods' request for reconsideration of the Public Employment Relations Board's decision in *State of California (Department of Corrections & Rehabilitation)* (2010) PERB Decision No. 2136-S is hereby DENIED.

Members McKeag and Wesley joined in this Decision.

