

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



MELVIN JONES, JR.,

Charging Party,

v.

COUNTY OF SANTA CLARA,

Respondent.

Case No. SF-CE-646-M

Request for Reconsideration
PERB Decision No. 2267-M

PERB Decision No. 2267a-M

August 2, 2012

Appearance: Melvin Jones, Jr., on his own behalf.

Before Martinez, Chair; Dowdin Calvillo and Huguenin, Members.

DECISION

DOWDIN CALVILLO, Member: This case is before the Public Employment Relations Board (PERB or Board) on a request for reconsideration by Melvin Jones, Jr. (Jones) of the Board's decision in *County of Santa Clara* (2012) PERB Decision No. 2267-M. In that decision, the Board adopted the decision of an administrative law judge (ALJ) dismissing Jones's unfair practice charge and complaint for failure to state a prima facie case that the County of Santa Clara (County) violated the Meyers-Milias-Brown Act (MMBA)¹ by:

- (1) terminating his employment in retaliation for having engaged in protected activity;
- (2) denying him the right to have an employee organization representative present at a meeting; and
- (3) interfering with protected rights.

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

¹ The MMBA is codified at Government Code section 3500 et seq.

DISCUSSION

Requests for reconsideration of a final Board decision are governed by PERB

Regulation 32410(a),² 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 in reviewing requests for reconsideration. (*Regents of the University of California* (2000) PERB Decision No. 1354a-H.) Reiterating the same facts and arguments made on appeal does not satisfy the requirements of PERB Regulation 32410(a). (*San Leandro Unified School District* (2007) PERB Decision No. 1924a; *Oakland Unified School District* (2004) PERB Decision No. 1645a.) Purported errors of law are not grounds for reconsideration. (*California State Employees Association (Hard, et al.)* (2002) PERB Decision No. 1479a-S.)

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

Jones submitted five separate filings within the 20-day period for filing a request for reconsideration under PERB Regulation 32410(a). Considered in its totality, the filings assert that the Board's decision contains prejudicial errors of fact concerning the following issues: (1) the ALJ's credibility determinations; (2) additional evidence submitted by Jones on appeal before the Board concerning a payroll warrant dated April 24, 2009, and provisions of a memorandum of understanding; (3) the claim that the ALJ failed to accommodate and/or consider Jones's medical condition; (4) the impact of a letter dated April 13, 2009; (5) alleged ex parte communications between the County's counsel and the ALJ; and (6) the ALJ's refusal to allow Jones to examine the County's counsel as a witness.

Having reviewed the record in light of the request for reconsideration, the Board concludes that all of the issues identified in the request for reconsideration were adequately addressed by the ALJ and by the Board in its original decision, and that the request for reconsideration fails to establish any prejudicial error of fact. We further find that the request fails to establish grounds for reconsideration based upon the discovery of new evidence. Accordingly, the Board denies the request for reconsideration because it fails to establish either of the grounds for reconsideration set forth in PERB Regulation 32410(a).

ORDER

The request of Melvin Jones, Jr., for reconsideration of the Public Employment Relations Board's decision in *County of Santa Clara* (2012) PERB Decision No. 2267-M is hereby DENIED.

Chair Martinez and Member Huguenin joined in this Decision.