

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



GEORGE SARKA,

Charging Party,

v.

REGENTS OF THE UNIVERSITY OF
CALIFORNIA,

Respondent.

Case No. LA-CE-748-H

Request for Reconsideration
PERB Decision No. 1585-H

PERB Decision No. 1585a-H

April 2, 2004

Appearances: George Sarka, on his own behalf; Lynne E. Thompson, Director, Employee & Labor Relations, for the Regents of the University of California.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

DUNCAN, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on a request for reconsideration filed by George Sarka (Sarka) of the Board's decision in Regents of the University of California (2004) PERB Decision No. 1585-H. That decision involved an unfair practice charge filed by Sarka alleging that the Regents of the University of California (Regents) violated the Higher Education Employer-Employee Relations Act (HERRA)¹ by retaliating against him for engaging in protected activities. The Board ultimately dismissed Sarka's charge for failure to state a prima facie case. Sarka now urges the Board to reconsider its decision.

After reviewing the entire record in this case, including Sarka's request for reconsideration and the Regent's response, the Board hereby denies the request for reconsideration.

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

DISCUSSION

Pursuant to PERB Regulation 32410,² which states, in pertinent part:

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.

In his request for reconsideration, Sarka asserts that upon filing his unfair practice charge, he was informed by the Board agent that his charge was untimely. Because he was told that his charge was untimely, Sarka alleges that his charge was “distorted and disrupted.” In other words, Sarka appears to allege that because timeliness was raised as a jurisdictional bar, he assumed it was unnecessary to submit facts going to the merits of his case. Sarka’s argument is not a proper ground for reconsideration. Even if it were, Sarka has failed to provide a declaration under penalty of perjury establishing what facts he would have submitted.

The remainder of Sarka’s request for reconsideration is dedicated to re-arguing his case. In addition to pointing out specific evidence which he feels is relevant, Sarka urges the Board to review the entire record in this case. Again, this is not a proper ground for reconsideration. The Board thoroughly reviewed the record as part of Sarka’s original appeal. As Sarka has not met any of the requirements for reconsideration, his request for reconsideration is denied.

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

ORDER

The request for reconsideration of the Board's decision in Regents of the University of California (2004) PERB Decision No. 1585-H is hereby DENIED.

Members Whitehead and Neima joined in this Decision.