

ATTACHMENT A

RESPONDENT'S PETITION FOR RECONSIDERATION



Fax Cover Sheet

Date May 12, 2021

Number of pages 3 (including cover page)

To:

Name Matthew G. Jacobs

Company CalPers

Telephone _____

Fax (916) 795-3659

From:

Name Charlie Martinez

Company Self

Telephone (559) 728-1913

Comments Petition for Reconsideration



Fax - Local Send



Fax - Domestic Send



Fax - International Send

fedex.com 1.800.GoFedEx 1.800.463.3339

May 12, 2021

Petition for Reconsideration

I am submitting a **Petition for Reconsideration** to the Board of Administrative Decision on the case of **Charlie Martinez, case no. 2020-0085 and OAH No 2020060717.**

This case started with the application for Industrial Disability Retirement (IDR), which I felt entitled to, and turned into a case of Federal and California state violation of drug testing policy. This case cannot be dismissed. The option of simply ignoring the problem may be even more dangerous to myself and others who wish to move forward on IDR requests. The ALS in my hearing on Jan 6, 2021 said he would not revisit my argument. If he would not, then who would? So my next option is to seek a higher authority in the courts system.

First, I would like to address the drug test policy at Valley State Prison and Department of Corrections. Our union, California Correctional Peace Officer Association (CCPOA) made a memorandum of understanding and agreement with the Department of Corrections and Rehabilitation (CDCR) that anyone hired as a Correctional Officer after April 15, 1998 will be subject to a drug test; and anyone prior to that date did not. At my hearing on Jan 6, 2021 I asked Nancy Clark, the representative for the institution (VSP) if she was aware of this policy, and she acknowledged that she was.

1. According to my paperwork VSP filed with the EDD on 06-30-10 Nancy Clark is the Appellant name on this document and was aware of this policy. According to Stimmel Law, the Federal Law requirement for drug testing on the Fourth Amendment of the U.S. Constitution requires a reasonableness. I did not have an accident in any state vehicle which requires a drug test, nor did I act peculiar at work where a supervisor requested a drug test.

2. This also violates my Fifth Amendment prohibition against the government forcing citizens to incriminate him or herself, which prohibits denial of life, liberty or property without due process of law. The denial of continued employment based on drug test results may invoke "due process" considerations such as the validity of the test results, the employee right to respond or any required notice to the employee. At the hearing Jan 6, 2021 I disclosed the CDCR policy. I also had Nancy Clark acknowledge she knew the policy. I showed evidence of the original copy of the Kroll Form I submitted at Madera Community Hospital (MCH) which the MCH employee, Delores M. Ledesma, submitted for testing with the wrong social security number or employee identification number which she had on full display on the Kroll form, thus deeming the test invalid.


3. Thirdly, if testing results are indiscriminately divulged, if procedures for obtaining personal specimens do not respect the privacy rights of the person, or if testing is unnecessarily or excessively imposed. In my Jan 6, 2021 hearing I told the ALJ that I was called at my post at VSP that "my number came up for drug testing". When I appealed the call for drug testing I was told by the person inside the institution's drug test policy office I quote "are you refusing to take a drug test", that statement equates to "dismissal from employment", so I went ahead and took the drug test and subsequent excessive drug testing annually without fail until the final invalid drug testing in March 2010.

4. National Labor Relations Act (NLRA) which mandates that the private sector employer must bargain collectively over term and conditions of employment. The employee in the Drug Test Policy Office at VSP had no right to threaten me with his "are you refusing to take a drug test" and not follow the MOU that the CCPOA and CDCR agreed upon.

5. California Law under California Drug Free Workplace Act of 1990 Cal. Gov. Code 8350 et. seq. (Modeled after the Federal Act) the state enacted protective legislation that restricts drug testing in the private workplace and gives employees some measure of protection from unfair and unreliable testing. In my hearing Jan 6, 2021 I told the ALJ that the employee at MCH Delores M. Ladesma broke the chain of command of the drug testing procedure when she submitted the wrong specimen and the wrong social security number or employee identification number, causing an invalid drug test.

In closing, the Jan 6, 2021 hearing with the ALJ discounted much of my testimony. I testified at the EDD hearing that VSP did not tell the EDD ALJ I was dismissed due to "failed drug test" but instead wrote "activity outside of work", and VSP failed to show up. Those actions make me believe the VSP was wrong for their "dismissal" action. I testified I was satisfied after the hearing. The ALJ also failed to mention that when the case #10-2191 Matter of Appeal SPB concluded that it lacked jurisdiction. I spoke to Darin Pratt of the Appeals division and asked if the institution VSP placed any disciplinary action in my file and he stated "no", but I could call the SPB downtown Sacramento where I contacted a Susan Ekers who stated "No disciplinary action on file" and directed me to Michael Roa at SPB Employee History Division who stated nothing in my personnel history file that shows any disciplinary action and only shows "retired". I was satisfied with these answers but it also created a "staleness" in regard to appealing the SPB decision in my case because it never again came up until I filed for IDR. I did not respond to the ALJ decision on my Jan 6, 2021 hearing to the Board of Administrative Decision because I thought the board would reverse the decision. Since the Board of Administrative Decision did not reverse the decision of the hearing ALJ and based all their finding on an invalid drug test by the employer I find myself having the higher courts settle my fate.

Thank you,

 May 12, 2021
Charlie Martinez