

ATTACHMENT C

**RESPONDENT'S ARGUMENT REGARDING THE PETITION FOR
RECONSIDERATION**

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attention to: Cheree Swedensky *Executive office*
Assistant to the Board date: May 27 2021

company: California Public Employees Retirement System from: Charlie Martinez *Ref # 2020-0085*

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comments: Respondent's Argument

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Charlie Martinez



May 26, 2021

Ref. No. 2020-0085

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Title: Respondent's Argument

Subject: In the Matter of the Appeal of Accepting the Application for Industrial Disability Retirement of CHARLIE MARTINEZ, Respondent and VALLEY STATE PRISON FOR WOMEN, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, Respondent. OAH No. 2020060717

Dear Board Secretary,

I reviewed the Administrative Law Judge (ALJ) resolution in my case and believe his decision to be one-sided, and with his statement at the hearing "I will not revisit this argument" to be prejudicial. I had explained to the ALJ that my reasons for not arguing my position at the Skelly Hearing April 26, 2010 was that I had already retired effective April 25, 2010, one day prior to the hearing. Secondly, the ALJ dismissed the information I presented from my hearing with the Employment Development Department (EDD) October 6, 2010, which I found relevant to my case. At the January 6, 2021 hearing Ms. Nancy Clark representing Valley State Prison (VSP) was present, and when asked if she was aware of the drug testing policy exhibits regarding the Memorandum of Understanding (MOU) stating that employees hired after April 15, 1998 had to drug test and those before that date did not. Ms. Clark acknowledged under oath that "yes", she was in fact aware of this policy. On the EDD Appeal Form for my claim Ms. Nancy Clark is named as the Appellant on the form submitted by VSP to the EDD on June 30, 2010. I executed a summons for Ms. Kris Hensley to attend the January 6, 2021 hearing but she did not appear. I was advised she had retired so Ms. Nancy Clark appeared at the hearing in her stead. In Exhibit F, Page 4 the reason for termination was for "Failure of good behavior outside of work duty hours". Why not write "Failed Drug Test"?

It is my opinion that VSP and Ms. Nancy Clark became aware of the MOU and thus did not want to compound the problem. This violates the Fourth Amendment of the United States Constitution requiring 'Reasonableness'. I was not obligated to take a drug test, according to the MOU, and there was no other reason to warrant a drug test.

This also violates the Fifth Amendment of the United States Constitution prohibition against the Government forcing citizens to incriminate him or herself. I was threatened by an Officer at the VSP Drug Testing Office when I was told in 1998 "Your number came up", and when I appealed this request the officer responded by stating "are you refusing to take the drug test?", which equated to me as Dismissal of Employment if I refused. From that day forward I continued to participate in drug tests annually without objection to avoid any future threats of dismissal if I refused to cooperate. This information was stated at my hearing on January 6, 2021, but was not mentioned on my resolution by the ALJ.

At my EDD Hearing the EDD Administrative Law Judge (ALJ) dismissed the case against me because VSP did not respond to his orders to elaborate on "failure of good behavior outside work duty hours", and a representative for VSP did not appear at this hearing. At this EDD hearing I was satisfied with the outcome and saw no reason to further argue my case against VSP. Then the following year, August 23, 2011, case No.10-2191 Matter of Appeal the State Personnel Board (SPB) concluded that it lacked jurisdiction. I viewed this as favorable to me, and my only concern was if there was any disciplinary action taken against me in my personnel file. I contacted Darin Pratt of the Appeals Division and asked if VSP placed any disciplinary action in my record, and he stated "no", but also directed me to contact the SPB in Sacramento. I contacted Susan Ekers who also stated "No disciplinary action was on file." Ms. Ekers directed me to Michael Roa at SPB Employee History Division who stated "Nothing in your personnel history file shows any disciplinary action and only shows 'Retired'."

My question to the Board, "Why not if I was fired for cause?"

I was satisfied with the answers received from SPB personnel so I had no reason to argue any further case with VSP in regards to the alleged dismissal. This information was stated at my hearing on January 6, 2021 but the ALJ failed to mention it.

My satisfaction over the years with the answers I was given by Mr. Darin Pratt, Susan Ekers and Michael Roa created "staleness" in regards to information I had, but didn't use in appealing the SPB Board decision in my case because it never came up again; until I filed for Industrial Disability Retirement (IDR) and CalPERS attorney Dustin Ingraham brought it up at my January 6, 2021 hearing. When I presented my evidence to the ALJ he stated once again "he would not revisit my argument."

If this is to be a fair and impartial hearing then both sides need to be heard. The ALJ is allowing VSP invalid and illegal information to move forward and dismissing my information of truth and fact.

Moving on to the drug test at Madera Community Hospital (MCH). It was customary I would go to Fresno Lab facilities to complete my drug tests and had only gone to MCH as an alternate on one other occasion to complete this testing. Referencing Exhibit B (Page 1 Kroll Form, Page 3 Notification Form of Scheduled Drug Test, Page 4 Drug/Alcohol Test Authorization), no one but the MCH Employee shall fill in the boxes on the Kroll Form. Page 3 has my social security number (SSN) just beneath my name. Page 4 also had my name and SSN in Box 2. Upon reviewing page 1 Kroll Form block D, it shows an incorrect SSN and Employee ID Number, which is not my VSP Employee ID Number. In referencing Exhibit E, Employee Position History, my correct employee ID number is noted, which you'll see is not a match to the information recorded on the Page 1 Kroll Form.

This evidence was rejected by the ALJ because "he does not want to revisit this argument". These actions again violate my Fourth Amendment right for 'reasonableness', and my Fifth Amendment right regarding forcing citizens to incriminate him or herself, and invokes "due process" considerations such as the validity of the test results. It also violates the National Labor Relations Act (NRLA) which mandates that the private sector employer must bargain collectively over terms and conditions of employment. The employee in the VSP Drug Test Policy Office had no right to threaten me by asking if I was refusing to take a drug test, and disregard the MOU that California Correctional Peace Officer Association (CCPOA) and California Department of Corrections and Rehabilitation (CDCR) agreed upon. It also violates California Law under California Drug Free Workplace Act of 1990 Cal. Gov. Code 8350 et. sea. (Modeled after the Federal Act) the 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 January 6, 2021 hearing I submitted this evidence to the ALJ that the employee at MCH broke protocol of the drug testing procedure when they submitted the wrong specimen, and incorrect patient SSN/Employee ID Number causing an unfair and unreliable drug test.

In closing, I believe my case is unique and not related to the following referenced cases cited as reason for denying my request for IDR March 21, 2019. In the case of **'Haywood vs. American River Fire Protection District'**, I was not terminated for serious disciplinary actions, nor was I suffering from depression rendering me incapable of performing my duties. In the case of **'Smith vs. City of Napa'**, I was not dismissed from service for failing a remedial test of competency. Certainly in the case of **'Robert C. Vandergoot'** I was not terminated from my job for being drunk on duty, inexcusable neglect of duty, or willful disobedience or dishonesty. In the case of **'McFarland Precedential Case'** I was not terminated for charges for billing private sector patients for services not rendered, nor was I given any kind of letter of instruction or otherwise. I was a good employee for the State of California with a good standing among my peers. Exhibit C, Report of Performance Work Report speaks for itself. Never during my time at VSP did I receive any kind of disciplinary action. I do not belong in this group of individuals and their mental and criminal behaviors.

When I retired in April 2010 I was not aware I could have applied for IDR. On December 11, 2012 Dr. Maclean Report, Exhibit G, I was declared 57% disabled. On February 7, 2018 Dr. Mandell Report, Exhibit H, also declared me 57% disabled from injuries that occurred at work during searches, and responding to emergency alarms. At my December 2019 Workman's Compensation Hearing VSP accepted full responsibility for both feet and both knee injuries, and a medical award was given to continue my visits at Industrial Health Kaiser Permanente Fresno with Dr. Acevedo to this very day. Based on these medical findings, and the fact that VSP has already accepted full responsibility for my permanent disabilities, I feel I am within full right to receive Industrial Disability Retirement, and all disputes in regards to reasons cited by VSP as "termination for failure of good behavior outside of work duty hours" be rendered null and void. The SPB personnel file record states I retired from the department, therefore this and only this should be considered when deciding my entitlement to IDR from the State of California.

I am requesting another hearing with an alternate Administrative Law Judge who will give me a fair and impartial hearing without bias or prejudice, referencing the facts from SPB, Doctor's Reports of disability, and Workman's Compensation award granted when deciding on my request for IDR.

Thank you,

Charlie Martinez
Charlie Martinez

MAY 27 2021

