

ATTACHMENT C

RESPONDENT'S ARGUMENT

MAY 24 2021

Respondent's Argument

To the board of Administration,

My name is Bryan Meyer. I worked as a Youth Correctional Officer and Youth Correctional Counselor for six years, until the date of my injury that prevented me from returning to my duties. During this time I worked at two different facilities, working the most violent and disorderly units while at these facilities. I've broken up hundreds of fights, uncountable riots, and numerous staff assaults. During my time in corrections I never once missed time due to an injury on the job and had outstanding performance reviews from my supervisors. On February 8th of 2012 I was working the Special Management Unit for inmates too violent to be allowed in general population. After escorting a group of inmates to the recreation yard, the group of inmates scattered in attempt for some to escape the yard to assault other inmates. A twenty year old inmate was climbing up a fence, so I climbed up the fifteen foot fence that he was almost over and pulled him down to prevent his escape. As he reached the ground, moments after I did, I attempted to grab him as he fell to prevent further attempt of escaping the yard. I grabbed him as he landed. He turned and elbowed me in the mouth knocking my teeth out and began to run again in another attempt to escape. I ran after the inmate, tackling him to the ground and physically restraining him until I was able to apply handcuffs. Minute's later security arrived on scene to assist. During this attempted escape and assault on myself my false teeth were knocked out, I tore the meniscus in my right knee, and suffered a severe herniated disc in my lower back. After my injuries were diagnosed and I was referred to a specialist I began treatment for these injuries. I have done countless hours of physical therapy, received injections in my spine twice, had acupuncture several times, been prescribed pain and nerve medication for over two years, participated in numerous tests such as MRI's, CAT scan and EMG testing which involves needles being pushed into your legs that then electrocuting you to test nerve function. I finally agreed to surgery which I was told was supposed to be low risk and high success rate with no negative outcomes. After my surgery my disc that was already collapsed, collapsed completely after the ruptured disc material was cut out of my back. A follow up MRI was completed after my surgery that shows the complete collapse of my L5-S1 disc and now consequently my spinal cord rests on the nerves that go to my legs. After the surgery my condition greatly worsened from the further collapse. My legs that previously suffered from lack of motion and operation after standing too long, went to complete lack of function when standing or sitting up straight too long. My legs (primarily left leg) would go so numb, after the pain increased to an unbearable level, that my leg would not bend or function. I would have to swing my leg from my hip, sometimes using my hand, in order to move ten feet. It took a year and a half of physical therapy just to get my legs to function at a serviceable level.

About a year after my surgery Dr. Moelleken, the workers compensation doctor who had been treating me, declared me permanent and stationary due to the fact that I could seriously injure my back by further breaking up fights and protecting myself from inmate assaults. Since then, every two years or sooner, I have been required to be re-evaluated by IME doctors of CalPERS choice. Doctors Moldawer, McAdams and Pompan have all agreed with Dr. Moelleken that I no longer meet the lifting, running and

required abilities to defend myself in a violent situation. I would like to note that all of these doctors have come to these conclusions without being provided the follow up imaging that shows the complete collapse of my disc. Except for Dr. McAdams, in which case I personally requested a copy of the imaging for him to review at my evaluation. During Dr. McAdams evaluation of me he showed me the imaging for the first time and attempted to measure on his computer, which measures in millimeters, the disc space between my collapsed disc. He was unable to take a measurement because the vertebrae were bone on bone and my spinal cord was resting on my nerves to my lower extremities.

At the end of April of 2019 my wife and I separated and I sought employment at the Home Depot, the only employer to respond to my resume. This job was not taken out of desire but necessity so I would be able to pay rent, child support, car payment and other essential bills. After finding out I had taken a job, CalPERS immediately began an investigation of me by an investigator named Mr. Barba. Mr. Barba followed and recorded almost thirty hours of surveillance of me and comprised a disc that he edited down to merely twenty seven minutes. Mr. Barba strategically filmed me and gave his commentary about what he thought I was doing. Estimating weights and assuming different items he suspected I was lifting. During this commentary Mr. Barba lied on several occasions saying that he suspected I was lifting "2x4 and 2x6 lumber that was twelve feet in length". During this part of the video I was clearly putting away trim that was very light (app. two pounds each in weight). Mr. Barba also filmed this while standing in front of the sign that read, in large letters, Trim Isle. This isle was and currently is still stocked by a 65 year old man that makes this part of his daily routine. He also stated in his commentary that I was viewed "pushing large heavy carts around the store". Mr. Barba was referring to the shopping carts that the store provides to our customers for use from people as young as children to elderly adults. These carts roll easily and without effort. Mr. Barba commented that he viewed me "easily handling lumber and cutting it for a customer". This part of the video showed me cut a 2x4 in half on the saw and hand it to a man in his seventies who easily lifted it onto his shoulder and walked away. Mr. Barba claimed he saw me "lift a refrigerator into a truck". Mr. Barba did not mention I assisted two customers with their loading of a mini fridge and although I am not certain, I believe in the video I pulled the pallet it was on out of the way so they didn't trip on it. Mr. Barba said he filmed me loading numerous bags of concrete from a pallet but wasn't sure so he returned to the area three hours later and photographed what he assumed I was lifting. In this video I clearly walk past the items Mr. Barba photographed into to the store. Although, from the distance he filmed, even I cannot tell what the product was. Lastly Mr. Barba commented that he filmed me "bent over parallel with the floor vacuuming saw dust". The video clearly shows me bend down on one knee for this task to relieve pressure from my lower back as well as spreading my legs very wide to minimize the distance to the ground while bending my knees. These techniques were taught to me in physical therapy and I don't believe these are techniques utilized by people in their thirties with healthy backs. The majority of this video, approximately fifteen minutes, was myself seated, on an emotional phone call with my wife discussing our separation, during my lunch break. This part of the video, which was most of Mr. Barba's surveillance, had absolutely nothing to do with my work restrictions or movement abilities and the only reason I believe Mr. Barba recorded and submitted this is to embarrass me. I feel this was extremely unprofessional and had nothing to do with his investigation. Mr. Barba testified that he edited the video for time sake and did not edit out any content that would be beneficial to me. However, as seen

numerous times throughout his recording, he continually starts and stops recording in very short intervals. I believe Mr. Barba did this to edit the video so as not to show me stretching my back or walking with a limp, which I sometimes do.

After my wife and I reconciled in November/ December, I put my two weeks' notice in to the Home Depot due to the fact that it was more physically demanding than I wished to continue. The store manager offered me a position as the Receiving Supervisor in which I was assigned the duties of managing payments and credits to vendors and supervising three other associates. Over fifty percent of the employees at Home Depot are of retirement age and many also have disabilities. Two of the associates I manage are of retirement age and the third being a medically retired correctional officer as well.

I have put my health, safety and life in jeopardy working corrections. While in the academy, we were all told by our instructors that if we were injured on the job that CalPERS would ensure our livelihood and take care of us. Since my injury I have been re-evaluated numerous times and every doctor has concluded that I will further seriously injure myself working in corrections. Dr. McAdams stated to me that if I were to tackle an inmate, my vertebrae that rests on my nerves could sever these nerves causing me to be paralyzed from the waist down. The only doctor who didn't agree with this is Dr. Henrichsen. Dr. Henrichsen states in his report that he feels I would be able to return to work in corrections although he states I would be in pain, which he doesn't feel is a factor. Although Dr. Henrichsen states that he feels I would be able to return to work, he clearly states in his reports that I don't meet the physical requirements, saying that after watching the video my lifting restriction would be seventy pounds and that I can run forty to seventy yards. As Judge Wong points out, Dr. Henrichsen doesn't comment on my ability to defend myself in violent situations and that he states lifting is not a routine part of the job. Dr. Henrichsen also testified that he based his medical conclusion on the video alone and that he was not shown my medical reports. I would like to point out that Dr. Henrichsen was not provided a copy of my post-surgery MRI that shows my condition had greatly worsened and a complete collapse of my disc occurred after surgery. After contacting several lawyers in the area, I was told by the majority that Dr. Henrichsen has the reputation of the doctor who companies send retirees and disabled persons too, to send back to work.

In conclusion, after being a public servant for six years, sacrificing my health and quality of life, CalPERS is attempting to find any reason to cancel my retirement, knowing that I do in fact have a serious and debilitating injury. If one reviews my reports from numerous doctors, they would see they all state, repeatedly, that this is a severe injury with severe narrowing of the spinal canal causing severe nerve impingement. I am a husband and a father of three. My family relies on me for financial support. Losing my medical retirement would devastate my family without giving me alternate means of employment. This is not a feigned or made up injury. It is a serious injury with numerous reports stating that fact. It is something I live with every day. I wake up in the morning stiff and in pain. I go to sleep in stiff and in pain. I believe that just because I choose not to take opioids or get further surgery that I am being penalized for it. My wife is a licensed massage therapist who treats me weekly. I do physical therapy exercises daily at home and when I throw my back out I go to the doctor out of my own pocket. Otherwise waiting sometimes two weeks to be seen by a Worker's Compensation doctor for treatment.

This company is attempting to send me back to work, with a serious injury, to a facility that is over seven hours away from the home I own and where my children live with their mother, to a job that Governor Newsome signed a bill to end in the next two years, closing all Departments of Juvenile Justice. Again, I ask this board to review the medical reports from all of the doctors that I have been required to see and to also side with the Honorable Judge Wong's order. Please allow me to keep my medical retirement for my injury caused while in the line of duty.

Attached is a letter from my personal physician presently confirming my medical restrictions, that I have provided to my current job.

Sincerely,

Bryan Meyer

5/19/21

**Marshall Medical Center
MARSHALL SIERRA PRIMARY MEDICINE
4341 GOLDEN CTR DR B
PLACERVILLE CA 95667-6260
530-621-3600 Fax: 530-748-0325**

Date: 4/15/2021

Work Release

Patient Name: Bryan Meyer

This patient was seen on 4/15/2021 in MARSHALL SIERRA PRIMARY MEDICINE. He may continue full-time work with restrictions as per his permanent recommendations, no lifting over 50 lbs and no repetitive lifting of over 20 lbs.

If you require further information, please contact PC GOLDEN CENTER 4341
MARSHALL SIERRA PRIMARY MEDICINE
4341 GOLDEN CTR DR B
PLACERVILLE CA 95667-6260
Phone: 530-621-3600.



Tracy A Harris, FNP-C