

**ATTACHMENT C**

**RESPONDENT'S ARGUMENT**



# Fax Cover Sheet

*"Respondent's Argument"*

Date 8-26-21 Number of pages \_\_\_\_\_ (including cover page)

## To:

Name Cheree Swedensky, Assistant to the Board

Company CalPERS Executive Office

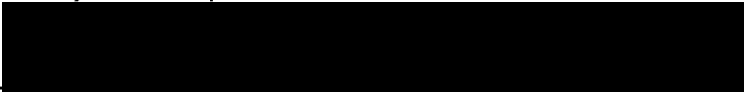
Telephone 916 795-0886

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## From:

Name David Vigil

Company \_\_\_\_\_

Telephone 

Comments "Respondent's Argument"



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David vigil

[REDACTED]

Aug 26, 2021

Cal-Pers  
Board of Administration

Dear Board

I would like to walk you through the last 3 years 8 months of my life. On 12/12/2017 I injured my right buttocks, after 2 days I couldn't sit, stand, walk or touch the floor. I arrived at work and could barely walk inside the warehouse. For the 2nd time in 2 days I had to ask someone to pick up something I dropped on the floor, so I advised my supervisor that I was getting dizzy when I stood up, and couldn't bend over, he had the EMT's from the prison look at me before I left to seek treatment. I was out 2 months when I was told I had to go back work because I took 2 days to report my injury. I went back for 4 months, limping in the prison and crawling out, I couldn't even make it to my car without sitting on the curb to rest. I finally told my supervisor that if I kept doing that, I would become cripple, too late I'm crippled I told them. I was put out for 2 months again when I was told I have to go back again. I did what I was told again and went back to worked in the warehouse, moving 1 box at a time with a desk chair. I was in constant pain when I got to work from the car ride and anything I did, included standing, sitting, walking. An inmate saw me laying on a cart with back spasms and asked if I wanted him to push me in the office, I declined, a person in that condition should not be working in a prison warehouse. I normally work in the clothing department but couldn't walk out there or get up and down to do the job. I went out again, only to be called back again 2 months later, this time I knew I couldn't do my job, I had to call in sick for the last 2 weeks before I was put on permanent and stationary. I later got a bill for over payment of sick leave that went to collections. I lost my job because of this injury, I didn't quit or retire, I never got an attorney for workers comp because of thought I was doing everything I was suppose to. But apparently I didn't, and now I'm appealing with an attorney, so I could get a more accurate diagnosis and the correct treatment and possibly surgery because I can't go on with approximately 1.5 million minutes of non stop pain.

I didn't pick my injury, it picked me. It doesn't show up on MRI's or x-rays. I thought when I noticed my leg deformed it would help DR Faint diagnosed me, it did, he said I have Hip Spurs. I asked him about my chances for my disability retirement, he said unless something else comes up, he didn't see any reason. But it appears he changed his mind because I did my recycling and bought beer, which hurt like heck but I have to do things even if it hurts, which is everything.

My daily routine, starts when I go to bed, I toss around 10 times for the first hour, and 3 times every hour after. I get up at 5:00 am because it hurts too much, I'm still tired but if I stay in bed it will hurt a lot more during the day. I get up and I feel like I just got out of a car that just rolled over. Getting up and down from the toilet is hard, I struggle to put my shoes on, I go to the garage and outside for the rest of the day because I can't sit or lay down, I keep moving to control the pain. I exercise by playing old peoples games, which like everything I do hurts, I can't go to movies with my wife, ball games or anywhere that I have to sit or can't move around. If I could work for extra money I would but I have trouble getting in and out of cars . 1 block walking and I start struggling, I force myself to do things or else I would just stay home and suffer. I am now getting really bad cramps in both my ankles at night from standing too much, I started drinking too much because it helps with the pain. I wear a SI Joint belt that has helped tremendously, I always have to wear it to support my back and hip area. I'm 5'11 137lbs, I battle losing weight, I need to gain 20lbs to be called skinny. I'm embarrassed of my weight. I use a cane to get up and down, but it doesn't help me walk long distance's, up hills or stairs. Riding a bike causes excruciating pain immediately. My Doctor has told me that I can do whatever I can stand. I haven't told my wife I lost the hearing case because I feel like a fool, she see's me crippled every day and wonder what's going on, I wish someone would tell me.

As for the investigation, it was a Workers Comp investigation. I know by the date of the investigation, I hadn't even applied for disability yet. All my Doctors saw the report, I talked to them about it, nobody but Dr Faint tried to use it as medical evidence. As Judge Walker noted, Evidence code section 801, subdivision (b) makes Dr Faint's opinion very questionable. He didn't even know where the report came from or didn't want to say, the dates on it. He did not do a proper examination for SI Joint Dysfunction, he didn't read any reports before he examined me, he had them 2 days prior.

I would like to ask the board to not make this ruling precedent because Dr Faint's decision was made with non medical evidence supplied by someone he doesn't know. I also ask the board, rule in favor of my medical reports written by Dr Thompson , Dr Steiger and Dr Gorges of Sharp Medical, I have a 20lbs and 5 lbs limit. This is the issue in the hearing. I was ruled against because I can't afford to pay an attorney and Doctor to testify. I don't mind seeing a different Cal-Pers Doctor. I'm now being treated by my family Doctor Dr Geores of Sharp who also agrees with Doctor Thompson's diagnosis, and Dr Thompson, a Pain Managment Doctor is still treating me. I have a long road to recovery if I recover, because my other leg is now worse then my injured side, from over compensating. I ask that you read the transcripts of the hearing and make you decision on the last 3 1/2 years of medical documentation, I don't need a technicality for my disability retirement, I have overwhelming on going medical evidence. I hope the board is the safety net, where injuries like mine can be resolved.

Best regards,

David vigil





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**State of California Division of Workers' Compensation  
Primary Treating Physician's Progress Report (PR-2)**

Today's evaluation was performed via video/telephone due to the current COVID-19 infection concerns. This report details the components of the evaluation and the total time spent on the video/telephone evaluating and discussing this visit with the patient. Under expansion of telehealth on emergent basis under the 1135 waiver authority and Coronavirus Preparedness and Response Supplemental Appropriations Act, this office visit was done via video/telephone visit. The patient has provided verbal consent for these telehealth services and understands that they have the right to refuse a telehealth visit in favor of an in-person visit.

**Reason for Submitting Report:** Request for Authorization.

**Patient Name:** Vigil, David

**Date of Visit:** Sep 28, 2020

**Date of Birth:** [REDACTED]

**Gender:** Male

**Date of Injury:** 12/12/2017

**Claims Administrator:** State Comp Insurance Fund

**Phone:** 951-697-3679

**Employer:** RJ Donovan State Prison

**Adjuster:** Jennifer Almanza, Adj.

**Fax:** 707-646-0738

**Current Work Status:** Patient is not working. (retired).

**I. SUBJECTIVE**

**Accepted Body Parts:** Low back.

**Chief Complaints:** Pain complaints of the low back.

**HPI:** *HPI Extended/Detailed: 4 Elements required (CC, Quality, Severity, Timing, and Modifying Factors)*

The patient is being seen for an industrial injury sustained while performing his usual and customary job duties on 12/12/2017. The patient bent over into a clothing cart when he felt a strong painful pull on his right lower back radiating down to his buttocks.

**Current Complaints:**

**Quality:** Regarding the low back, the pain is described as burning, achy and throbbing.

**Severity of pain:** 8/10.

**Timing:** constant.

**Improves with moving and exercise. Worsens with prolonged sitting, laying.**

**Review of Systems:**

**Neurologic:** denies.

**Gastrointestinal:** denies.

**Psychiatric:** denies.

**Past Medical and Social History:** *PFSH Extended/Detailed: 1 History component from any of the Three areas: Past (Illness, injury, surgery, meds, allergy).*

**Allergy:** hydrocodone

**Current Medications:**

- (1) Diclofenac Sodium 1% Gel SIG: Apply 1-2g to affected area TID-QID PRN
- (2) Hydroxyzine Hcl 25 Mg Tablet SIG: Take 1 at bedtime PRN

**Past medications:** Nortriptyline.

**Other medications:** (prescribed outside our office) OTC ibuprofen as needed for severe pain.

**Past treatment:** Physical therapy.

**Past diagnostic studies:** X-ray and MRI scans.

**II. OBJECTIVE**

phone appointment, no exam performed

**III. MEDICAL DECISION MAKING** *Two out of Three required (Data, Diagnosis, Risk)*

**DIAGNOSES** *Moderate/Detailed: 3 points required*

**Established Problems** *[Established worse 2pts each/ Established Stable 1 pt each]*

- S33.5XXD Sprain of ligaments of lumbar spine, subsequent encounter (Same)
- M51.36 Other intervertebral disc degeneration, lumbar region (Same)
- M53.3 Sacroiliac joint dysfunction (Worsening)
- G89.4 Chronic pain syndrome (Worsening)

**DISCUSSION:**

The patient complains of chronic low back pain that he indicates arose out of his industrial injury on 12/12/17.

He expressed that he feels desperate and overwhelmed by his pain. He provided multiple examples of how his pain affects him and limits his daily activity.

The patient reports he is unable to stand or walk for prolonged periods due to pain and reports several episodes of near-falls. Awaiting auth for single point cane to assist with ambulation when outside of his home and prevent falls.

The majority of his pain complaints appear to be related to SI joint pain and dysfunction. The patient has never had a SI stabilizing belt and this is recommended in combination with a course of physical therapy to improve his daily function and walking tolerance. Awaiting auth

**TREATMENT**

He had an MRI scan of the lumbar spine that was relatively unremarkable. There were previous exam findings for pelvic obliquity and right sacroiliac joint dysfunction.

He failed TENS due to not liking the sensation.

Patient continues his HEP. He continues to report that the most helpful thing for him is regular exercise and stretching.

**MEDLEGALS**

He reports completed QME on 07/13/19

**CBT**

Auth for remaining CBT sessions has expired and is awaiting extension on auth to be granted.

**MEDICATION**

Using diclofenac gel PRN

Patient complains of severe insomnia due to pain which causes a decline in daytime activity tolerance. Proper sleep hygiene was discussed as well as medication options.

Awaiting auth for trial of hydroxyzine 25mg, 1 tab QHS and will monitor for functional improvement.

**TREATMENT PLAN / RISK** [Moderate: Prescription Drug Management / One or more chronic illnesses with mild exacerbation, or side effects of treatment / Two or more stable chronic illnesses]

**Request authorization for:**

Diclofenac Sodium topical gel 1% apply 1-2g to affected area TID-QID prn #3-100g tube.

Hydroxyzine HCL 25 mg 1 QHS PRN #30.

Physical therapy 2 Times a week for 3 weeks, for the low back.

SI stabilizing belt

Single point cane.

**NOTE:** I discussed different medication options with the patient in detail, outlining the risks versus benefits of various regimens. Potential side effects of the medications were reviewed.

**WORK STATUS:** The patient remains Permanent and Stationary.

**Permanent Work Restrictions:** For the low back patient should avoid pushing, pulling or lifting over 20 pounds and repetitive bending and stooping. He should also avoid prolonged standing over 45 minutes per hour.

**Next Appointment:** 1 Week(s)

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The 1997 Documentation Guidelines for Evaluation and Management of Services was used for the composition of this report.

**Billing Criteria:**

Telephone non-face-to-face E/M 11-20 minutes.

Prolonged service without direct patient contact 99358 - 30 minutes.

Because of the State of Emergency regarding the COVID-19, additional precautions were made requiring extensive non-face-to-face time to call the patient, review previous records and coordinate care to ensure continuation of medical treatment, medications, and disability status. 30.

**DISCLOSURE:** I declare under penalty of perjury that this report is true and correct to the best of my knowledge and that I have not violated Labor Code Section 139.3.

Sincerely,



Stephanie Luzak PA-C



**Blake Thompson, M.D.**

CA License #G60675

Physical Medicine and Rehabilitation, Pain Management

Executed at: Rehabilitation and Orthopedic Center – San Diego  
9040 Friars Road, Suite 400 San Diego, CA 92108  
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Recv'd Date 20191204 Bill ID 101324013  
SCIF RECD DATE 12/04/2019

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Date of Report November 19, 2019

**DIAGNOSIS**

- 1 Musculoligamentous sprain lumbar spine chronic, with right lower extremity radiculitis
- 2 Right hip arthralgia
- 3 Disc protrusion at L4/5

**DISABILITY STATUS**

The examinee is considered permanent and stationary and maximally medically improved

**PERMANENT IMPAIRMENT RATING PER FIFTH EDITION AMA GUIDES**

LUMBAR SPINE (Chapter 15, Table 15-3/P 384)

The DRE method was selected. There are nonverifiable radicular complaints, defined as complaints of radicular pain. DRE Lumbar Category II with 6 % whole person impairment.

**SPINE IMPAIRMENT SUMMARY**

	Lumbar	Thoracic	Cervical
DRE Imp%	6	0	0
ROM Imp%	0	0	0
Disorders Imp%	0	0	0
Nerve Imp%	0	0	0
Regional Total Imp%	6	0	0

Spine Total Imp%	6
Pelvis Imp%	0
Corticospinal Imp%	0

BODY PART OR SYSTEM	CHAPTER NO	WHOLE PERSON IMPAIRMENT %
Spine	15	6

**CALCULATED TOTAL WHOLE PERSON IMPAIRMENT 6 %**

**CAUSATION**

The cause of the examinee's complaints in his back and right hip are due to the injury of December 12, 2017.

2020/02/04 14:38:54 SB 4698

2020/02/04 14:38:54 SB 4698

Recv'd Date 20191204 Bill ID 101324013  
SCIF RECD DATE 12/04/2019

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Date of Report November 19, 2019

APPORTIONMENT

I find that 90% of the present disability is due to the injury of December 12, 2017 and 10% is due to degenerative changes

WORK RESTRICTIONS

The examinee continues to work for the same employer. The work restrictions are no lifting more than 5 pounds and no prolonged sitting or standing.

FUTURE MEDICAL CARE

Office visits, medications, injections, short courses of therapy, diagnostic studies including x rays, MRIs and EMG/NCV. DME, allowance for right knee surgery and home exercise program.

VOCATIONAL REHABILITATION

Vocational Rehabilitation does not appear to be required.

DISCUSSION

The examinee had a lifting injury on December 12, 2017. He still works for the same employer and presently works with a 5 pound lifting restriction and no prolonged sitting and standing. He will require medical care from time to time in the future as outlined in this report.

Thank you for asking me to evaluate this examinee. If you have any further questions, please do not hesitate to contact this office.

SOURCE OF ALL FACTS AND DISCLOSURE

The source of all facts was from review of medical records and my previous medical report. I declare under penalty of perjury that the information contained in this report and its attachments, if any, is true and correct to the best of my knowledge and belief, except as to the information I have indicated I received from others. As to that information, I declare under penalty of perjury that the information accurately describes the information provided to me and, except as indicated herein, that I believe it to be true. Labor Code 139.3 was not violated. Please note that all times listed reflect physician time spent and not staff time.

Under penalty of perjury, I declare that the following represents the physician time associated with supplemental report:

- Review of records 0.5 hour
- Report prep/review 0.5 hour

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SCIF RECD DATE 12/04/2019

VIGIL, David  
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Date of Report November 19 2019

Date of Report November 19, 2019 Signed this 3<sup>rd</sup> day of December, 2019 at San Bernardino County California

Sincerely



RALPH N STEIGER M D  
Orthopedic Surgeon

RNS/db

cc David Vigil  


State Compensation Insurance Fund  
P O Box 65005  
Fresno CA 93650  
Attn Patrice Harrison Claims Adjuster

10/11/2019 11:12 AM FAXED TO 559-438-1111

