

**ATTACHMENT C**

**RESPONDENT'S ARGUMENT**

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December 29, 2022

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Regarding:

Respondent Trever Dalton in Re: Accepting Proposed Decision for Disability Retirement.

Thank you.

  
Jill Suzanne Breslau, Esq.

Number of Pages: 6 (including cover)

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December 28, 2022

Board Services Unit Coordinator  
 California Public Employees Retirement System  
 PO Box 942701  
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FAX: 916-795-3659

Re: In the Matter of Accepting the Application for Industrial Disability Retirement of  
 Trevor Dalton, Respondent and California Highway Patrol, Respondent  
 Ref No: 2020-0294

**RESPONDENT DALTON'S ARGUMENT IN FAVOR OF THE PROPOSED  
 DECISION OF THE ALJ FINDING INDUSTRIAL DISABILITY RETIREMENT**

**INTRODUCTION**

The Proposed Decision of the ALJ, Howard W. Cohen, was rendered on November 9, 2022, and served upon Respondent Dalton and his counsel by CalPERS via letter of November 22, 2022. The matter had been heard by Judge Cohen via video and teleconference on July 7, 2022.<sup>(1)</sup> Judge Cohen determined that all evidence showed that Mr. Dalton was substantially incapacitated from performance of his duties.

Respondent has been afforded the opportunity to submit written argument regarding the Proposed Decision by December 29, 2022. Respondent thanks the Board for the opportunity to submit written argument in favor of the Proposed Decision. We also thank the Board for the opportunity to state our preference regarding whether or not the Decision should be designated in whole or in part as precedent.

**RESPONDENT'S CONTENTIONS**

Respondent contends that he was properly awarded IDR as a result of his permanent and disabling psychiatric injury, to wit, Post Traumatic Stress Disorder (PTSD), which he sustained during his eleven-plus (11+) year career as an Officer with Respondent, California Highway Patrol.

<sup>1</sup> Not March 15, 2021, as set forth on the front page of the Decision, probably inadvertently.

The incidents which started his PTSD, commenced literally within the first three weeks of his duties as a road patrol officer at his first assigned area office.

He was assigned to take the photos of a motorcycle crash in which both the motorcycle operator and passenger had severed legs. The female passenger died; the male operator survived. He testified that there were several such incidents occurring quickly thereafter. A woman who hit a tree, had severe head trauma and he was unable to get into the car to assist her. Her sons showed up on scene shortly after the fire department did, and Mr. Dalton had to inform them that their mother had passed away. There was a gentleman with a medical emergency, for which Mr. Dalton raced to the scene and performed CPR, sadly, despite effort, the gentleman died. Mr. Dalton blamed himself for taking the "wrong way" to the scene, what was apparently just a slightly longer route. There was a plane which had crashed into the center median and caught fire. The pilot burned to death.

There was a crash while he was off duty but he raced to the scene to try and help. He thought the injured woman was in worse shape than the injured male but it turned out that was not the case. The male he thought was in better shape than the woman actually was not and died because of his injuries. That young fellow was only 19 years old. Mr. Dalton blames himself for helping the wrong victim. All the above happened in his first area office, Hollister-Gilroy, to which he was assigned for only a year and a half.

Over the remaining years, there were more horrific accidents, multiple fatalities, children the same age(s) as respondent's dying; people he could not save, and for whom he still feels guilt. The names of victims he still remembers, and images of a couple of the children still plague him to this day. There were plenty more examples of grisly crashes to which he was called, but we were informed that we needed to cease discussing the above for purposes of time left in the day long hearing.

### MEDICAL EVIDENCE

**The medical evidence supporting Respondent's position is uncontroverted and was more than adequately addressed by Judge Cohen.** In fact, Judge Cohen did an excellent job in discussing the medicals. The doctors who found Respondent substantially incapacitated from performance of his duties due to his PTSD were those whose reporting is in evidence:

1. **Treating psychologist, Dr. Ines Monguio;**
2. **Treating psychiatrist, Dr. Mark Nehorayan;**
3. **CalPERS examining physician, Dr. Lawrence Warick;**
4. **WCAB Qualified Medical Examiner, Dr. Edward Spencer**

Dr. Warick, had in his possession all reporting at the time of his exam and reviewed it in his report to CalPERS. He also reported that Mr. Dalton had been in a shooting incident and suggested a re-evaluation in a year or so to ascertain if Respondent was still substantially

incapacitated at that future time as he had no idea how long the condition might last. In October of 2019, CalPERS secured updated records and could have sent Respondent back to Dr. Warick but they did not do so.

Again, Judge Cohen did a masterful job of addressing QME, Dr. Spencer's reporting that Respondent suffered from chronic PTSD arising out of the traumatic situations in his job duties with CHP. I can add nothing to Judge Cohen's cogent, lengthy discussion.

The doctors who disputed Respondent's psychiatric condition, and its industrial etiology:

**None.**

Respondent also discussed the other claims he had, which are also known to be stress related including hypertension, shingles, and his eye issue – retinal detachment which are also discussed in the medical reporting. All of the doctors reported on the existence of these claims.

### CHP DOCUMENTS

Judge Cohen, did a superb job of summarizing the CHP Memoranda presented which clearly show the problems which Respondent had and the Department's constant warnings that it "may" take adverse action, if he didn't alter his performance and his behaviors, his excessive use of sick leave to lengthen time off; his disrespect towards supervisors, his drunk dialing of fellow employees and supervisors.

The Department noted there had been similar sick leave issues in another area office to which he had been assigned. They also discussed his other off duty behaviors which included confronting a neighbor whom he suspected of drug dealing back in February 2011, a mere three and a half years after graduating from the CHP Academy, and his inappropriate off duty behavior all the way up to and including September 2016, a drunken incident involving his pet rooster and grossly inappropriate questions to unknown persons.

Respondent was constantly advised by the Department that he needed to seek help, where to go or whom to call, and that the Department was there to assist him and would monitor his progress. In reality, there was no evidence of any real monitoring or any kind of follow-up by supervisors and no assistance.

### WITNESS TESTIMONY

#### Mr. Grigsby

**Judge Cohen did a masterful and extraordinary review of the testimony of CalPERS witness, Mr. Timothy Grigsby. I can add nothing to it. Judge Cohen correctly reported that Mr. Grigsby's time frame regarding treatment was incorrect; that CalPERS knew that Respondent was receiving treatment at the time he applied and thereafter; that Mr. Dalton was on two medications to address his conditions. He also correctly reported that Mr. Grigsby was**

unaware that persons suffering with PTSD often self-medicate with alcohol, and thus his assessment was insufficient to form any part of a basis for CalPERS denial of eligibility.

**Dr. Monguio**

Dr. Monguio testified briefly at the conclusion of the day. She indeed said that being fired would be “demeaning” to Mr. Dalton. It would probably be demeaning to many people.

Nevertheless, Respondent testified at pages 205-209 that he was on paid administrative leave until he resigned on August 7, 2018 and stated that it was the only way to support his family at that point.<sup>(2)</sup> Otherwise, he would have resigned earlier. It’s also worth noting that the penalty which he faced, dismissal, was not determined until the NOAA was actually signed by the Commissioner on July 17, 2018. Under the Peace Officers Bill of Rights, it had to be served on Mr. Dalton and he had to have a period of time in which to respond.

Dr. Monguio stated that when she first started treating him “he was a mess...he was on drugs...his attention was dismal; his language was depressed and all over the place. He was very anxious. He was very agitated, and he was very sick.” He was unable to work.

**LEGAL ISSUES**

We agree with Judge Cohen’s legal analysis and with his recitation of the cases and codes. We agree with Judge Cohen’s discussion of the legal issues and cases supporting his determination of Respondent’s eligibility for his IDR benefits. All we can point out again for the Board, is that CalPERS had requested medicals, received them, didn’t know which way to go and on July 16, 2018, served a letter on Respondent to be examined by CalPERS physician, Dr. Warick. He went to the appointment and was examined at length. Dr. Warick reported him to be substantially incapacitated from the performance of his duties. **It was CalPERS who provided records and reports to Dr. Warick.** Dr. Warick discussed these reports at length. He also noted reporting showing Dalton’s treatment in 2014 with Dr. Leidig and Dr. Sylvester. CalPERS had the reporting which discussed his career, his traumas and the December 2017 off duty issue.

Essentially, CalPERS claimed two diametrically opposite positions: (1) in September 2018, they found him substantially incapacitated from performance of his duties, and (2) in October, 2019, stated that they had made the determination without establishing the industrial nature of his incapacity. As His Honor wrote, Dr. Warick did it for them.

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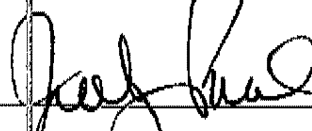
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<sup>2</sup> The paid administrative leave period of April 9, 2018, when he filed his IDR application and August 7, 2018, when he resigned was the only point where His Honor seemed to be mixed up

**ISSUE RE DESIGNATION AS PRECEDENT**

We think that Judge Cohen's Decision is extraordinarily well written, clearly discusses the issues, and very clearly addresses all testimony and documentary support. In that regard, it is especially valuable. However, because Respondent was a law enforcement officer, and because that prior position can leave one vulnerable, I hesitate to suggest precedential status, though I believe the decision is deserving. My personal preference would be to err on the side of caution and protection of law enforcement identities and not do so.

Respectfully submitted,



Jill Suzanne Breslau, Esq.  
Attorney for Respondent, Dalton

Trever Dalton- Respondent's Argument in Favor of Proposed Decision

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Attached is Trever Dalton' Argument in Favor of Proposed Decision  
Re: Industrial Disability Retirement Issued by Judge Howard Cohen.



Respondent's Argument in Re Proposed Decision.pdf  
327.1kB