

ATTACHMENT C

RESPONDENT'S ARGUMENT

Respondent's Argument - Nick Abarca - Ref. No. 2022-0742

Why I believe I'm eligible for Industrial Disability Retirement:

Because my primary treating physician who is a spine specialist has classified my injury as "permanent and stationary" and I am unable to return to work as a firefighter because of that classification. Therefore I am unable to perform my usual job duties with my current employer for a permanent or extended duration.

The industrial disability retirement application states that you are eligible "If you have a disabling injury that prevents you from performing your usual job duties with your current employer for a permanent or extended duration."

"You are unable to perform the usual duties of your job with your current employer because of a job-related injury"

I brought to court my primary treating physician who is an orthopedic surgery specialist who specializes in back and spine. He showed evidence of my multiple bulged disks and a narrowing of the spinal column in the MRI and showed that Templeton Imaging also corroborated his diagnosis of the MRI. And because of this injury, he testified that I was unable to work the extremely physical job of a firefighter.

The Dr. that CALPers used to evaluate me was an orthopedic surgery specialist who specializes in shoulders and knees. I don't think it's right that she gave the less qualified Dr. More weight in the decision.

I think the Dr. had a misunderstanding of the severity and nature of my disability. From his report, it seemed like he was judging if I was completely disabled. Which I am not, which is why he claimed I am not. However, I am disabled in a way that prevents me from doing the job of a firefighter. If I was working a normal job this disability may have been something I could have continued to work through. The issue is that due to the extreme physical stress put on the body while performing the job of a firefighter, this disability prevents me from being able to perform my duties in a sustainable long-term way.

The CalPERS IME Dr. gave several points of reasoning behind why he believes I do not have a substantial incapacity to perform my job. I do not believe any of these points have solid justification that I am capable of working as a firefighter.

He believes that there is no evidence that pain limits my abilities based on what he sees on my social media. Because my injury only flares up to the point where I am in significant pain after I endure hard labor. It makes perfect sense that I can be in states of lower pain after I have rested my back and then go out and do normal stuff. What you dont see on my social media is me laying in bed for a week after I go out and do something. He also states that because I travel with "equipment bags" he feels "he doesn't have any objective evidence that I have a disability to perform my job duties". There is a massive difference between loading 15-20lb pieces of luggage into a vehicle. And me carrying 80+ lbs on my back for 16 or more hours like I would do at my job. My Dr. has restricted me to lifting no more than 30lbs., So this instance isn't even outside of what I have been told to do by my DR.

He states that "I do not feel that the objective evidence correlates with the substantial incapacity". Nothing that is posted on my social media is of me doing any kind of extreme labor like I would be doing as a firefighter. He repeatedly makes mention of me doing basic things like dancing, driving and carrying light objects for short periods of time. All of this is stuff I'm capable of doing with my injury. None of it is even close to the kinds of physical labor that I do as a firefighter. I'm not claiming that I'm so crippled that I can't do anything. I just can't do the extreme workload required of a firefighter. I dont understand how they are using videos of me doing low intensity normal activities as justification that I can do the extreme job of a firefighter.

Explanation of the nature of my back injury:

I can do 1-2 days of physical labor and then I have to lay in bed and rest my back for a week to get back to a point where I'm not in pain constantly. Anything more than that and I resort to taking Ibuprofen and Vicodin every day that I work. and I have to take pain meds every night to be able to sleep if I do physical labor that day. Any work that requires me to bend over regularly or carry weight on my back causes my back pain to become unbearable in a short amount of time.

Like all people with chronic pain as soon as we feel better and have rested we get up and to try and do things since we feel good at the time. Even if it's things we will pay for later because we still want to try and have a life outside of laying in bed and resting. After resting, I can physically get out and go do physical work for a short period of time, and then the pain starts again and I end up back in bed resting for days. So when you see pictures of me on social media doing normal things, it's not because I'm not injured, it's because I have been resting my back and I'm finally getting out of bed to go live my life a little bit. All of my Dr.s have told me that I shouldn't just lay in bed and I need to get out and do stuff to strengthen my spine. I think it's absurd that doing what my Dr's told

me to do is now being used as an excuse to say I'm not injured. I could see if I was like carrying a backpack around or doing something crazy. But nothing I posted was the equivalent of arduous labor. And the few times I actually went and worked side jobs was because I was trying to see what kind of work I could still do with my injury and to support myself financially and not have to apply for IDR. I feel like I'm being punished for trying to work, Instead of just laying around and expecting to get paid. It turned out that my back hurt too much to do even light construction, and helped me realize that I have to do some kind of computer work.

The psychological stress of my back injury:

Having this back injury has severely affected my mental health and ability to function. Being in pain all the time is very depressing, knowing that most likely this is the way I'm gonna have to live for the rest of my life. Everything I do has an added layer of difficulty because of the pain. Losing my career and not knowing how I'm going to support myself and my wife keeps me up at night regularly. I used to be very active and build art all the time. I'm still trying to come to terms with the fact that I'm very limited in doing all of the things I used to be able to do and love. I spend a lot of my time lying in bed now because that is what keeps my pain level low. I've always been a very emotionally strong person, I think from years of working as a firefighter where we had to deal with difficult situations and keep our composure. But now I find myself regularly breaking down into tears. I just feel so lost, frustrated, unsure of my future, and unsure what I will do. At work, the things that were difficult were always someone else's problem and they would go away when I went off duty. But the problem of my back never goes away, all of it is with me 24/7. This problem affects my whole life, and it's very overwhelming.

Why I'm not capable of working as a firefighter:

Due to the extreme intensity of the job, My back injury just gets worse and worse over time until I'm physically incapable of working. Even when I was still working I had to burden my co-workers by having them do most of the work that was high intensity while I did supportive work to try and still help. This was possible to do for a short period of time but it's not acceptable long term to not be able to carry my share of the workload. I'm technically not allowed to take prescription pain meds while on duty because you need to be fully mentally alert to maintain your safety in dangerous environments. I was only able to function on long assignments while on pain meds which is not sustainable because I could get fired if they found out I was using them on duty. Not to mention long-term use leads to addiction which I have had to deal with several times. Pushing through the pain and working has even led to my leg going numb for 2 days. Even non-emergency tasks such as rolling hose are extremely painful to do. Rolling our hose up after a fire requires me to bend over hundreds of times over the course of several

hours which completely wrecks my back. Being in pain causes me to not get good sleep, which greatly reduces my mental alertness and ability to keep myself safe when working in dangerous environments. There have been several times when I almost died because I was exhausted and not thinking clearly. Being in pain all the time has also affected my mental health, causing me to feel depressed and hopeless. I tried my best to rehabilitate my back and work through the pain. I have done everything the Drs have suggested and after giving my best effort it's clear to me that my condition is permanent, and I'm not physically or mentally capable of doing this job anymore. Even if you deny my IDR, I still can't return to work as a firefighter. I quit because I can't continue to endure that level of pain every day. My body is damaged and incapable of doing this type of work.

This is a direct quote from the CAL FIRE physical/mental job stress description:

"The incumbent typically is required to perform psychologically stressful and/or physically demanding duties consistent with firefighting, disaster response, and emergency medical response, including working in isolated areas, walking or running on uneven rough terrain, and remaining on duty 24 hours or longer without a break while performing these duties.

CATEGORY I - ARDUOUS PHYSICAL WORK

Duties involve field work requiring physical performance calling for above-average ability, endurance, and superior condition, including occasional demand for extraordinarily strenuous activities in emergencies, under adverse environmental conditions and over extended periods of time; requires running, walking, difficult climbing, hiking, jumping, twisting, bending and lifting over 25 pounds; and the pace of work is typically set by the emergency situation."

A specific description of the physical work we are required to do as a Firefighter:

During the peak of fire season which is about 3 months, We get sent out on fire assignments. Each assignment can last up to 30 days, after the 30 days they give you 2-3 days off and then they can re-assign you to another fire which can last up to 30 days, and there is no limit to how many times they can do this if there are fires still burning. While on the assignment we typically work 24hrs on shift and 24 hours off shift. After we are released from our 24-hour shift we have to re-habilitate equipment and drive to a hotel. So our work-to-rest ratio is more realistically around 30 hrs work to 18 hrs of rest. When we are on our shift, a majority of the time, we are required to wear a backpack that weighs 25lbs. When we are assigned to do a "hose lay", which is our primary assignment as an engine crew, We have to wear a 40lb "hose pack" in addition to our backpack and carry a hand tool that weighs 5lbs. So in order to be capable of doing my

job, I need to be capable of carrying 80lbs for approximately 16 hrs a day, every other day for approximately 1-3 months. Even in peak physical conditions, This is extremely difficult. The extreme physical demands of this job can make even a minor injury something that prevents you from being able to do your job.

Trying to say that the stuff I posted on my social media is proof that I can do the job of a firefighter is absurd. Nothing that I posted was even remotely close to the intensity of what we are expected to do working as a firefighter. And none of it was outside the restrictions I was given by my DR.

In "Ultimate Finding" #34:

The judge uses these examples for why she's giving my Dr. less weight in the decision:

She says that my position requires infrequent lifting of 50lbs and occasional prolonged lifting of 25lbs for an extended period. I don't know where the misunderstanding is here but firefighting is way more intense than that. Just look up a video on youtube. She also didn't like that he disagreed with the 2020 MRI finding. But he explained that when you go into an ER to get an MRI, the radiologist is looking for serious life-threatening injuries. And not the subtleties of a chronic pain condition. I would think that a spine specialist of 25 years would be more proficient at reading a back MRI than and ER radiologist. I don't think it is right to give more weight to the less qualified DR. because my Dr. had the opinion that my social media posting didn't undermine the credibility of my back pain. He stated that the social media posts weren't relevant because they didn't show me lifting more than 25lbs or doing anything outside of what I was told I could do by the Dr. There was nothing on my social media that showed me doing anything close to the workload of a firefighter. The instances they have referenced as evidence that I can do the job of a firefighter are... Dancing, Carrying a 10lb Chinese festival dragon, and loading luggage into a car. None of this is the equivalent of carrying 80lbs on my back for 16hrs a day.

Why I feel misled by CALpers:

When I initially called CALpers, I was told that I would be eligible for IDR if I couldn't do the job of a firefighter anymore. And based off of that understanding I borrowed \$14k for this court case because I met that criteria. I provided physical evidence(MRI) and a qualified medical Dr. who said I couldn't do the job of a firefighter anymore. If I would have known that CALpers required you to be so disabled that you never left your bed, I wouldn't have put so much time and money into this. I also had the assumption that if a firefighter got hurt on duty that the state would look after them. Its been very discouraging that after all of the pain and misery of my injury and losing my career that CALpers would be doing everything in its power to not help me when I needed help. And

now im extremely limited in what I can do for work and im just kicked to the curb to figure it out.

Why I applied for disability:

Initially, I wasn't planning on applying for disability. I figured I was capable of working any other normal job because they weren't as extremely physically demanding as firefighting. But after picking up several small side jobs I realized that I wasn't even capable of working a standard labor job. Because I can't do more than a couple of days of light physical labor at a time, it is difficult to find a job that can accommodate the amount of rest I need between working. Unfortunately, a lot of the skills I have are physical and I'm having a hard time trying to figure out what I can do to support myself that doesn't aggravate my back injury. It's clear that I need to avoid doing anything physical if I want to live with minimal pain. So I'm currently limited to some kind of computer work that I can do from my computer workstation I had to mount in my bed because I can't sit in a chair for longer than 4 hours.

Eventually, my debt started to stack up (Currently around 32k at the time of writing this). So I decided I should probably apply for a disability retirement since I was struggling financially and this assistance was available to me. I don't need to be on this forever, I just need help while I try and figure out another career that I can do with my back injury. I don't know if this is something you guys do, because it seems like it's either you get IDR for the rest of your life or nothing at all. But I really only need 1 year of help and I'm sure I can get my finances figured out in that time. And the backpay would help pay down my debt and pay my parents back the \$14k they loaned me for the court case. I would be willing to sign papers that give up my right to the IDR if you would consider doing this. I served the people of California for 15 years and ended up breaking my body in the course of that service. It's disappointing that if you hurt yourself and are out of a career there isn't help to get you back on your feet.