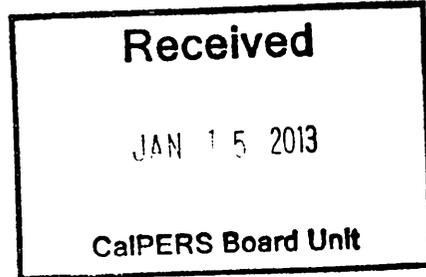


ATTACHMENT C
RESPONDENT'S ARGUMENT



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SETH BOONE

BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM

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|----|---------------------------------|--|
| 8 | SETH BOONE, |) Case No. 2010-0006 |
| | |) OAH Case No. 2012040704 |
| 9 | Respondent, |) |
| | |) RESPONDENT SETH BOONE'S ARGUMENT |
| 10 | vs. |) AGAINST ADOPTION OF PROPOSED DECISION |
| | |) |
| 11 | CALIFORNIA STATE PRISON, LASSEN |) |
| | |) |
| 12 | COUNTY, |) |
| 13 | Respondent, |) |

Respondent Seth Boone submits this Respondent's Argument in opposition to the adoption of the Proposed Decision of the Office of Administrative Hearings dated December 17, 2012.

The three medical experts considered in making this determination of eligibility are consistent in one regard. Dr. Baer Rambach, Dr. Steven McIntire, and Dr. John Branscum have all expressed the opinion that Mr. Boone was substantially incapacitated from performance of the usual and customary occupation of a Correctional Officer, and that this incapacitation was permanent. This was expressed within the report of Dr. Baer Rambach dated December 8, 2010; the report of Dr. Steven McIntire dated April 19, 2011; and the report of Dr. John Branscum dated December 6, 2010.

1 Dr. Rambach later recanted his opinion upon observation of surveillance
2 video which demonstrated Mr. Boone walking for approximately 6 minutes on the
3 first video, and 8 minutes on the second video. Also shown is a long
4 distance, obscured view of Mr. Boone playing with children on a large
5 trampoline. At no time during that shot can Mr. Boone's lower extremities be
6 viewed, nor can the activity in which he is engaged be conclusively
7 determined.

8 Dr. McIntire reviewed both surveillance videos at the time of his
9 initial evaluation and expressed no concern over the content in light of his
10 physical evaluation. He also concluded that due to Mr. Boone's inability to
11 engage in "takedowns or physical restraining of inmates" and inability to
12 "run at full speed", he was substantially and permanently incapacitated from
13 performance of the job requirements of a Correctional Officer. Upon
14 provision of very limited information regarding the occupational requirements
15 of the position of a Correctional Officer, Dr. McIntire recanted his
16 previously expressed medical opinion.

17 At the administrative hearing, testimony from both Dr. Rambach and Dr.
18 McIntire was provided which essentially dismissed all medical findings which
19 had been previously expressed in their reports, concluding based upon
20 approximately 21 minutes of surveillance video, wherein Mr. Boone is never
21 clearly observed engaging in any activity more rigorous than walking, that he
22 had essentially been faking or exaggerating his medical condition; a medical
23 condition which each doctor had previously independently diagnosed.

24 Neither Dr. Rambach nor Dr. McIntire conducted a physical examination
25 in concluding that Mr. Boone was able to perform the full requirements of a
26

1 correctional officer. Dr. Rambach reached the conclusion after viewing
2 surveillance video, and Dr. McIntire reached the conclusion after review of a
3 document which discussed only a few of the numerous physical requirements of
4 a Correctional Officer.

5 Both Dr. Rambach and Dr. McIntire wrote in their reports at the time of
6 their physical evaluations that they felt there was *no exaggeration* by Mr.
7 Boone present in their respective evaluations.

8 Dr. Rambach expressed opinion that the presence or absence of an
9 antalgic type gait was significant in determination of the veracity of Mr.
10 Boone's injury, and the absence of a limp was evidence that he was *not*
11 substantially incapacitated. This despite the fact that within his initial
12 report of December 16, 2009 Dr Rambach did not find Mr. Boone to have any
13 aberration of gait, but in spite of that absence, *did* find Mr. Boone to be
14 substantially incapacitated from performance of the requirements of a
15 Correctional Officer. (Though not thought to be permanent at that time, a
16 position he amended in his December 8, 2010 report.)

17 Uncontroverted and consistent testimony from Mr. Boone and Lieutenant
18 Beck provided a clear picture of the physically rigorous nature of the job of
19 a Correctional Officer. Including the constant, daily possibility of
20 engaging an inmate in a physical altercation for the purpose of protecting
21 one's health and safety, and the health and safety of all those around.

22 Mr. Boone presented clear and uncontroverted testimony regarding a
23 number of activities which he could not physically perform, or which upon
24 performance would incapacitate him from any follow-up activity.

1 It is asserted that the written medical opinions from Dr. Rambach and
2 Dr. McIntire, completed at the time of physical examination of Mr. Boone, as
3 well as the consistent report of Dr. John Branscum, should be taken as a
4 whole and given greater weight than the later expressed conclusions from Drs.
5 Rambach and McIntire, which were based upon extremely limited surveillance
6 video and incomplete information regarding the actual requirements of the job
7 of a Correctional Officer.

8 For the reasons stated, it is asserted that Mr. Boone has satisfied the
9 burden of proof to show that he is permanently and substantially unable to
10 perform his usual duties such that he is permanently disabled. This is
11 supported by the medical reports of Dr. Rambach, Dr. McIntire, and Dr.
12 Branscum which were completed concurrent with a physical examination. The
13 Proposed Decision of the Office of Administrative Hearings should not be
14 adopted, and Mr. Boone should be awarded an Industrial Disability Retirement.

15
16 Dated this January 14, 2013

17
18 

19
20 Matthew C. Watkins

PROOF OF SERVICE BY MAIL (C.C.P. 1013a, 2015.5)

STATE OF CALIFORNIA) Seth Boone v. California State Prison, Lassen County
) ss. Case # 2010-0006
COUNTY OF BUTTE) [REDACTED]

I am a citizen of the United States and a resident of the County of Butte. I am over the age of eighteen years and not a party to the within above entitled action; my business address is 592 Manzanita Avenue, Chico, CA 95926.

On January 14, 2013 I served the within Argument Against Proposed Decision on the parties of record in said action, by placing a true copy thereof enclosed in a sealed envelope, Certified Mail, with postage thereon fully prepaid, for pickup by the United States Postal Service in Chico, CA, addressed as follows:

Seth W. Boone, [REDACTED]
Charee Swedensky, Assitant to Board CalPERS Executive Office, P.O. Box 942707,
Sacramento, CA 94229-2707
CalPERS, Legal Office, Attn: Wesley Kennedy; P.O. Box 942707, Sacramento, CA 94229-2707
California State Prison- Lassen County, PO Box 270220, Susanville, CA 96127
Robert Downs, California Department of Corrections and Rehabilitation, 1515 "S" Street, Rm 556- North, Sacramento, CA 95811

I, Eddie Aguilar, certify, under penalty of perjury, * that the foregoing is true and correct.

January 14, 2013 Chico, California.



*Proof of service by mail forms, being signed under penalty of perjury, do not require notarization.
Cowdery's Form No. 1045 - Proof of Service by Mail (California Action)