

**ATTACHMENT C**

**RESPONDENT'S ARGUMENT REGARDING THE  
PETITION FOR RECONSIDERATION**

SEPT 23. 2013

From: Rory M. Mayberry  
To: Cal Pers, Executive Board Secretary

Subj: Respondants Argument

Ref: 2012-0522

1. Request that the board consider sworn testimony from Dr. McCoy as his testimony was the only competent testimony the board considered during my hearing. He testified when ask, Mr. Mayberry is experiencing alot of discomfort and headaches when wearing the cumbersome vest during his shift. What would you suggest he do? I would tell him, "he shouldn't wear the vest." The reason for bringing this up is because it is a stringent institutional policy that a vest be worn at all times. I cannot even get into the facility without wearing the vest . I would instantly be sent home. The vest issue is a very important argument to me because the main consideraion in denying me industrial disability retirement borders on the fact that although I have had numerous industrial injuries and surgeries I was able to return to work following them and had done well after returning. However, prior to my last year at the prison, the vest was not a part of the standard required attire. In fact when introducing the vest it took over ten months to have it fitted and sent to the facilty for my use. A waiver was in place pending the receiving of the vest allowing those that have not received it yet to continue to work. I was able to maintain by taking pain medication prescribed to me during the last few months of my employment, however, this caused me to experience on a daily basis neck pain and discomfort leading to severe headaches and aggravation more so then before. Although I took more medication, it was not as helpful as before. I Requested on several occasions through my supervisor that the vest was bothersome and causing me additional problems, I was told, It's institutional policy, it's mandatory you wear it. Yet Dr McCoy testified that I shouldn't wear it if it is causing me these problems. Again, I wore the vest only in the last few months and not in the years previously. I truly know that had the vest been implemented years prior, I would not have been able to continue as long as I did.

2. Every injury I received was an Industrial Injury. I find it hard to understand how wanting to continue to work following my surgeries and having the desire to continue to work, and making the effort to continue to work has become the reason for denying me. I would think I would be commended for my effort to want to work not penalized. I was offered no other position where I wouldn't have to wear the vest and to limit my inmate interaction to which I would have accepted readily in order to continue to work, and would gladly come out of retirement even now if the board would consider this. You see, I wasn't planning on retiring until age 65. I lost over four years in meeting this goal. That's twelve percent of my retirement that I lost due to these injuries and having to retire earlier. That is a considerable

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reduction in my retirement pay and due only to my injuries on the job.

3. It's hard to explain to someone else the pain and problems I am having physically on a daily basis. Doctors are great in what they do, yet, one only has to look at the internet and nightly news to hear about patients that have been complaining for years of pain and medical issues and have been mis-diagnosed by numerous experts in the field. Their told by them, that they can't find anything wrong. Fortunately, another expert finds what has been plaguing them for years, and is able to finally treat them properly. I mention this only because it has been written of me that I should suffer only a mid/moderate discomfort due to my cervical spine injury. Dr McCoy's report. I would only say that if what I am experiencing is mild/moderate, I would not be looking forward to severe discomfort! I contest the fact that a Dr. that I saw based on your recommendation for a period of five minutes is able to be the final authority on my medical condition. You see, although he means well, I am still dealing with my pain/discomfort after everyone else goes home.

4. I know that I cannot submit numerous medical reports from Expect neuro-surgeons with well over twenty years experience in their fields because of different institutional protocols, however, there is nothing wrong with mentioning that I received a 65 percent disability rating from workmans' comp due to my industrial disability injurys I have not been given any percentage rating from Cal Pers /Dr.McCoy. Do you know what my Cal Pers percentage rating is? I was told by the board that Cal Pers has a different standard. I would like to know what the difference in my percentage rating is. I request that Cal Pers percentage rating for my disability be provided to me for my records.

5. I cannot emphasize enough in just a letter the progressive worsening of my symptoms. Each month they would get more worrisome to me in that I was feeling badly in the work place, that I had to continually take medication to mask my pain and that physical weakness and the inability to control my pain/headaches was stressing me. Trying to avoid confrontations in a prison environment is not an easy accomplishment. Level four inmates with mental disorders as well as criminal intentions toward officers is an ongoing issue. When I am not 100 percent I am putting not only myself at risk of injury but my co-workers as well. This is not a good situation to be under.

6. I have always given 100 per cent toward my job in the institution. I can say this truthfully as I was requested by numerous nursing staff and block supervisors to be their Senior when their working. They will say others in my position are non-desirable do not have their back. This is another reason that I needed to not return as I am the type of individual that will still give 100 percent at 35 percent capacity. This would eventually catch up to me and result in yet another injury or an injury to a co-worker. My professionalism on the job was problematic for me in that I would never complain that I couldn't do this assignment or that assignment and took over supervision of blocks others were not wanting or could not handle. Or,

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at worst, unit supervisors didn't want them. So, yes, I would continue to get favorable writeups in the performance of my job. I was increasingly aware of my inability to give 100 percent should a physical altercation or situation arise in the work place. I started feeling increasingly fearful about being able to deal with future situations regarding use of physical force.

7. Dr. McCoy was unable to diagnose the situation I suffer with my torn Bicep muscle and my continual cramping/charlie horse pain in my left bicep. He testified that usual these symptoms go away after a few months. He had no explanation as to why mine continues even now, he did state it would be unusual. Guess I'm the unusual, for myself, this cramping continues and is real and my only explanation is that when it happens, it hurts. Don't let anyone tell you that your pain is not there just because its not explainable. You and I know when we are hurting. Probably from your own experience, no one else feels your pain.

8. I know that this letter is not medical evidence nor is it proof of my on-going medical problems. I only ask that you reconsider me as a person that is having these issues and to listen to what I have to say as I will be the one to continue suffering even after all the paper work is filed away. I can't prove it other then through the evaluation of Doctors I was sent to by workers comp, who wrote in their medical evaluations for me not to return to work. However, unable to present this documentation on my behalf, I ask the board to read this letter and accept my integrity and consider my view as the injured Cal Pers Employee. These injurys not only interfere in the performance of my duties in the workplace, They have also prevented me from enjoying activities that use to be second nature to me. To mention just a very few of these activities there are swimming, playing baseball, throwing a ball, any activity involving physical exertion running/jogging I no longer longer participate in. Because these injurys have taken a toll on me physically and have limited my quality of life in alot of ways, I can only hope that this letter would sway you toward re-considering the approval of my Industrial Disability Retirement request.

Thank You,

  
Rory Mayberry

