

ATTACHMENT C
RESPONDENT(S) ARGUMENT(S)

March 30, 2014

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CalPers Executive Office
P.O. Box 942701
Sacramento, Ca. 94229-2701

Received

APR 1 2014

CalPERS Board Unit

Ref No. 9299

Subject: In the Matter of the Application for Disability of JIMMY DAVID HOPE, Respondent and DEPARTMENT OF CORRECTIONS AND REHABILITATION (SIERRA CONSERVATION CENTER). Respondent Case No. 9299.

**HISTORY BEFORE INJURY
(PRE-1994)**

Before I was hired by Sierra Conservation Center, I was a trained Journeyman Baker. I brought 15 years of baking experience with me when I was hired in 1985. Sierra Conservation Center hired me for the Bakery Supervisor II position. I worked in that capacity for a period of 9 years.

1994 - 2009

In May 1994, my life took a dramatic change. I was carrying supplies for the bakery, a fifty pound bag of flour. This was a job usually performed by inmates, but there was a prison lockdown at the time. I twisted, grabbed a table before falling to the floor. The extended damage was, in part due to my size, I was 6'5" 315 pounds at the time of injury.

Dr. Rick Justice was my treating chiropractor. Through numerous visits, adjustments, stretching exercises and heat therapy in his office, I was able to keep walking and doing my Bakery Supervisor II position. There were good and bad days during this time. There were times in Dr. Rick Justice office I would have to remain in his office for hours, just to be able to stand and walk. I followed his advice religiously, as I felt I was slowly getting worse. Eventually, I was sent to Dr. Amsden, Modesto, Ca. for spinal epidurals and medications to help deaden the nerves to alleviate the pain for short periods of time. With countless medications and treatments, it was determined I would eventually need back surgery. Cal Per's requested I pick a QME from a list that was sent to my home. My choice was Dr. Hinchman, Modesto, Ca., a doctor of chiropractic. I kept my appointment with Dr. Hinchman, he thoroughly examined me and provided his report to Cal Per's. Dr. Hinchman recommended Dr. Robert Byers if surgery was needed.

I was summoned to a hearing in Stockton, Ca. for the purpose of a permanent disability rating. The hearing was held by Judge Nelson. The first rating was 70.1. Cal Per's immediately filed an appeal of the rating, and a the permanent disability rating was changed to 67% by Judge Nelson. After the hearing, I was still performing my duties as a Bakery Supervisor for SCC. After a miss step on prison ground my back injury

proceeded to worsen, I was sent to countless doctor's to make the decision to have surgery or not. Cal Per's sent me to a doctor in Sacramento to make a final decision. Upon the decision to have surgery, I was sent to Dr. Robert Byers, Marin County. This was Dr. Hinchman's recommendation.

On April 22, 2002, my back surgery was performed. I was under Dr. Robert Byers care for approximately 2 years for recovery. When it was time for me to resume my job at SCC, Dr Byers requested a job description. He based his recommendations on the job description he was provided by SCC. That job description was for a Bakery Supervisor II position, which I had currently held. Dr. Byers took in consideration my comments to him about my job, the hours I had and the fact that inmates had worked for me several years, and were capable to perform many bakery jobs that would allow me to sit when I needed to. Job restrictions were based on the job requirements he had received. In a report made to Cal Per's Dr. Byers stated, he was unsure I would be able to continue to work for SCC, and had requested I medically retire at that point. I felt that if I could work with restrictions, I would be able to keep my job that I needed to provide for my family. Then I was released from Dr. Byers to return to what he believed was the bakery Supervisor's position. The day I returned to work, I was immediately called to the Work Return Coordinators office. I was told that the bakery had been closed for sometime. She also stated "I would be grandfathered into a cook I position. I had no experience as a Cook I and did not test for that position. I did my best to work in the Cook I position, but the restrictions Dr. Byers had based his release on were not being met by SCC. So, because of the constant pain, I was forced to make an appointment with Dr. Byers. Dr. Byers took me off work for another 3 months. When I was allowed to return to work, I had the following restriction: 1. Continued modified work, 2. A.M. shift only, 3. No overtime, 4. No lifting over 50 pounds, 5. Very limited walking and standing. SCC abided with these restrictions, which allowed me to pull a chair up to the line when I served. This allowed me to sit when I needed to. I was released from Dr. Byers, with the warning again, that I should consider a medical retirement. He released me to Dr. Patrick Rhoades, Modesto, Ca. Pain Management, with the same restrictions that Dr. Byers had enforced. Upon the return to the Cook I position the doctor's restrictions were honored. These restrictions were allowed by SCC for 5 years with no problems. During this time I was still seeing Dr. Patrick Rhoades every 8 weeks, and SCC were presented with the same restrictions each time. My nightmare began on July 25, 2008, when Dr. Rhoades was sent a form from Cal Per's (Physician's Report on Disability) to complete and mail back. It plainly states the following restrictions, 1. No lifting greater than 50 pounds, 2. limited in bending, pulling and reaching. All these restrictions are required by the job description of Cook I, and you must be able to comply with. The form describes what Cal Per's accepts as a members incapacity. After the description, the following questions are ask, 1. "Is the member currently incapacitated from performance of the usual duties of the position for the current employer?" The box YES is checked by Dr. Rhoades, if yes, must describe specific work activities that the member was unable to perform due to incapacity. Dr. Rhoades wrote out, 1. No lifting greater that 50 pounds, 2. Limited in bending, pulling,

pushing and reaching. Question 2. "Will the incapacity be permanent?" The box was checked YES. QUESTION 3. "Was the job description/duty statement reviewed to make your medical opinion?" The box was checked YES. QUESTION 4. "Was the Physical Requirements of Position/Occupational Title reviewed to make your medical opinion?" The box checked YES. Question 5. "Was information reviewed that the member provided?" The box checked YES. It ask for the information the member provided. It was attached, and explained that exact requirements of the job, that are not foreseen, such as weeks of prison lockdowns that force the employees to work long overtime hours for extended periods of time. Also, that many complaints had been filed against SCC for wet, slippery floors that made it unsafe to perform duties. SCC made no effort to correct these situations. Until SCC received this form, stating that the restrictions would be permanent, my life changed. The Work Return Coordinator told me that those restrictions were unfair to the other employees. She also stated that they would be contacting a Cal Per's board in Sacramento to see if these restrictions had to be honored. The decision, of course, was denied. I was told by SCC Work Return Coordinator, that SCC would no longer be able to abide by my doctor's restrictions. I was sent letters for rehabilitation, which were also denied, stating there were no jobs for me to do at SCC. I made an appointment Dr. Rhoades. I ask him if he would lift my restrictions, because SCC would not honor his restrictions. I felt I was being punished for an injury I could not avoid. If I was not able to work at the my job, I would not be able to provide for my family. Even though, I was put in a position to endure the pain, cause further injury and work without my doctor's permission. My doctor said he was unable to lift those restrictions because he felt I was unable to perform the required listed duties of the Cook I position. He also stated that the Sacrament Board had directly made their decision against "The American's Disability Act" by refusing to allow doctor's ordered restrictions. I was left with a really difficult decision, to work going against doctor's ordered restrictions, and do the best job I could with out protection of a doctor, or retire, with a denial of work rehab. After a lot of discussions with my family, I made the choice to retire on August 21, 2008. On January 15, 2009 Cal Per's sent me to Dr. Joseph Serra, M.D. for an evaluation. I kept my appointment and went to see Dr. Serra in a 24 hour Gym in Stockton, Ca. When Dr. Serra came out to get me his first statement was, 'I really don't know why you are here, I haven't received any medical files or MRI's from Cal Per's to do the exam.' Nevertheless I went back with him for a 30 minute exam, with a doctor that had no idea what to look for, other than what he had been told, a back injury. I was not given the opportunity from Cal Per's to have an exam by a doctor of my choice, so that a fair an unbiased decision could be made. Only the exam results that a Cal Per's doctor provided was allowed at the hearing. Then the wait began, the Dr. Serra appointment was in January 2009, and Cal Per' drug out a hearing date for 5 years. If I had not made the decision to retire my family would have definitely endured unbearable suffering. What is an average family suppose to do with no income for that length of time. Cal Per's wants you to lose you home, possibly break up your family and be destitute. Cal Per's really tries to break your spirit, because of an injury you could not avoid.

HEARING JANUARY 30, 2014

I was denied once again by a Cal Per's Judge. So, I filed this appeal once again. Of course, a life decision is again in the hands of a Cal Per's Sacramento Board.

Dr. Serra was able to be present at the hearing because Cal Per's had longer than 10 days to prepare their case. Dr. Serra was able to give his opinion of my back injury. He summed it all up in his ridiculous accusations of my size, age being the main reason I was having pain, and was unable to do my job. I have always been able to perform my work duties before the injury, with the same size I am. Not being a trained attorney, I was offended by his allocations. If my size was causing all my pain, I would not have subjected myself to countless doctors, harmful medications, bilateral sacroiliac joint injections, MRI's and much more, if all I had to do was lose weight. My weight did not have any bearing on my restrictions or be able to perform duties. In Dr. Serra's opinion, he minimized my back surgery, by stating I had a small scar in the surgery area. That scar doesn't tell any of the horrors that went on with the surgery. He did not elaborate on Dr. Byers' surgery report at all, simply going over an MRI, that was done, and again stating that size was the main factor for my back problems. I took this quote from Dr. Byers' surgery report.

The Indications are as follows: "Mr. David Hope has continued to experience progressively worsening symptomatology associated with secondary to underlying pathology of both L4-5 and L5-S1, despite modalities of conservative care. He is now scheduled to undergo micro surgical decompression in the form of laminotomies and discectomies at L4-5, Bilaterally, as well as on the Right at L-5 S1, due to the size of the patient (6'5" 330 pounds), and the extensive nature of his pathology, his surgery proved to be far more difficult than the typical micro surgical decompression would be, and accordingly, the 22 modifier had been added to the procedural code. Specifically, the procedure could have been anticipated to require approximately 2.5 hours, but in reality required 4 hours and 15 minutes of actual surgical time." I was insulted by Dr. Serra's comment making my back surgery insignificant and minor. When Dr. Serra appeared at the hearing, he brought with him a stack of medical records estimated to be 12 to 16 inches thick. I cross-examined him, and ask if he had based his decision on those records, which included doctors' reports, treatments, back injections, medications and MRI reports. He stated yes. He completely made light of all the medical files presented, and once again made the statement, "Due to my size and age that was my only problem with my back." He also stated, "I was completely able to do the position of Cook I. I have weighed between 315 to my heaviest at surgery time of 330 and stood 6'5" most of my adult life. When I was hired by SCC my size was approximately the same. I was perfectly able to do my Bakery Supervisor II position from 1985 until 1994 when the injury occurred. I find Dr. Serra's statement unfounded. I had no control of the bakery closure, and being grandfathered in to a Cook I position after injury. The statement was made in the written decision by Judge Coren D. Wong, that my doctor Patrick Rhoades was not present at the time of the

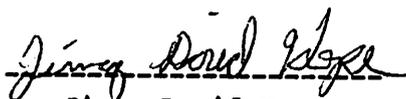
hearing, for cross examination from Cal Per's. The reason why Dr. Patrick Rhoades was not present was due to me finding out 10 days before hearing that I was not being represented by the Attorney on File, Mr. Craig Dykman. This attorney wanted an additional \$10,000, to complete the Industrial Retirement process he began. The Cal Per's attorney believed that Mr. Craig Dykman was representing me, because he did not file a withdrawal from the court. Cal Per's attorney sent all the hearing discoveries to Mr. Dykman's office. I received the discoveries from Cal Per's one week before the hearing. On limited time, Dr. Rhoades was unable to schedule a time slot for the hearing in Sacramento. So, I did the next best thing, and ask Dr. Patrick Rhoades if he would be able to write a letter that I could present. Dr. Rhoades did write the letter, and I was able to pick it up the night before the hearing. The Cal Per's attorney had me fax it to her, and she accepted, and allowed it to be presented at the Hearing. But, my doctor of 10 years was taken in to consideration very little, on the other hand, Dr. Serra's testimony was considered gospel. This was a very impartial, and biased, one sided decision made by Judge Coren D. Wong.

SUMMARY

SCC was able to follow my restrictions for 5 years. When I was deemed Substantially Incapacitated by Dr. Patrick Rhoades, SCC made the decision to force me into retirement. SCC was not present at the hearing for me to cross exam. They waived their rights to the hearing. An Industrial Disability is appropriate because I was medically unable to do all the job descriptions required for the position of Cook I. For this reason Dr Patrick Rhoades made the decision to state that I was Substantially Incapacitated from the performance of Cook I duties. SCC put me in a, "NO CHOICE" position, when my doctor's restrictions were refused, rehab. was denied and my doctor refused to lift the restrictions to keep me on the job and safe at the work place. I present this appeal for a fair and unbiased decision.

I have included letters from Dr. Patrick Rhoades.

DATED: March 30, 2014



Jimmy David Hope
Respondent

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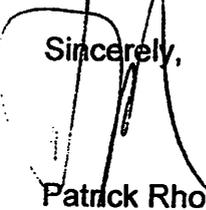
January 29, 2014

Re: Jimmy Hope

To Whom It May Concern:

This letter is regarding my patient, Jimmy Hope. Mr. Hope has chronic lumbar pain. His most recent MRI scan was done on 01/16/2008. They showed no change since the patient's previous examination in 2003. It showed the postop laminectomy to the right of L4-5 and L5-S1, soft tissue density around the thecal sac at L4-L5 and the right side of the thecal side at L5-S1, which does enhance on post contrast sequences indicating granulation tissues, which may be surrounding the exiting nerve roots at those levels disc and osteophytes at L4-5 measuring up to 3mm slightly flattening thecal sac with moderate neural foraminal encroachment due to disc and osteophytes and moderate facet degenerative changes and mild 2-3mm broad based disc bulge at L4-S1 with osteophytes. He is status post two level laminectomy with chronic degenerative changes. He had been through therapy, injections and had surgery. He continues to take medication even up to this day. For many years, we have called him permanent and stationary. It appears that he does not really have a good outcome likely with surgical intervention. We called him permanent and stationary in 2008. At that time, we said that he was placed on modified restrictions including modified work, no more than 8 hours per day, AM shifts only. This was to make sure that he did not work more than he could tolerate. It was also to make sure that he would get adequate sleep. In addition to this, he should not lift greater than 50 pounds which is quite a limitation for a man of his size, have only limited bending, pulling, pushing and reaching. He should be involved in no altercations. So he could not do the job. He was limited in all that fashion. It is my feeling that he could never return as a Cook I and is very limited in his abilities. I do not feel he could work more than 8 hours, work different shifts, lift more than 50 pounds or do pushing, pulling or reaching more than occasionally. I believe he is permanent and stationary with these restrictions, and at the time of retirement, Mr. Hope, was substantially incapacitated from doing his duties as Cook I.

Sincerely,



Patrick Rhoades, M.D.