

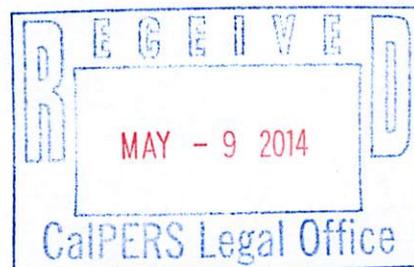
ATTACHMENT C
RESPONDENT'S ARGUMENT

Attachment C

Respondant's Argument

To: Cheree Swedensky, Assistant to the Board
CalPERS Executive Office
P.O. Box 942701
Sacramento, CA 94229-2701

From: Lisa Trevino-Angelo Reference #9454



Attachment C

May 9, 2014

Cheree Swedensky, Assistant to the Board
CalPERS Executive Office
P.O. Box 942701
Sacramento, CA 94229-2701

Re: Respondent's Argument to Reference # 9454

Thank you for the opportunity to respond in writing to the proposed decision made by the Administrative Law Judge during the Administrative hearing on this matter. I respectfully disagree with the decision to decline my application. I further disagree and object to the use of my case being deemed precedential as I was unable to appear, and it is essentially a default decision based on the presentation of only one party. I did not participate at the hearing because I did not have adequate time to prepare a defense or retain a new attorney specializing in Administrative Law, and I had exhausted my legal resources on my trial defense and subsequent appeal.

Additionally the decision cannot possibly include a clear and complete analysis of the issues in sufficient enough detail, as many of my considerable health-related problems were not adequately examined and vetted during the trial. A number of my witnesses, including current and former physicians, were unable to testify. Those that did testify were not given enough of an opportunity to describe in detail the significant disabling nature of my condition.

I do not believe that I received a fair review of my original application for a number of reasons. First, it was revealed at trial that my application was automatically segregated and processed differently due to my age. It appears from the beginning that my application received particularly negative attention, perhaps due to the fact that fibromyalgia varies greatly in individuals and is often misunderstood or unfairly dismissed.

Testimony provided by the CalPERS case specialist during the early stages of my trial indicated that the person assigned to my case could not recall making an effort to interview my supervisor. I cannot comprehend how a fair review of a member's application for Disability Retirement from employment can be made without speaking with an employee's supervisor in detail. CalPERS would have learned important information about my daily struggles at work, as well as the fact that I was working with a reasonable accommodation on a reduced work schedule due to my poor health. I believe that speaking to my supervisor or coworkers would have been an essential initial step in the process of reviewing a member's application for Disability Retirement.

Also, the CalPERS case specialist could not recall contacting or making an effort to contact any of my seven medical doctors, despite being provided with their full name, address, and phone number (which is requested of an applicant on the application form for Disability Retirement). I was asked to provide information that supported being substantially incapacitated from *my current employment*. That was the threshold I was required to meet according to the application booklet provided by CalPERS. In my opinion, my application was not reviewed for that threshold. It appears that it was unfairly reviewed for total and complete incapacitation from all activities of daily living, including participating in society and caring for and supporting my children. I believe this to be true as statements, taken out of context from my entire disability retirement application, were used to develop a criminal investigation against me.

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As a member/applicant I was asked to provide an Authorization to Release Protected Health Information. The application booklet indicates that the Authorization allows medical providers to release medical and employment information to CalPERS "necessary to make a disability determination." Despite my repeated and documented attempts, imploring the CalPERS case specialist to obtain all medical records from my doctors pertaining to my condition, she did not. I do not understand how a thorough review and determination of my application for disability could have been made without the review of my complete medical records from my primary physicians who are specialists in the field of Rheumatology, Neurology, and Psychiatry.

It remains unclear to me how an unbiased assessment of my health and fitness for employment was made. It appears that the decision was based solely on the opinion of the "Independent" Medical Evaluators (IMEs), neither of which specializes in Rheumatology or Neurology. These IMEs are not agreed upon third-party medical evaluators. You must see them, and they are paid by CalPERS. Both IMEs misstated or mischaracterized my evaluation responses during the trial and my defense did not sufficiently cross examine them regarding this important area.

I believe that some responses that were favorable to my application were deliberately omitted. For example, I was asked by the IME psychologist if I did my own shopping, which was demonstrated in the sub-rosa video. I replied that I often did my own shopping. This question and answer was not included in his report. I was inaccurately characterized by both IMEs as uncooperative. I arrived at my appointments on time. I answered all questions asked of me. I participated in the physical exam administered by the IME general practitioner, despite it being unsuitable for my particular illness. I got up and down, bent over, walked around, and allowed her to closely examine my body. I did not complete the Jamar grip strength and she labeled me as uncooperative. She documented my examination and behaved on the witness stand as though I had curled up in a fetal position and did not move until our time was up. I walked into her office on my own two feet and walked out the same way. I do not know how this was incongruent to my behavior in the videos. I have anxiety and I was feeling stress when I was in her office. I was holding my shoulder because stress sometimes causes it to flare up.

In my opinion, a request for the authorization to release medical records implies that a member's personal physicians would be consulted. Additional testimony at my trial revealed that the IMEs paid by CalPERS received sub-rosa video of me prior to my appointment with them. It is my opinion that the process of providing sub-rosa videos to expert witnesses for CalPERS prior to a member's exam is an unfair practice. I believe the inclusion of them, whether viewed prior to the exam or after, suggests wrongdoing on the part of the member (as it removes objectivity). The videos are included in the appointment request to the IME according to copies of documents provided to me by CalPERS. I do not recall a request of the IME to view them after the exam. They are, however, instructed not to share the existence of the videos with the members. It is my opinion that a fair and thorough review of my medical records, which I believe I was entitled to as an applicant, would have provided a positive outcome instead of a criminal investigation. It would have provided an accurate depiction of me honestly attempting to cling to gainful employment as I struggled with a chronic illness.

One key element that occurred at trial without proper analysis was the fact that I suffered and continue to suffer from disabling components of fibromyalgia, chronic fatigue, myofascial pain syndrome, diabetic neuropathy, and anxiety and depression to varying degrees on a daily basis. I never claimed that these disabling conditions forever rendered me a bed-ridden invalid, yet that is how it was portrayed by the prosecution.

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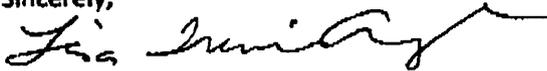
There was never enough focus given to the qualifying aspects of my condition included on the application indicating that I could not effectively do many aspects of my job "most days, on a routine basis without pain, or in order to be productive in a work environment." Again, the frequent disabling nature of my health conditions were sadly exploited, mocked and misrepresented by the prosecution at trial, and taken out of context of my original application.

In conclusion, a series of video clips comprising a few hours of activity, taken over several months, showing me perform low-impact activities that I never claimed I was unable to do (without qualification) - became the focus of the trial. What was not focused upon was how these isolated activities do not provide an accurate assessment as to whether or not I can work eight hours a day, five days a week. Many doctors agree that all individuals have different pain thresholds; and you can't judge the level of an individual's pain by the expression on their face or their body language, especially someone who is used to constantly battling and coping with chronic pain and anxiety.

Had I been afforded the opportunity to defend my application at the Administrative Hearing level first, which seems the more appropriate initial step, I believe I would not have suffered a criminal investigation and the subsequent character assassination that followed.

I regret not providing these comments and facts during the administrative hearing. However, I submit these comments against the proposed decision, and feel that if any decision is decided against me, it should be without precedent.

Sincerely,



Lisa Trevino-Angelo