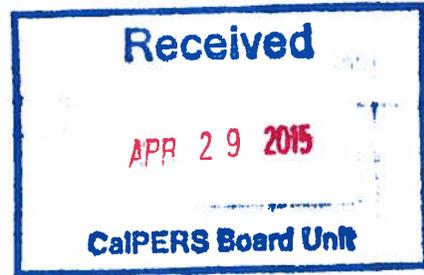


ATTACHMENT C
RESPONDENT'S ARGUMENT

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5 Sacramento, CA 95821
6 Telephone: (916) 514-1097
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8 *Attorneys for Respondent*
9 *Joseph Lujan*



10
11
12 **BEFORE THE**
13 **CALIFORNIA PUBLIC EMPLOYEE'S RETIREMENT SYSTEM**
14 **STATE OF CALIFORNIA**

15 Case No. Ref No.: 2014-0400

16 OAH No.: 2014060526

17 **RESPONDENTS ARGUMENT**

18 In the Matter of: In the Matter of the
19 Cancellation of the Application for Industrial
20 Disability Retirement of JOSEPH A. LUJAN

21 Respondent,

22 and

23 CALIFORNIA STATE PRISON –
24 SACRAMENTO, CALIFORNIA
25 DEPARTMENT OF CORRECTIONS AND
26 REHABILITATION,

27 Respondent.

28 Respondent JOSEPH A. LUJAN requests that the proposed decision of the Administrative Law Judge Coren D. Wong, dated April 3, 2015 be accepted by this Board and that this Board find that Respondent Joseph A. Lujan be granted the right to file and Application for Industrial Disability Retirement. We also request that the board designate this decision as a **precedent** in whole. As can be seen in the legal analysis Mr. Lujan was not terminated by the Department of Corrections and that the existing case law of *Haywood, Smith and Vandergoot* do not apply. The basis for this decision in fact is that prior to any active termination taking place Mr. Lujan had retired for service and as pointed out at page five, Mr. Lujan; never being terminated by California State Prison Sacramento, did not qualify for the position of CalPERS in the cases cited in this matter. all preexisting cases cited were based on the fact that there was an actual

1 termination of employment and not a designation of an anticipated termination. Also, as pointed
2 out, because Mr. Lujan had received a re-service retirement it did not foreclose the possibility of
3 future reinstatement should his condition change. Thus Government Code section 21190 applies
4 in this case. because of the application of the Government Code sections and the lack of actual
5 termination, the **precedent** decisions raised by respondent, California State Prison Sacramento
6 cannot apply. No cause thus exists to uphold the CalPERS determination that respondent was not
7 eligible to file an Application for an Industrial Disability Retirement. I believe this is **precedent**.
8 It may be used again. The issue in preexisting cases all involves the termination of the individual,
9 not the proposed termination of the individual and this legal issue will again be discussed.

10 WHEREFORE we respectfully request that this decision be designated ad **precedent**
11 decision. We also request that a review of the decision take place and allow Mr. Lujan the ability
12 to submit his Application for an Industrial Disability Retirement.

13 Dated: April 20, 2015

14 Respectfully Submitted,

15 METZINGER AND ASSOCIATES

16 
17 RONALD M. METZINGER
18 Attorney at Law
19 *Attorneys for Respondent*

VERIFICATION

I, RONALD M. METZINGER,

I am the attorney for Respondent in this action.

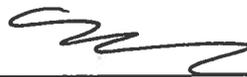
I have read the foregoing

(XX) RESPONDENT'S ARGUMENT

and I am informed and believe the matters contained herein to be true and correct and on that ground, I allege that the matters stated herein are true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 23 day of April 2015, in Sacramento, California.



RONALD M. METZINGER
Attorney at Law

1 In re: JOSEPH LUJAN,
2 Case No.: Ref No.: 2014-0400
3 OAH Case No.: 2014060526

4 **PROOF OF SERVICE**

5 I, Tereta McClory, CCLS, declare:

6 I am a resident of the United States and of the State of California. I am employed in the
7 County of Sacramento. My business address is 3838 Watt Avenue, Suite D-400, Sacramento, CA
8 95821. My telephone number is (916) 514-1097. My fax number is (916) 514-1334. I am over
9 the age of eighteen years, I am not a party to the within action or proceeding. On this date I served
10 the following document:

11 **(XX) RESPONDENT'S ARGUMENT**

12 I am familiar with the practice of the collection and processing of correspondence for
13 mailing with the United States Postal Service. In accordance with the ordinary course of business,
14 the above-mentioned document(s) would have been deposited with the United States Postal
15 Service on the same day on which it was placed at the Law Offices of Ronald Metzinger for
16 deposit.

17 **Mail** – on interested parties in this action by mail by placing, or causing to be placed, a true copy thereof
18 enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail in Sacramento,
19 California.

20 **E-mail or electronic transmission** – Based on a court order or an agreement of the parties to accept
21 service by e-mail or electronic transmission, I caused the documents to be sent to the person(s) at the email
22 address on each person listed below. I did not receive, within a reasonable time after the transmission, any
23 electronic message or other indication that the transmission was unsuccessful.

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

28 Joseph Lujan

Elizabeth Yelland
CalPERS Legal Office
elizabeth_yelland@calpers.ca.gov

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 4/23/15

By: *Tereta McClory*
Tereta McClory, CCLS
Declarant