

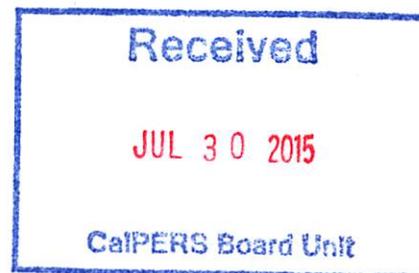
ATTACHMENT C
RESPONDENT'S ARGUMENT

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Joel Marzan

July 17, 2015

California Public Employees' Retirement System
CalPERS Executive Office



In the matter of the Proposed Decision of the Administration Law Judge of the Involuntary Reinstatement from Industrial Disability Retirement, I am asking the Board to delay or deny the proposed decision. I am requesting a delay to have a second reevaluation by a neutral Psychiatrist to determine my incapacitation of the essential duties of a Correctional Officer or to deny the proposed decision based on my medical reports.

I requested my medical records from CalPERS to prove my Psychological Disability. It was determined from Benjamin Kaufman, MD, Adult and Child Psychiatrist and Luigi Piciucco, Ph.D., Psychologist I am incapacitated from the duties as a correctional officer. I will prove to the board that I am incapacitated to perform the duties as a corrections officer.

The mental requirements of a Correctional Officer position are:

- *Must have mental capacity to be aware/alert in their observation/identification of security risk. Correctional officers are at risk to a variety of inmate behaviors, including but not limited to aggressive or violent inmate.*
- *Must have the mental capacity to judge an emergency situation, determine the appropriate use of force, and carry out that use of force. Use of force can range from advising an inmate to cease an activity to firing a lethal weapon at an inmate when another life is threatened with great bodily harm or death.*
- *Must have the mental ability to recall an incident in order to accurately document the incident Writing.*

In addition, in the Department Operations Manual (DOM), section 31060.8.2 peace officers must be:

- *Be free from any physical, emotional, or mental condition which might adversely affect the exercise of the powers of a peace officer. Physical condition shall be evaluated by a licensed physician/surgeon. Emotional and mental condition shall be evaluated by a licensed physician/surgeon or by a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorder.*

In DOM, section 31070.8.31 and in California Penal Code, section 26305, currently as a retired peace officer from psychological disability I will not be endorsed a Carry Conceal Weapon (CCW). My medical file has a diagnosis of psychological condition disqualify me.

DOM

- *The employee is retiring because of: (1) Employee has a psychological disability (PC 26305(a)).*

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PENAL CODE

- *26305. (a) No peace officer who is retired after January 1, 1989, because of a psychological disability shall be issued an endorsement to carry a concealed and loaded firearm pursuant to this article.*

My diagnosis is Adjusted Disorder with Mixed Anxiety and Depressed Mood, Pain Disorder Associated with Both Psychological Factors and General Medical Condition, and Post-Traumatic Stress Disorder (PTSD) - Chronic from Wayne Fulton, Ph.D., Luigi Piciuccio, Ph.D., Benjamin Kaufman, MD Psychiatrist, and my treating License Clinician, Greg Ottersen.

Included are direct reports from Dr. Fulton, Dr. Piciuccio, Dr. Kaufman, and Mr. Ottersen.

PSYCHOLOGICAL EVALUATION

I was referred for a psychological evaluation with Wayne M Fulton, Ph.D. Clinical Psychology. Dr. Fulton's evaluation was on May 17, 2010 for 1 1/2 hour. Dr. Fulton reported the following

DSM-IV diagnoses

Axis I - Adjusted Disorder with Mixed Anxiety and Depressed Mood

Axis II - Deferred

Axis III - Per Dr. Fainsztein - resolved right biceps hematoma

Axis IV - Occupational problems-job stress and difficult work situation

Axis V - GAF (current) = 65

Dr. Fulton recommendations were

1. Cognitive-behavioral psychotherapy
2. Consider psychopharmacological medication consultation if his symptoms do not improve

On March 17, 2011, a Qualified Medical Evaluator Luigi Piciuccio, Ph. D. Clinical and Forensic Psychology requested by State Compensation Insurance Fund evaluated me. Dr. Piciuccio was to address diagnosis, treatment, future psychiatric care, causation, disability status, permanent and stationary status, apportionment, injured worker status and work preclusion and restrictions. His evaluation included the administration of a detailed psychodiagnostic interview, a mental status examination, and a battery of psychological test. Dr. Piciuccio reported as follow

DSM-IV TR

Axis I - 319.28 Adjustment disorder with Mixed Anxiety and Depressed Mood

308.91 Posttraumatic Stress Disorder - Chronic

307.89 Pain Disorder Associated with Both Psychological Factors and a General Medical Condition.

Axis II - Personal Disorder NOS (passive-aggressive, paranoid)

Axis III - Pain in right bicep, elbow, and shoulder

Axis IV - Assault on 01/28/10

Axis V - GAF = 65 Mild symptoms. GAF of 65 is equivalent to 8% (eight percent) WPI (Whole Person Impairment)

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Causation:

Q. Are conditions related to work factors as outlined?

A. The applicant's adjustment Disorder with Mixed Anxiety and Depressed Mood is predominantly (at least 51%) caused by the 01/28/10 industrial injury (suffered assault).

Q. Is there a mental disorder causing disability or need for treatment and can it be diagnosed pursuant to subsection 3208.3 (a)?

California Labor Law Code:

'3208.3. (a) A psychiatric injury shall be compensable if it is a mental disorder which causes disability or need for medical treatment, and it is diagnosed pursuant to procedures promulgated under paragraph (4) of subdivision (j) of Section 139.2 or, until these procedures are promulgated, it is diagnosed using the terminology and criteria of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Third Edition-Revised, or the terminology and diagnostic criteria of other psychiatric diagnostic manuals generally approved and accepted nationally by practitioners in the field of psychiatric medicine.'

A. YES. The applicant is suffering from mental conditions (Adjustment disorder with Mixed Anxiety and Depressed Mood, Posttraumatic Stress Disorder, Pain Disorder) that require treatment and can be diagnosed pursuant to subsection.

Q. Are actual events of employment predominant as to all causes combined of the psychiatric injury?

A. The applicant's Adjustment Disorder is predominantly (at least 51%) caused by the 01/28/10 industrial assault.

Secondary Issues:

Q. Have there been periods of partial/total temporary disability?

A. YES. The applicant has been totally and temporarily disabled on an industrial caused psychiatric basis since the date of injury. The suffered assault is the predominant cause of his Adjustment Disorder with Mixed Anxiety and Depressed Mood, rendering him unable to perform his usual occupational duties on a psychiatric basis.

Q. Is there a need for current and future medical care to cure/relieve the applicant of the effect of his industrial injuries?

A. In terms of treatment, the applicant underwent "several visit" with Wayne Fulton, Ph.D. a clinical psychologist. He told me that Dr. Fulton's psychotherapy was very useful and helpful to him. In terms of treatment recommendations, I would recommend additional psychotherapy for the applicant to ameliorate his symptoms of anxiety and dysthymia secondary to the incident of 01/28/10. However, he told me that he would not participate in any further treatment and/or psychotropic therapy. Nevertheless, he should be awarded ten additional individual cognitive supportive psychotherapy sessions in case he has a change of opinion as well as consultation with a psychiatrist for psychotropic therapy.

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These recommendation for treatment are consistent with ACOEM Guidelines. The Guidelines not that pain may trigger anxiety, stress, and cause depression (pages 112, 113). On page 154, the Guidelines refer to depression scales and inventories as an effective way to identify and quantify depression "which may be cause of delayed return to work or may be a result of loss of function or work status.

Q. Is the condition permanent and stationary?

A. YES. The applicant's psychiatric status has been stationary for a reasonable period of time. Additionally, he appears to have attained Maximum Medical Improvement from medically appropriate psychotherapy treatment provided by Dr. Wayne Fulton, Ph.D.

The applicant's permanent partial disability impairments are rated according to the GAF system, as outlined within Guides to the Evaluation of Permanent Impairment, Fifth Edition, published by the American Medical Association.

Q. Is apportionment appropriate?

A. YES

Q. Are the medical findings consistent with the mechanism of injury alleged by Mr. Marzan?

A. YES

Qualified Injured Worker Status:

The applicant is a Qualified Injured Worker, entitled to vocational retraining as a result of the assault of 01/08/10, he developed an Adjustment Disorder with Mixed Anxiety and Depressed Mood marked by anxiety, Depression, irritability, excessive anger with impairment in his judgment.

Dr. Piciucco also stated, "**Lastly Mr. Marzan Displayed and candidly acknowledge potentially poor judgment which could render him a danger to others or himself if he were to return to his former occupation. He is restricted from performing the usual functions of a correctional officer.**"

Note: Documentation is on file with CalPERS, page PERS00145

Dated July 22, 2011, CalPERS Benefit Service Division sent a letter in response to my industrial disability retirement application. CalPERS stated that they must have sufficient medical information to make a determination as to whether or not I am substantially incapacitated for the usual job duties. I met with a Psychiatric Independent Medical evaluator Benjamin Kaufman, MD, Adult and Child Psychiatry and Psychoanalysis on August 29, 2011. The examination lasted two clinical hours.

Dr. Kaufman's diagnosis and response to whether if I am incapacitated for the usual job duties as reported on his psychiatric evaluation report

Diagnosis:

Axis I - Post-Traumatic Stress Disorder (308.91); anxiety Disorder with mixed anxiety and depressed mood (309.28)

Axis II - Dysphonic Personality Disorder

Axis III - Human bite, no lasting injury; resolved human bite wound to his right biceps.

Axis IV -Occupational Problems with job-related stress

Axis V - GAF Score: 60

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Question and Answer as stated on Dr. Kaufman's report that is on file with CalPERS, page PERS00194-PERS00195.

1. Are there specific job duties that you feel the member is unable to perform because of a physical or mental condition? If so, please explain in detail.

Mr. Marzan will be unable to interact with inmates who have potential for violence in any facility. He is clearly frightened of being endangered while pursuing his job duties wherein he might be attacked or challenged and he might be forced to respond. He will not be able to provide for the safety of his peers nor can he be riled upon to perform in an orderly rational way to maintain order. Rather, his tendency will be to escalate and make matters worse in a setting which a competency at bringing order and calmness to a situation in an urgent or emergent situation. He will react over-aggressively in order to protect himself from harm.

2. In your professional opinion, is the member substantially incapacitated for his/her performance of the usual duties? If yes, on what date did the disability begin?

Yes, he is substantially incapacitated for the performance of his usual duties. This condition began on 1/28/10

3. If incapacitated, is the incapacity permanent or temporary?

His incapacity is permanent and will last at least one year during which he should be treated with psychotherapy and medication. Mr. Marzan has been changed, altered by his experience that probably follow on his experiences with his motor vehicle accident some years ago during which he sustained significant injuries to his back. His current condition began on 1/28/10.

4. Is the member cooperating with the examination and putting forth the best effort, or do you feel there is exaggeration of complaints to any degree?

Mr. Marzan cooperated fully with the examination and put forth his best effort. While he exaggerates, the exaggeration is not out of malingering or intent to deceive. It is difficult to assess the degree of disability that is a carryover from his prior post-traumatic stress disorder incurred when he was involved in the motor vehicle accident described earlier in this report. He continued to have pain from that accident and it probably affects his anticipatory mental condition and readiness to react aggressively.

5. What part of the disability, if any, is due to non-industrial or pre-existing condition? Please explain.

I am not qualified to describe the percentage of disability due to his preexisting condition.

6. Is the condition either caused, aggravated, or accelerated by his/her employment? Explain. Would these complaints be present if the member had not been employed in his job?

Yes, the condition is both caused and aggravated and accelerated by his employment. I do not believe that these complaints would be present if Mr. Marzan would not be employed in an atmosphere in which he was confronted with violent inmates that show how were not controlled by his associates. He has profound distrust of supervisors and administration as he is convinced they allowed an inmate who had a violent disposition toward him to be on his unit and he felt he was inadequately protected. He felt that this would be repeated as his peers are not sufficient conscious of his vulnerabilities, both emotional and physical.

In closing, I am currently in treatment with Craig Ottersen a License Clinical Social Worker since May 2014. He is helping me cope with my Post-Traumatic Stress Disorder and Anxiety. He has diagnosed me with

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DSM IV Diagnosis

Axis I - 309.81 PTSD

Axis II - V71.09 No diagnosis on Axis II

Axis III - Right arm pain and trauma

Axis IV - Job stress triggered traumatic

Axis V - 50

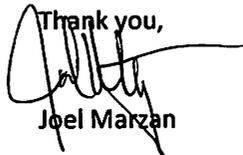
I looked for treatment after Robert F Riley, CalPERS Retirement Program Specialist said I was reinstated. I got a mental break down that day and could not concentrate on my job. I was a temporary worker at Health Net in the Medi-Cal customer service department answering phones. I told my manager I could not concentrate and provide accurate service to the members. I was depressed and an anxiety attack knowing I was returning to my former position. Robert did not provide any information on what I could do but said, "Call your facility, they are waiting for you to return to work." I did not know what to do but I remembered in Health Net training that mental health was covered. I called my insurance company and inquire about mental health coverage. It is a covered benefit and I scheduled an appointment with Greg Ottersen to help me cope with condition.

My diagnosis of Depression, anxiety, and PTSD was triggered with the information given by Mr. Riley. Knowing I was returning to a violent place where I was assaulted. I could not sleep, concentrate, I had mood swings, and I did not want to be around people. The news was affecting my relationship with my family and work. I had meetings with my manager saying that customers were complaining about my phone etiquette. Prior to the news, I was had no complaints, followed protocol, met daily quota.

When Dr. Bates reevaluated me, I was in an office atmosphere with no violence. I had my own cubicle, my own space, no one to harass me. No trigger and I was calm, opposite from my former position as a Correctional Officer.

I am asking the board to look into my medical records that CalPERS has and determined my qualification of an Industrial Disability Retirement approved on November 1, 2011. There were three individual Doctors that had the same or similar diagnosis and two Doctors stating I am incapacitated from the usual duties as a Correctional Officer compared to Dr. Bates' one time opinion.

Currently, I am in treatment with Mr. Ottersen. This is my first professional treatment since seeing Dr. Fulton in 2010. I had no professional treatment since then and have not understand the type of psychological disorder and unaware of the symptoms I have been getting until I met with Mr. Ottersen. To self-rehabilitate a psychological disorder is not the professional treatment that I need. Dr. Bates said, I was self-rehabilitated, I did not know the diagnosis until I request my medical records. I could not have self-rehabilitated my condition but rather suppress the condition.

Thank you,

Joel Marzan