

ATTACHMENT C
RESPONDENT(S) ARGUMENT(S)

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September 2, 2015

To the Board of Directors.

I have been and am physically able to return to work as a California Highway Patrolmen. Dr. McSweeney was my treating orthopedic surgeon since 2006. When I approached him in 2011 to see if I could return to work he examined me and was very impressed by the recovery that I had made. He continued to see me as I went through the process of reinstating. At the end of every visit he would tell me that I was good enough to return to work. He had me perform a functional capacity test and during the strength portion of it they ran out of weights for me to pick up and test with. The maximum amount they had was 110 pounds and I did it with ease. Also, during that test I picked up and carried a 100 pound "heavy bag" out of their office, down the hall and returned with it. They had me perform a series of sprints. I passed those tests and as a result Dr. McSweeney said I was more than capable of returning to work.

After seeing the 3 separate orthopedic surgeons and getting the go ahead from them I went to and passed the Physical Agility Tests given to me by the CHP recruitment staff at the Border Division Office in June of 2011 when I had applied for reinstatement. At this point I was told I needed to move back to California by Sharil Smith, the reinstatement coordinator for the CHP or I would have the world's longest daily commute. She informed me that they would have me in the academy in Sacramento for requalification in October of 2012. I sold my house and moved back to California at that point. They had Sharil Smith on their witness list then removed her so she could not testify that they had offered me employment as a result of applying for reinstatement, which would nullify their argument for an appeal to my reinstatement.

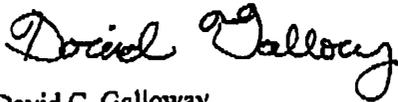
Three separate orthopedic surgeons, including Dr. Lane, hired by the CHP to examine me, wrote "return to work" reports for me to be reinstated. The State did not include Dr. Lanes report's in evidence or have him testify at the hearing most likely because his findings contradict their case. They would not allow the mention of the reports into evidence either, which I find extremely prejudicial. Instead the State hired a family practitioner to read reports from 2005-2007 that are far past outdated and do not reflect my current medical status. The last doctor appointment I had with Dr. McSweeney was 5 weeks prior to him testifying and he slapped me on the back and said "You worked real hard to get here, let's get you back to work!" He then took the stand and completely contradicted every single report he has written in the last several years. When I questioned him on the stand he stated that his medical opinion had changed, but it had changed without a new examination of me and would not expound on why his view changed or what his new view was based on. Since the court date he refuses to see me even as a patient and his Physician Assistant, with whom I have spoken with states that Dr. McSweeney refuses to speak with him about why he testified the way he did.

I have been and am daily working on maintaining and improving my physical abilities. I am routinely running as I am training for a 5K for this September. I help coach my daughter's softball team in which I

run the bases and squat to catch for the pitcher during warm ups and demonstrate drills for them. I have several times acted as the umpire for games and scrimmages between the teams in her softball organization. This requires squatting for extended periods of time and then quickly moving to watch the play at the bases after the pitch was caught or hit. I have been lifting weights and can perform a dead-lift of 350 pounds. For people to say I am unable to perform these tasks is absurd. I have routinely offered to prove my abilities to do any of the tasks that they have said I am incapable of completing.

I can and am willing to demonstrate my ability to perform the 14 critical tasks required. I have recovered from my injury and am physically able and willing to return to work. If I were not capable of doing the job tasks I would not be asking for this opportunity. My honor and integrity would not allow me to return to this work if I was not fully capable, I would not put myself, fellow officers, or the general public at risk. In 2006 when I retired due to this injury I was not at that time competent in doing the required tasks. I was told that with a lot of hard work I could get the strength and stability back and be able to return to work. That was my goal and I worked very hard to get to this point. When an officer has changed their situation to the point where they are able to physically do their job they should be able to go back to work. I personally know an amputee, Sgt. Lincoln McKenna 17185, who continues to work for the CHP with a prosthetic leg after a motorcycle collision.

I implore you, the board of directors, to set aside this ruling from the Office of Administrative Hearings and give me the opportunity to have a full board hearing. If you will remand this to be heard before your board I will I can assure you will be convinced that I am more than capable of returning to work and executing all duties required of me as a CHP officer.



David C. Galloway