

ATTACHMENT C
RESPONDENT'S ARGUMENT

October 1, 2015

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



Attention: Cheree Swedensky, Assistant to the Board
Board of Administration of the California Public Employees' Retirement System
(CalPERS)

SUBJECT: In the matter of Application for Disability Retirement of GERALD S. WOLFF,
CalPERS ID Number ending ***926886

Dear Members of The Board of Administration:

This letter is written in response to the proposed denial of my application for CalPERS Disability Retirement benefits. It is my hope that The Board will not only reconsider the proposed decision of Timothy J. Aspinwall, Administrative Law Judge. It is also my hope that my situation will serve as an opportunity for The Board to reevaluate the overall effectiveness of the CalPERS Service Pending Disability application process, as well as the effectiveness of their customer service to their public service employees who have loyally served the State of California.

Documentation contained in my CalPERS file will substantiate the following chronology of events throughout the CalPERS application process.

- Physician's Report of Disability forms from my doctors were submitted to CalPERS on January 13, 2013, February 5, 2013 and September 18, 2013, substantiating my inability to sit for extended periods as a result of a compression fracture to my T6 vertebrae and resulting the pain. The forms were further supported by over 400 pages of my medical records, which were submitted on several occasions. On October 31, 2013, after numerous requests and re-requests for Position Requirements, additional medical records and Physician's Reports, I was informed by Genet Henry that the Physician's Report from my orthopedic surgeon was not clear enough. I was reexamined by my doctor on November 8, 2013 and a new Physician's Report was submitted to CalPERS on that date clearly stating that my condition is "Permanent" and that "Gerald has pain with prolonged sitting and therefore is restricted from prolonged sitting."
- Despite the clear documentation provided by my orthopedic surgeon, my primary care physician and my medical records, I was referred for an IME with Dr. Serra. The most recent Physician's Report documenting the permanency of my disability and the pain I

experience with prolonged sitting was not included in the documentation sent to Dr. Serra, and therefore, was not considered in my IME.

- My actual examination by Dr. Serra lasted no more than 15 minutes. I struggle to understand how a cursory physical examination by Dr. Serra preempts months of documented care by my doctors, all of whom support my application for disability, as well as my testimony under oath at my appeal.
- My exam was scheduled for 1:00 p.m.; however, Dr. Serra did not arrive until approximately 1:45 p.m. According to Dr. Serra, the entire evaluation took one and a half hours. An evaluation report was sent to CalPERS the same day, leading one to believe that either Dr. Serra writes very quickly, or he had already formed his opinion before examining me and without the benefit of complete documentation from my doctors.
- Dr. Serra's testimony at appeal was filled with unsubstantiated hearsay remarks, unsupported by any medical documentation about my use of prescriptive medications and medical marijuana. His testimony at appeal reflected an evaluation based solely on my ability to bend and move during his examination, as well as his opinion that "the body heals itself," but he failed to acknowledge that chronic pain can persist without evidence of injury. Nor did Dr. Serra explain in his evaluation report or at appeal how an individual with chronic back pain exacerbated by sitting can expect to perform a job in which he is tethered to a phone and computer for 6-8 hours a day.
- Medical reports submitted to CalPERS reflect the numerous traditional and non-traditional approaches I have attempted in an effort to relieve my pain, including the following:
 - Radiofrequency ablation
 - Thoracic Bilateral Medial Branch Block
 - Acupuncture
 - Tens Unit
 - Chiropractic
 - Physical Therapy
 - Light exercise with a person trainer
 - Heating and numbing patches
 - Butterfly clavicle brace
 - Pain killers, anti-inflammatories and muscle relaxers
 - Myofascial release
 - Rest and relaxation

- Absence records from EDD, which were submitted to CalPERS during the application process and at appeal, reflect my numerous partial workdays, documenting my ongoing attempts to report to work daily and maintain my attendance.
- Although I did not call upon my orthopedic surgeon to testify at my appeal, I did, in fact, testify under oath as to the chronic back pain I experience every single day, the many activities I have been forced to discontinue, my efforts to control my susceptibility to Type 2 Diabetes through limited exercise and my careful use of pain medication in order to avoid over-dependence. Additionally, I attempted to resubmit the final Physician's Report that was not included in the IME; however, this was rejected as "hearsay" without my orthopedic surgeon present.

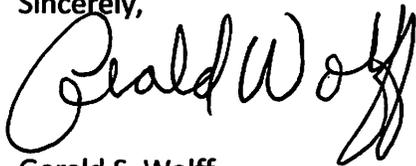
While I do not dispute Dr. Patel's and Dr. Serra's assessment that the original fracture to the T6 vertebrae has healed, this has not relieved the unexplained, residual thoracic pain I continue to experience across my mid-back as a result of this injury. As a result I have given up all of the following in an effort to control my pain:

- My 11-year career as a valued and respected State EDD employee.
- Snow-skiing
- Long-distance bicycling
- Kayaking
- Scuba diving
- Long-distance auto travel
- Household projects and maintenance

I ask that the Board review my file and the plethora of documentation supporting my claim for CalPERS Disability Benefits and that you reconsider the denial of my benefits.

Thank you for your consideration in this matter.

Sincerely,



Gerald S. Wolff

Attachment: Chronology of My Medical Care April 15, 2010 through September 3, 2013.

Chronology of My Medical Care
Gerald Wolff
April 15, 2010 through September 3, 2013

Date	Services
April 15, 2010	Back injured at fitness center. Seen at emergency room.
April 20, 2010	F/U with Primary Care Physician (PCP) – Dr. Nassim
June 1, 2010	Referred to Physical Therapy for back pain.
June 10 – July 22, 2010	Physical Therapy, heat pads, ibuprofen, stretching exercise, no weight lifting.
July 21, 2010	F/U with PCP. Continue PT, muscle relaxant and Vicodin for pain, referral to PMR.
Sept 14, 2010	Physical Exam
Sept 20, 2010	F/U with Dr. Stephenson - Pain Management (PM) for assessment. Trazodone prescribed. Stretching and aerobic exercise recommended. Electro diagnostics imaging ordered, not taken.
Oct. 25, 2010	F/U with PM – Dr. Stephenson. Carisoprodol for pain. No referrals made.
Nov 2, 2010	F/U with PCP – Nassim. Referred for x-ray f/u with Dr. Stephenson.
Nov 2, 2010	LSP, Comp, with Flex/Ext completed.
Nov 16, 2010	F/U with PM – Dr. Stephenson. Hydrocodone-Acetaminophen ordered.
Dec 21, 2010	F/U with PM – Dr. Stephenson. TENS unit prescribed.
Dec 30, 2010 – Feb 28, 2011	Electrical Nerve Stimulator used.
Jan 31, 2011	F/U with PCP – Nassim. Stretching exercises demonstrated. Referred to sports medicine.
Mar 10, 2011	Seen by Sports Medicine – Dr. Patel. Focus of exam on knee problem. Instructed to return if back pain doesn't improve.
Apr 1, 2011	F/U with PCP – Nassim. Referred to physical therapy. Meds continued. Butterfly clavicle brace for improved posture at work. Referred to PT for posture training.
April 13, 2011	Self-referral to Chiropractic Health.
Summer 2011	Suspend kayaking activities.
Aug 3, 2011	F/U with PCP – Nassim. Referral to chiropractor. Discussed 6-8 weeks off work.
Aug 23, 2011	F/U with PCP – Nassim. Placed on temporary state disability until October 19, 2011. Lidoderm patch prescribed.
Aug. 31–Oct 12, 2011	Self-referral to Simmons Chiropractic. (4 visits)
Sep 13, 2011	F/U with PCP. Recommend physical therapy, home rest, no heavy lifting or repetitive lifting. Will proceed with MRI of thoracic spine and PM if no relief.
Sep 19-Oct 4, 2011	Physical Therapy through Mercy Medical. (3 visits)
Sept 28-Nov 23, 2011	Self-referral to acupuncturist, Michele Tahara. (8 visits)
Oct 1, 2011	Suspend Fitness Center membership.
Oct 11, 2011	F/U with PCP. Referred to PM for consultation. MRI ordered. State disability extended to Dec 5, 2011.
Oct 19, 2011	MR Thoracic Spine completed.
Nov 3, 2011	Evaluation with PM – Dr. Linn. Thoracic MBB arranged. Percocet prescribed.
Nov 16, 2011	Dr. Linn. Thoracic bilateral medial branch block completed.
Nov 29, 2011	F/U with PCP. State disability extended to Jan 2, 2012. PM will f/u with permanent nerve block.
Winter 2011	Suspend skiing activities.
Dec 9, 2011	Dr. Linn – PM. Lumbar medial branch radiofrequency neurolysis completed.

Jan 2, 2012	Return to work full time.
Jan 12 2012	Dr. Linn. F/U of thoracic RFA. Continue meds. Physical therapy with myofascial release.
Jan 16 2012	PCP – Nassim. FMLA form – no continuous standing or sitting for more than 30 minutes. Referred to behavioral health for counseling and biofeedback.
Jan 25-Feb 9, 2012	Referred to physical therapy for myofascial release. (4 visits)
Feb 29, 2012	Hire personal trainer through fitness center to develop safe exercise routine. Return to fitness center.
Mar 13, 2012	PMP – Dr. Linn. Plan for left suprascapular nerve Block.
April 4, 2012	Suprascapular nerve block completed.
May 2, 2012	Self-referral to private physical therapy when Mercy services denied. Unable to find provider for myofascial release.
May 4, 2012	PCP – Nassim. Placed on 3-month state disability until August 4, 2012. Recommend f/u with PM, behavioral health for biofeedback and consider long-term disability.
May 15, 2012	PM – Dr. Linn. F/u for lefts Suprascapular injection.
July 18, 2012	Self-referral to Simmons Chiropractic.
July 20, 2012	PCP – Nassim. Referred to spine surgeon for evaluation. Continue pain meds, back rest and stretching exercises. State disability extended to Nov 1, 2012.
Aug 7, 2012	Dr. Patel. Orthopedic Surgeon. Thoracic spine AP and lateral test and bone density test ordered. Recommends continued strengthening program and stretching program. Recommends against surgery.
Aug 7, 2012	Thoracic spine AP and lateral completed.
Aug 21, 2012	Bone density test completed.
Sep 6, 2012	Dr. Davids for GMV. Participated in group pain management meeting, including 3 mind/body tools and guided imagery.
Oct 8, 2012	Dr. Davids – behavioral visit. Reinforced 3 mind/body tools, guided imagery and 2 vision boards.
Oct 30, 2012	P+MP – Dr. Linn. F/u for left suprascapular pain.
Oct 30, 2012	PCP – Nassim. State Disability extended to February 1, 2013.
Dec 7, 2012	PMP – Dr. Linn. RFA procedure completed.
January 30, 2013	F/U – Nassim. Continue f/u with pain management. Disability form completed.
Feb. 5, 2013	Dr. Patel. F/U regarding back pain. CalPERS disability report completed.
Feb. 26, 2013	Dr. Linn. Cont. Tramadol and Percocet. Cont. HEP
June 24, 2013	Dr. Linn. Consult re: chronic mid-back pain. Cont. tramadol and Percocet. Cont. HEP.
July 30, 2013	Dr. Nassim. Cont. present regimen. F/U with pain management.
Sept. 3, 2013	Dr. Patel. Major option is disability. Subjective and radiographic findings of damage. As much better as he is going to get. F/U as needed.

I swear that the above chronology is an accurate representation of medical treatment that I have received for my back pain between April 15, 2010 and September 3, 2013.

Signature

Date

10/06/15