

ATTACHMENT C
RESPONDENT(S) ARGUMENT(S)



Jerry Beasley

Ref no. 2015-0136

OAH no. 2015031088

CalPers Board

Dear CalPers Board Members,

I am writing this letter of argument **against** the proposed decision per the letter I received with the arbitrator's decision.

I have been employed by CSU Fresno since October 2005. I was injured on the job May 11th, 2012. I submitted my Disability Retirement Application in December of 2013, as instructed by CSU Fresno. I was told by a CalPers employee it would take approximately 12 months to complete the process. It has now been a little over two years, and I believe we are just about done.

I injured my right knee on the job at CSU Fresno. My right knee has required three surgeries now, is still not right, and causes me pain twenty-four hours a day seven days a week. I have been off of work since May 14th, 2012, due to CSU Fresno not granting any modified duty work. My workers compensation ended in April of 2014. My medical benefits for my family and I ended on September 1st, 2014. We have had no medical insurance since then, and do not qualify under Obama Care. I also had long term disability insurance through work. The long term disability insurance was a waste of money, as it had to run concurrently with my workers compensation, muscle skeletal is only covered for two years, so I only received the minimum monthly payment of one hundred per month.

I have given you a very brief history of what has been going on, and the issues my family and I have had to face. Now to get o the main issues of my argument against the arbitrators decision. I have had six different medical professionals tell me I could no longer perform my previous position at CSU Fresno. Three of them who are or were surgeons, two were my physical therapist, and the last was my workers compensation physician. I have included a copy of the coversheet, ratings, and restrictions from my Qualified Medical Examiner (Dr. Georgis) at the end of this letter. This is the final report as I am now permanent and stationary. Dr. Georgis, by the way used to do CalPers disability retirement exams and reports, (so he is very familiar with the rules and requirements) until he quit practicing, and went to just doing qualified medical exams and reports. Dr. Georgis told me that I definitely qualified for a disability retirement, and if he had done the exam his report would have stated that. According to CalPers guidelines for disability retirement you must be off six months or longer, and not be able to perform the job you were hired to do. I was completely off of work per mu surgeons after surgery

January 11th, 2013 through September 20th, 2013 which equals over eight months. Then again from February 18th, 2015 through June 30th, 2015, this is over four months. Giving us a grand total of over a year where I could not work at all. I have been off of work with sedentary work only for over 15 months, per surgeons and workers compensation physician. The remainder of the time up to November 9th, 2015 my restrictions were no prolonged walking greater than fifty percent of work day, no walking on uneven surfaces or steep inclines, or repetitive stair climbing. No twisting, squatting, kneeling, running, or jumping activities, these restrictions have totaled one year and 3 months. That totals three and a half years in all. My lifetime restrictions from Qualified Medical Examiner Dr. Georgis, as of November 9th, 2015 are as follows, and I quote "for the right knee, he should have the following prophylactic work preclusions: Disability precluding climbing, walking on uneven ground, squatting, kneeling, crouching, crawling, and pivoting, or other activities involving comparable physical effort". "For bilateral wrists/hands, he should have the following prophylactic work preclusions: No repetitive forceful gripping or grasping". In Dr. Georgis report he stated that "the patient will not be able to return to his regular occupation". He also stated "all periods of temporary disability have been reasonable". As listed in Administrative Law Judge Wong's decision under job duties of a building service engineer: constantly-walking and power grasping. Constantly is more than six hours a day. Occasionally: crawling, kneeling, climbing, squatting, and walking on uneven ground. Occasionally is up to three hours a day. I'm not supposed to perform any of those functions at all. Under occasionally it list up to three hours. To do my job I must be able to perform all of those functions, but every piece of equipment I work on involves either climbing, kneeling, squatting, or crawling to access the equipment. It states up to three hours, but between all of these I do this all day long, I would venture to say at least seven hours out of an eight hour work day. I cannot kneel or squat at all, which is not just due to pain, when Doctors have had me try to squat or kneel my knee starts to give out at around a fifty percent squat. I then call over and risk further injury to my knee or some other body part. As you can plainly see, how am I supposed to perform my job? I meet CalPers requirements for the time of six months as I have shown I was off longer than that, and also not being able to do the job I was hired to do as shown.

At the hearing I represented myself as I could not afford and attorney to represent me. At the time of the hearing, I had been off almost three and a half years, and almost exhausted my savings. I made well over half the money generated in my household, which just came to a complete stop. How many people can make it a year and a half with losing over half the household's income? This is also the reason why I could not bring a medical professional with me to the hearing. As for dealing with Mrs. Yelland, Senior Staff Attorney, for CalPers. When you talk to her over the phone before your hearing, she comes across as helpful and caring to gain your trust. Then when you get to the hearing you find out how she really is. I had to send all of my evidence to her, and she said she was supposed to and would send her evidence to me, but of course her evidence never arrived. So now you have an everyday person representing themselves against a full fledged attorney, who knows exactly what you plan on presenting, really your entire case, and you have no clue as to what they're going to bring up. Talk about a stacked deck against you. I objected, to which Judge Wong replied we could to move the hearing to a later date. I have been fighting with CalPers for so long; I decided this thing just needs to

get done. According to CSU Fresno, she also told them they did not have to be there. Guess that way they couldn't substantiate what I had said they had told me.

CalPers main evidence was from Dr. D'Amico. I had a problem with him from the day I met him. On the day of my appointment he was rude, late, and requiring me to do movements my other doctors had told me not to do. He then filed his required report with CalPers. I spoke to Kim after waiting for some period of time and never hearing anything. She told me Dr. D'Amico had filled out the paperwork incorrectly, and sent it in at the last possible minute, and then he went on vacation. She had been trying to get a hold of him for three weeks and supposedly just talked to him earlier that day. She went on to state that she had to tell him how to fill out the paperwork properly, and that she had filled out the required paperwork to get him removed from the list of approved Doctors CalPers uses. Her telling him how to fill out his report does not sound appropriate to me. I was sent his report that was now done to CalPers standards, and it was riddled with errors and discrepancies, Judge Wong mentions this in the last paragraph under discussions on page 10. Dr. D'Amico went so far as to say I never needed surgery, yet I have had three for this injury. He also said I was faking it for lack of a better term, and he did not believe I put forth any effort in physical therapy. Yet, I produced two letters, from two of my physical therapist that said otherwise. He has changed his mind and opinion several different times now. At the hearing Dr. D'Amico said that one year of physical therapy should be sufficient, that I would then be able to perform my job. He went on to say, this could change if I had no improvement after the year was up. No other Doctors that I have seen agree with him. Who will pay for this rehab? Workers compensation won't, since they say I am permanent and stationary. I do not have any medical insurance, and cannot afford to pay for it on my own. If I could perform my normal job after one year of physical therapy per Dr. D'Amico, how can I perform my normal job before the physical therapy?

In conclusion, I think this whole process of disability retirement was a sham. The outcome was determined before the process ever took place. You have a Doctor that should have been banned from CalPers list of approved Doctors. You have an attorney that does not follow proper protocol, or what she says she will do. This whole process is unfair to the applicant. The applicant is held to strict timelines, while CalPers has all the time they feel they want, to get the decision rendered they like. I believe the Board should overturn Judge Wong's decision and grant my disability retirement, based on the new evidence that I have provided. I have been completely off of work for over one year, which was due to having surgeries to repair my knee. The rest of the time my restrictions have prohibited me from being able to do the job I was hired to do and will now continue to do so. I have shown that I have met all of CalPers guidelines for a disability retirement both time and job I was hired to do.

Thank you for your time and Consideration in this matter,

Jerry Beasley

THEODORE GEORGIS, JR., M.D.

Orthopaedic Surgery
Diplomate, American Board of Orthopaedic Surgery
1475 West Shaw Avenue
Fresno, CA 93711
Phone: (951) 330-0217
Fax: (951) 849-3235

RECEIVED

Date of Examination: November 9, 2015

DEC 14 2015

Disability Evaluation Unit
Office of Benefit Determination
2550 Mariposa Mall Room 2005
Fresno, CA. 93721

Monge Law Firm

We request to be added to the Address List for Services of all Notices of Conferences, Mandatory Settlement Conferences and Hearings before the Workers' Compensation Appeals Board. We are advising the Workers' Compensation Appeals Board that we may not appear at hearings or Mandatory Settlement Conferences for the Case-in-Chief. Therefore, in accordance with Procedures set forth in Policy and Procedural Manual Index No. 6.610, effective February 1, 1995, we request that defendants, with full authority to resolve our

REGARDING: BEASLEY, Jerry

EMPLOYER: California State University - Fresno
D/INJURY: May 11, 2012; CT May 15, 2011 to May 15, 2012
CLAIM NO:

PANEL QUALIFIED MEDICAL REEVALUATION
ML-101

This report will be billed out as an ML-101. I spent 1 hour of face-to-face time with the claimant as well as 1 hour reviewing the new and past medical records as well as addressing causation and apportionment. I spent 1 hour 30 minutes researching and reviewing the report

Ladies and Gentlemen:

I evaluated Jerry Beasley in my Fresno office for a Qualified Medical Reevaluation, referencing his specific industrial injury of May 11, 2012 and a cumulative trauma injury of May 15, 2011 to May 15, 2012. I took a detailed history, carried out a medical examination, reviewed the medical records provided, and prepared the report.

PRESENTING COMPLAINTS:

1. Bilateral knee pain.

APPORTIONMENT:

The patient had a prior industrial injury of the right knee as well as having had three prior surgeries on the right knee. He had preexisting chondromalacia of the right knee. The previous industrial injury to his right knee resulted in permanent work restrictions; please see my initial PQME report dated June 20, 2014.

There is no prior injury, prior permanent disability, or any preexisting conditions with regard to his bilateral wrists/hands.

As such, it is my opinion with reasonable medical probability, that 50% of the permanent disability of the right knee is the direct result of the current specific industrial injury dated May 11, 2012; and 50% is apportioned to the preexisting condition of his right knee, to include the prior industrial injury, three prior surgeries and the prior permanent disability.

It is also my opinion with reasonable medical probability, that 100% of the permanent disability of the bilateral wrists/hands is the direct result of the current cumulative trauma injury; 0% is apportioned to prior permanent disability; and 0% is apportioned to preexisting pathology or other nonindustrial factors.

WORK STATUS:

For the right knee, he should have the following prophylactic work preclusions: Disability precluding climbing, walking over uneven ground, squatting, kneeling, crouching, crawling, and pivoting, or other activities involving comparable physical effort.

For the bilateral wrists/hands, he should have the following prophylactic work preclusions: No repetitive forceful gripping or grasping.

VOCATIONAL REHABILITATION:

It is my opinion that the patient will not be able to return to his regular occupation, and is considered to be a Qualified Injured Worker.

FUTURE MEDICAL TREATMENT:

For symptomatic flare-ups or worsening condition of the patient's right knee and/or bilateral wrists/hands, he should be afforded repeat visits with a treating doctor, as well as short courses of medication including nonsteroidal anti-inflammatory medication and/or pain medication.

The patient may require a short course of physical therapy, up to 18 sessions per year for the right knee and/or the wrists/hands.

Using Table 17-33 on page 546, he is determined to have mild laxity of the anterior cruciate ligament, with 3% whole person impairment.

Using the same table, he is also determined to have a subtotal medial meniscectomy, with 3% whole person impairment.

Using the Combined Values Chart on page 604, the above values are combined to result in 6% whole person impairment.

Bilateral Wrists/Hands:

The patient has a mild residual sensory deficit of the digits in the median nerve distribution of both hands.

Using Table 16-10 on page 482, he is determined to have Grade 4 sensory function with a 25% sensory deficit in the median nerve distribution of both upper extremities.

Using Table 16-15 on page 492, the maximum impairment of sensory deficit of the median nerve distribution below the midforearm is 39% upper extremity impairment.

Multiplying these above values together results in 10% upper extremity impairment of each upper extremity due to the residual sensory deficit.

Using Table 16-3 on page 439, this converts to 6% whole person impairment for each upper extremity.

Using the Combined Values Chart on page 604, the impairment values for each upper extremity is combined to result in 12% whole person impairment.

Calculated Whole Person Impairment:

Using the Combined Values Chart on page 604, the impairment values for the right knee and bilateral wrists/hands are combined to result in 17% whole person impairment.

ALMARAZ-GUZMAN II ANALYSIS:

The above impairment rating is considered to fairly and accurately reflect the impact of this patient's injury on the performance of the activities of daily living. No additional charts, tables or chapters of the AMA Guides to the Evaluation of Permanent Impairment (Fifth Edition) are deemed applicable.