

ATTACHMENT C
RESPONDENTS ARGUMENT

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Respondent Deborah Buchko

Case 2014-0719

OAH 2015020314



January 26, 2016

RESPONDENT'S ARGUMENT for the decision made December 10, 2015 by Coren Wong, ALJ

On September 30, 2015 a registered letter was sent to Marguerite Seabourn, Chief Counsel for CALPERS. In the letter I was asking that due to financial hardship and my inability to afford counsel. I was asking could I please be allowed to provide my current medical reports and not to be considered as "hearsay".

Judge Wong was made aware during proceedings that I had requested to provide my current medical records as not "hearsay". Ms. Seabourn acknowledged (privately) that she had received my request/letter and apologized for not responding before the hearing.

In the CALPERS retirement disability booklet it states that "hearsay is admissible" if both parties agree. I outlined the hardship I was experiencing financially in obtaining legal counsel. I did not receive a response and had called CALPERS at least three times before the hearing.

On the day of my hearing I had my **treating physician Dr. Shin's** (Center for Intervention Spine) current report. This report states that my condition is permanent and stationary. Also, submitted was a report from **Dr. Renbaum**, a board certified orthopedic surgeon who I have seen twice, the last visit being June 23, 2015; Dr. Renbaum has also, rated me as permanent and stationary stating that my disabilities are job related.

My Husband Randall Koll attended the medical appointment with Dr. Serra IME CALPERS doctor on September 12, 2013. Dr. Serra who gathered the same medical evidence that I had submitted to CALPERS. Dr. Serra made his determination in favor of CALPERS to deny my disability retirement solely, on obtained medical reports from Kaiser.

Dr. Serra's report stated that I was able to perform my usual duties and that there was nothing wrong with my health and that I could return to full-time usual duties.

My witness/husband Randall Koll was present during the exam and was present during cross

examination during the hearing. I protested to Dr. Serra's testimony. Dr. Serra did not prepare an accurate detailed report. Dr. Serra did a 10 minute cursory exam and was very dismissive of any of my health concerns.

Exhibit A and Exhibit 13 (submitted CALPERS duty statement) submitted to Judge Wong: outlines the physical requirements of my duties as a Building Manager/Analyst. This document was prepared by the Supervisor Sheryl Kroh on my behalf. In this Exhibit it outlines my full-time duties. After the accident I am unable to perform the usual requirements of day to day job performance.

1. Inability to sit for long periods of time due to the impact on my spine and neck.
2. Inability to keyboard and fine finger manipulation up to 6 hours a day.
3. Inability to lift 30- 50 lbs up to 3 hours a day.
4. Inability to climb ladder to top of roof for occasional repairs.
5. Inability to constantly kneel and crawl under tables to repair phone lines.

In page 9 of the CALPERS disability retirement booklet it states that if the job related injury is expected to be permanent and the employee is unable to perform usual job duties, then the disability retirement will be awarded.

Exhibit H shows that State Fund has classified my disability as permanent. Social Security Disability has also approved my disability as of 2013.

Before my fall down the stairs 10/3/11 I was able to perform all my duties with ease. In the 15 years as a dedicated state employee, I have promoted five times. My personnel record is exemplary which includes three letters of recommendations from other agencies. The day of my accident I had just completed an interview for another promotional position.

Per Government Code sections 20026 and 21150- Disability and incapability for performance of duty as a basis of retirement, mean disability of permanent or extended and uncertain duration, as determined by the board,... on the basis of competent medical opinion.

I do not feel CALPERS has met it's burden of proof to deny my request for "disability retirement." Dr. Serra IME who works for CALPERS ultimately was the only deciding factor CALPERS had to deny my (DR). The extent of Dr. Serra's cursory exam took 10 minutes not 1.5 hours as Dr. Serra had stated.

Government code section 21156- If the medical examination and other available information show to the satisfaction of the board... that the member in the state service is incapacitated physically or mentally for the performance of his or her duties is eligible to retire for disability, the board shall immediately retire him or her for disability.

Dr. Renbaum QME more then substantiates my inability to perform required duties. Dr. Shin my current treating physician's report more then substantiates my inability to perform required duties. These reports were submitted to CALPERS and Judge Wong. These documents

substantiated "substantial inability" to perform usual duties as outlined in CALPERS disability retirement guidelines.

During the proceedings I was handed and exhibit marked #16 which was left out of CALPERS Exhibit folder. After the hearing I was able to read it and noticed that on the bottom of the front page in small letters stated; "Technically, Ms. Buchko applied for Service Benefits Pending Disability Retirement. However, since Ms. Buchko indicated that she was injured while at work CalPERS believes that this should be considered an Industrial Disability Retirement matter." I am confused by this statement. I was under the assumption, due to the statements in the booklet, that only safety workers (police, fire, correctional) fall under the guidelines of Industrial Disability Retirement. If for some reason I fall under this category I would then be able to retain an attorney on contingency bases. Most Attorney's that I spoke with would consider contingency if Industrial. Please explain why it was never conveyed before now?

Also, included in the CALPERS exhibits were reference to previous applicants who were also denied disability retirement. Mansperger(1970) and Ruth A. Keck (2000) - Precedential Decision. These two cases were referenced and absolutely have no comparison to my injuries or individual case. Neither case had the extent of injuries or surgeries.

Once Medicare is approved I will have knee replacement, surgery on both hands to relieve carpal tunnel and eventually, need the Lateral bicep repair to left shoulder and surgery for the degenerative disks in my upper spine. For now I must battle the chronic pain with medication and weekly physical therapy (which I pay for).

In conclusion I can only trust that you will reconsider your decision to allow me to retire with disability retirement in dignity. After this unfortunate accident I do deserve to heal, and to live my life with these life changing injuries. One day I hope that I will not have to suffer with this debilitating pain and future health issues. I realize this will be a slow process and may take the rest of my life.

I am making a fourth of my salary. I believe that I should not be punished for this unfortunate accident that has left me in chronic pain daily. This pain has forever altered my mental and physical state.

Sincerely,



Deborah Buchko