

ATTACHMENT C
RESPONDENT'S ARGUMENT

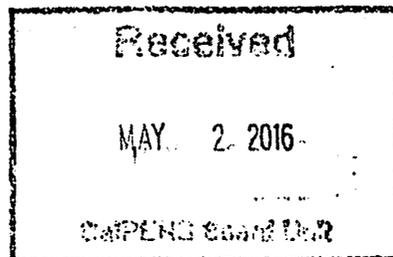
Respondent's Argument - May Meeting

^{6 Pages + 1}
To: Cheneé Swedensky, Assistant
to The Board.

CalPERS Executive Office

Fax # (916) 795-3972.

From: Daniel White = Case 2013-
Phone 0982



BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Application for
Disability Retirement of:

RESPONDENT, DANIEL WHITE'S
ARGUMENT IN OPPOSITION TO
PROPOSED DECISION

DANIEL M. WHITE
Respondent, and

Case No. 2013-0982

OAH No. 2014080590

21ST DISTRICT AGRICULTURAL
ASSOCIATION, BIG FRESNO FAIR,
DEPARTMENT OF FOOD AND
AGRICULTURE. Respondent.

INTRODUCTION

Respondent Daniel White submits this Argument In Opposition to the Administrative Law Judge's decision dated March 21, 2016. Mr. White began work at the Fair in 1991 as a security guard and worked his way up to the position of Chief of Racing in 2007. Performance evaluations were consistently outstanding. Shortly after promotion to Chief, his salary jumped almost 40% due to a reclassification and coworkers were upset by what they considered unfair compensation. At this point the workplace became increasingly hostile.

Although he routinely worked 6 days a week for at least 10 hours per day, these hours expanded to 12 hour days with frequent 16 hour shifts, one day off per week, and limited vacation or sick time. So limited that when he went on medical leave he remained on payroll as he had two years of accumulated time. His required duties expanded to include volunteer work for a non-profit agency in addition to his state duties. There were numerous examples of bullying that continued for several years. The increasing level of anxiety, panic attacks and hypertensive events is documented in medical notes from his psychiatrist Dr. William Seigfried and Internist Dr. Richard Berquist.

On July 14, 2010 as Fair staff were gathering for a meeting, Respondent was discussing scheduling issues with the CEO in a private office. The CEO stopped the conversation, put his hand on his shoulder and said, "Follow me." He led respondent into the meeting at the center of the room and started yelling insults and derisive comments at him as he circled around him. Respondent was taken by surprise, caught off guard and felt like he was kicked in the stomach. He looked at his co-workers, who were all staring. He became nauseous and left as soon as he could. He returned to work the next day but was unable to control his anxiety, hypertension and his other symptoms so he called in a coworker and sought medical care.

FINDINGS OF FACT

Numbers noted below correspond to the numbers in the ALJ document. Numbers were omitted when there is no comment.

CALPERS IME Dr. Callahan

Of 25 findings of fact related to Dr. Callahan, the majority are copied from the Revised Report of March 5, 2013 and a dearth of facts are linked to hearing testimony. There were numerous differences between that report and the testimony (and in some cases the facts) Reading along with the ALJ document some of the differences are:

#7. Dr. Callahan's report states, "I reviewed with the member the job description of a Chief of Racing for both essential and non-essential functions. He was fully familiar with the specifications." The ALJ's comment implies a thorough discussion was held on the topic. The point of the exam was not to determine if the respondent was familiar with his job description but to find out what duties he was able or not able to complete because of his illness. Dr. Callahan did not ask that question and when respondent tried to tell him, they both started yelling.

#8. Incorrect. Respondent was not Chief of Racing before the new CEO arrived (although he did the duties working out of class). The CEO recommended him for promotion to the position.

#11. The statement respondent made that he was "unable to return to work because of the number of hours it would involve" requires clarification. This was Respondent's attempt to explain that one of the main causes of his increasing illness was due to excessive work hours and he brought time sheets to show the examiner (per instructions by PERS.) While on medical leave, he was told they replaced him with three people to complete parts of his job. Dr. Callahan refused to look at the records.

#12. When he did review records sent by CalPERS, the review was incomplete as Dr. Callahan ignored the extensive records by Dr. Seigfried (Board Certified Psychiatrist) who makes very detailed observations from 2009 to 2011.

#16. The ALJ quotes the diagnosis given by Dr. Callahan using DSM-IV-TR . Dr. Callahan diagnosed Respondent as having an Adjustment Disorder, a Personality Disorder, Hypertension, Psycho social and Environmental Problems and gave him a Global Assessment of Functioning (GAF Scale Current: 60. Current means it is as of the date of the evaluation on January 31, 2013)

At hearing, Dr. Walling testified she disagreed with Dr. Callahan's primary diagnosis of an Adjustment disorder because that condition is temporary in nature. When the PERS attorney asked Dr. Callahan what he thought of her challenging his diagnosis, Dr. Callahan said, She is correct, I agree with her, my mistake, sorry.

#17. Because at hearing he admits his diagnosis is in error, this incorrect diagnosis cannot be used as the basis for concluding that respondent is NOT substantially incapacitated from the performance of his normal duties. This conclusion has no basis.

Dr. Walling testified, based on her review of respondent's medical records, as well as the observations she made while treating him, that respondent was substantially incapacitated from performing the following essential requirements of his job as Chief of Racing as of April 17, 2012 the date of his disability application.

- "planning, organizing, directing and having the overall responsibility over a licensed satellite facility," Essential.
- "establishing and maintaining good public relations: and administering personnel supervision," Essential
- "supervising approximately eight/ten permanent employees" Essential
- "planning, organizing, and overseeing the presentation of the eleven-day live horse race" Essential
- "coordinating and supervising multiple facilities" Essential
- "record keeping" Essential
- "supervisory decisions on matters relating to conduct of the operation ensuring that the rules and regulations... are properly observed" Essential
- "establishing and maintaining good public relations" Essential
- "answering questions from fair patrons" Essential. (REx21, closing brief)

#18. Dr. Callahan testified he requested further testing of the respondent to eliminate potential bias he might have. PERS attorney asked why he would be biased and Dr. Callahan said he had been strongly

influenced by Dr. Kushida's report that respondent had failed to cooperate in discovery. There is NO Dr. Kushida. Steve Kushida is an analyst in Fair Services who did not work there when respondent applied for Workmans Compensation in 2010. A memo and documentation sent to PERS on May 17, 2012 clarified that Kushida made a mistake on the form and Respondent was awarded a Workmans Compensation settlement and that was sent to PERS for their records. There is no reason PERS record keeping errors should have been relied on by anyone to make judgments or form opinions, nor should they influence witnesses especially an IME.

#22. The ALJ reiterates much of Dr. Leifer's report but left out Dr. Leifer's statement that "The extreme nature of Respondents response questions a rational valid interpretation of the test item patterns..." This repudiates his findings. The ALJ is relying on a report that the author himself repudiated. Dr. Leifer stated that a repetition of the test should be done. It was not done. Dr. Walling testified the elevated scores in Dr. Leifer's test indicate pathology and she provides recent research dealing with the study of this topic. (R.Ex18)

#24-#31 Supplemental Reports. The four supplemental reports were included in PERS exhibits. When the PERS attorney asked Dr. Callahan why PERS requested he review so many documents, Dr. Callahan responded he had no idea and he did not actually review them, he simply acknowledged receipt of the records. This is in direct contradiction to Respondent's exhibit #3 which is a copy of one of two letters Dr. Callahan authored in response to the complaint lodged against him by the respondent. While stating he acknowledged receipt only, Dr. Callahan actually cherry picked facts out of the reports without considering the bottom line of the report. Overall, Dr. Callahan's testimony failed to support the documentation in his IME reports.

Respondent's Expert Dr. Walling

#35. There are differences of opinion between the two witnesses on the diagnosis of PTSD. When Attorney Kreutz questioned Dr. Walling about PTSD in the workplace due to bullying, he asked the same question over and over in different ways. The basic question at issue is, can PTSD occur in response to workplace bullying? According to the ALJ , Dr. Walling conceded that "you cannot make the diagnosis without full Criterion A". This response followed a rambling hypothetical question and Dr. Walling did not change the diagnosis for the respondent. She added that rather than focus on labeling the illness, treating professionals deal with the patients' ongoing symptoms which are severe and debilitating. She referred for review, (REx. 17) "Basic Assumptions and Symptoms of Post-traumatic Stress among Victims of Bullying at Work." Overwhelming evidence of professional providers supports the conclusion that PTSD occurs in the workplace environment. This article includes no less than sixty-eight recent publications in the bibliography on this topic.

#37. When presented with three articles from professional literature on PTSD in the military and among victims of bullying at work. (Rex 17-19). the ALJ referenced only the article concerning military veterans, and said nothing about the articles on workplace bullying.

#38 Dr. Walling suggested the IME by Dr. Callahan should have included and considered medical notes by all the treating professionals, since symptoms either present over a period of time or at a specific "point in time". Medical records by Dr. Siegfried, Dr. House, and Brooke Denni,MFT, refute Dr. Callahan's main thesis and should have been carefully considered by Dr. Callahan and also the ALJ. (Rex8.p2-5)

#39 Dr. Walling testified that based upon respondent's medical records, and her own observations of respondent, he meets Criterion A for PTSD. She testified that respondent has consistently, over

time, described his workplace to his medical providers as "threatening." Dr. Walling contended that there were numerous instances of respondent's supervisor threatening and humiliating respondent. There was an implicit threat to respondent's well-being. She opined that respondent's supervisor would or could cause very significant harm to respondent if he did not carry out his supervisor's requests."

DISCUSSION AND CONCLUSION

Additional facts

Under Legal Conclusions, respondent has the burden of proof to establish by a preponderance of evidence that he is incapacitated for performance of duty; that at the time of application (April 17, 2012) he was incapacitated from performing the usual duties of his position.

Respondent has met that burden of proof.

Since the ALJ states the case was decided "largely upon the expert testimony of two credible medical practitioners," it becomes important to determine if one practitioner is more qualified for testifying about this case. Are both witnesses equally expert on PTSD, the disorder in question?

Dr. Callahan's Curriculum Vitae contains only two dates stating he was employed at a psychiatric facility for 21 years (1969-1990) and private practice for about 25 years. (stated as 1990-present but he testified he is retired.) None of his other experiences are dated and appear to be brief or positions he held before Medical School. None of his listed publications and presentations are dated. Most are unpublished brochures or handouts printed by the hospital he worked at. Professional societies are all listed as Previous - again with no dates. Noting the fax date on the page (2007), seems out of date for this purpose. Nothing can be verified without dates. (PEX6)

Dr. Walling's Curriculum Vitae shows a rich background specifically in PTSD. She studied at the National Center for Post traumatic Stress Disorder for a year (2008-2009) where she provided care to female veterans with PTSD, trained in Cognitive Processing therapy for PTSD, and completed large numbers of diagnostic assessments for PTSD. In 2006 she worked for the VA Ambulatory Center in Los Angeles where she conducted diagnostic assessments for the Combat PTSD clinic. She has taught courses in this specific topic. Her Doctoral dissertation was on PTSD and adverse childhood experiences. Dr. Walling shares her expertise by consulting on the topic to the CA. Board of Psychology and National Center for PTSD among others. She has published numerous peer-reviewed publications and media presentations and received many awards for her work in PTSD and leadership. The document is written in such a manner that one can verify her extensive work on this topic. (REX16). While Dr. Callahan has many years of experience as a psychiatrist, Dr. Walling also has years of experience in the field of psychological disorders with an additional defined expertise in the topic of identifying and treating PTSD. There is no doubt she is the expert.

Respondent's application for disability (2012) was for disability due to physical as well as mental symptoms. The PERS analyst called respondent's internist and asked about his recommendation for disability. She asked "Not taking the psychological condition into consideration, is it your opinion that respondent's hypertensive condition solely on its own, disabling and meets the criteria for substantial incapacity?" In response, he checked the NO box" and stated "Respondents hypertension is exacerbated by PTSD and situational stress", and wrote "fluctuating blood pressure-uncontrolled, unable to do all job duties. The analyst removed any of respondent's physical problems from consideration for disability and stated, "The medical condition was not being denied because it wasn't even being considered." Looking at all those supplemental reports you can see documents questioning or diagnosing respondent's physical conditions. These were the reports Dr. Callahan testified he "acknowledged receipt of only" and made no comment about. These issues were clearly listed on the application, backed up by close to 100 pages of medical reports, and should

not have been ignored by the analyst. The should not have been ignored by Dr. Callahan.

There is no question the ALJ was biased and aligned with PERS staff. Respondent submitted substantial treatment records and evaluations from two board certified psychiatrists (Dr. Seigfried and Dr. M House) and the ALJ made no comment on their extended "hearsay" testimony but commented for two pages on the "hearsay" documentation Dr. Callahan included in his report. This hearsay was a 2 hour visit with Dr. Leifer, Psychologist. This lopsided review is concerning, especially when one compares notes from years of treatments versus one interview and one test. From five highly qualified medical practitioners over time to two practitioners for one visit.

Respondents exhibits include numerous reports which deal specifically with symptoms that interfere with his ability to complete necessary tasks to do the job. ALJ ignores these reports which are detailed and meet the criteria defined by PERS demonstrating WHY he is 'incapacitated for the performance of duty.' Under discussion (#40) she states that respondent was clearly anxious and agitated. "His behavior at hearing supported Dr. Callahan's observation of respondent as "emotionally labile and manipulative". Drawing that conclusion from the ALJ's observation demonstrates active bias. The facts are easily provable and show the reasoning behind her conclusion is not rational or fair in any way. Facts: Respondent has difficulty in maintaining quiet sitting six hours in a hearing. (He has had ADD since childhood; he was moving a bit like quietly rubbing his fingers) Added to that, he could only partially hear. When Dr. Walling testified her back was to him. When Dr. Callahan testified he spoke very quietly and observer with normal hearing had to strain to hear him. Dr. Callahan was turned towards the attorney and ALJ. Respondent is being treated by an ENT specialist who planned surgery to put tubes in his ears to increase his hearing acuity. This can be documented. It is incorrect that respondent agreed to leave mid hearing solely for the purpose of allowing the parties to present evidence. Respondent decided to leave when his own attorney told him that he had been approached by the PERS attorney who noticed respondent's observer had made a face and she would be reported to the judge who would probably ask her to leave (even though she was positioned so the ALJ could not see her face.) Since he was having such a hard time hearing anyway, Respondent said he would leave with her. Under these facts there was no evidence respondent was emotionally labile and manipulative during the hearing. In fact, he was quiet and respectful.

Issue at hand

- 1) Applicant met the burden of proof that he was incapacitated for the performance of duty at the time of his application in April, 2012.**
- 2) At hearing, Respondents medical expert Dr. Walling listed in detail the issues that would impact on respondent's ability to do his job and listed those duties he could not perform .**
- 3) At hearing on cross examination, Dr. Callahan testified that he could not determine if respondent was substantially incapacitated at the time he applied for disability retirement.**
- 4) Dr. Callahan agreed with Respondent's expert that his (Dr. Callahan's) proffered diagnosis was incorrect and he was mistaken thus voiding the conclusion he drew. (#17 of ALJ decision.)**
- 5) It is important that the board see the testimony and documentation to verify the allegations made in this report.**
- 6) It is the job of the court to look behind the label (diagnosis) at the issues and symptoms the respondent deals with daily to focus on the issue of whether or not the respondent could have done his job.**
- 7) For an ALJ to make comparisons of workplace bullying and its relationship to PTSD to wartime battle experience is irrelevant to the case and unfair. Because some experience is different does not negate the impact of the problems faced.**

CONCLUSION AND REQUEST

Respondent, Mr. White, requests the CalPERS board, after review of this document, order the Transcript of Testimony and the documentation as part of your independent review. This complete review will verify the statements made in this document and will support a finding of permanent incapacity beyond any doubt.

April 29, 2016

Respectfully Approved and Submitted by Respondent Daniel White



(Daniel M White)

Written by Karen White, observer at hearing



Karen White