

ATTACHMENT C
RESPONDENT(S) ARGUMENT(S)

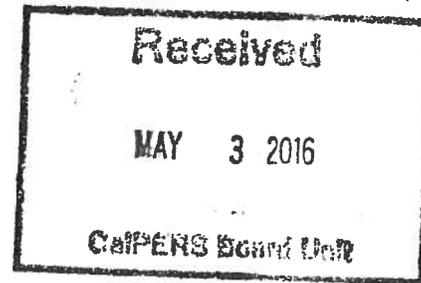
May 1, 2016

PERS Board

In the Matter of: Jordan Conway:

PERS case # 2015-0580

OAH case # 2015071344



Dear Board Members:

I am writing you this letter because I was told that I am not allowed to speak during the hearing regarding the above-mentioned case.

I was employed by CALFIRE as a firefighter until I was medically retired due to injuries I sustained to my left knee while actively fighting a wildland fire on July 30th, 2011. I continue to suffer from the injury I sustained and have pain in my knee on a daily basis. After my injury I went through a full course of corrective medicine including physical therapy and medications. I have seen four Doctors including Orthopedic Surgeons who all told me that my injuries would be lifelong. Some even said I was at maximum medical improvement. After two and a half years of trying to go back to the fire department, I was unsuccessful because my knee was never able to carry the weight up the steep inclines that is required in wildland firefighting. For example, in a firefighting move called a hose lay, firefighters have to carry significantly large and heavy loads, 50+ pounds, of fire hose up the mountain across rough, uneven terrain to get water to the area where the fire is actively burning. This is a very common method of fighting wildland fires that I am unable to perform because I cannot carry the weight of the hose and counter the torque force that it

places on my knee. Simple yard work requires me to rest often and still produces pain in my injured knee.

On March 8th, 2016 I represented myself in an administrative hearing.

Unfortunately I am not an attorney and was not familiar with the process of the hearing. I was under the belief that if I simply showed the 3 doctors reports that I had which all say I cannot return to work as a firefighter and explained what I have to do to modify my daily routine that any reasonable person would understand my disability. Even though I brought reports from Doctors that have recently examined my knee which stated that I cannot return to work as a firefighter, a State Doctor who has never physically examined my knee, reviewed the reports and gave an opinion that I can in fact return to work as a firefighter. The Judge stated that because the Doctors reports that I produced did not say which duties of a firefighter I cannot perform and the Doctors that wrote them were not present to be cross examined, they were not as persuasive as the State's Doctor's direct testimony.

As a firefighter I am required to hike up and down hills and cross side hills on uneven terrain all while carrying between 50 -100+ pounds of equipment. While I would love to return to work as a firefighter I am sure that doing so would present a potential life threatening danger to myself, other firefighters that would be depending on me to complete tasks that I cannot do due to my injury, and the public that we are charged with protecting. In order for me to return to work as a firefighter for CalFire they will be required to accommodate my disability by modifying my duties. It is unrealistic to believe that CalFire will be able to

consistently modify my duties so that I can return to full employment with them. Wildland firefighters are routinely assigned to different shifts working with different supervisors whose only concern is that the firefighters they are sending to perform a job do so in a safe and efficient manner. Having a firefighter on their truck that is a potential danger to the other members of the crew is not an option. The job I had as a firefighter is not a desk job where my physical disabilities can be accommodated, it is a safety related job which requires the employee to be in top physical condition capable of lifting and carrying heavy weight on a regular basis including being prepared to carry an injured fellow firefighter or member of the public to safety.

In an effort to find out what if any accommodations CalFire could provide me so I can return to work I spoke with Chief Dustin Hale at Fresno Kings Unit Headquarters. He is the Chief in charge of injured personnel, who has informed me that the fire department knows nothing about what is going on with this case. However, firefighters are not returned to duty until they are medically cleared to complete all duties of a firefighter. I have also contacted Melissa Solorio at region office in Fresno. She is in charge of all worker's comp cases and on-duty injured personnel cases who also has not been notified as to the nature of this case. Both can be reached at their offices. Melissa's contact is (559)243-4100 and Chief Hale's contact is (559)243-4300.

As a result of the injury that I sustained on July 30, 2011, I have to deal with my knee by modifying the way I work. For heavy loads, anything over 25 pounds, I use tools like wheeled carts and dollies that carry the weight so my knee does not

have to. This is not an option when fighting fire. This is why I was never able to return to work as a firefighter. Because of my disability, caused by the injury to my knee, I am now a potential liability to the State of California, and more importantly a potential danger to my colleagues, myself, and the public of California if I were to try to return to work as a firefighter. I hope that the members of the Board recognize the major difference between working in a position that requires little physical ability and working in a position where other people's lives depend on your physical ability. At the very least CalFire and the Doctor they use to conduct firefighter readiness evaluations should be consulted in this matter prior to deciding that I should return to a job that I am no longer physically qualified to do.

Thank you for your time reviewing my case.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jordan M. Conway', with a long horizontal flourish extending to the right.

Jordan M. Conway

**BOCA RATON ORTHOPAEDICS AND
SPORTS MEDICINE**

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DIPLOMATES, AMERICAN BOARD OF ORTHOPAEDIC SURGERY

Name: Jordan M Conway

DOB:

Account:

DOS: 2/17/2016

Original Chief Complaint 26 year old male complaining of left knee pain.

History of Present Illness:

The patient returns today for follow up. There has been no significant changes in the current symptoms. There has been no change in the character or location of the problem. There are no new symptoms or accompaniments. The patient went for 4 sessions of physical therapy followed by a home exercise program. He notes that pain in the left knee has persisted. He describes it as a tightness. It is deep within the knee. He does note some snapping posterolaterally that occurs with squatting and climbing. He has applied topical Tiger balm to the knee with some relief. He avoids NSAIDs due to a history of peptic ulcer disease.

Conservative Care History: There has been no change in the symptoms with ice, heat, rest, anti-inflammatory medication, home exercise program, bracing and pain medication.

Medical History

Past Medical History: No known medical conditions.

Medications: Takes no medications

Allergies: Penicillins

Review of Systems

Vital Signs: Height: 5ft 6.00in, Weight: 140lbs BMI 22.59

Left Knee Examination

Inspection: Inspection of the knee reveals no effusion. There is no ecchymosis. There is no deformity.

Palpation: There is no tenderness over the medial joint line, lateral joint line, patella tendon, quadriceps tendon or anterior aspect of the patella. There is mild tenderness over the medial facet of the patella. There is no tenderness over the iliotibial band at the lateral epicondyle.

Range of Motion: Knee range of motion is 10° of hyperextension to 145° of flexion. There is no pain on range of

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Patient Name: Conway, Jordan M
DOB:

motion testing. Some snapping is noted of the lateral hamstring tendon as he goes from flexion to extension.

Strength: Strength testing is 5/5 in the quadriceps and hamstrings.

Sensation: Sensation is intact.

Reflexes: Reflexes are normal and symmetric.

Special Tests: Anterior drawer, Lachman, Pivot shift, Valgus stress, Varus stress, posterior draw, external rotation stress and apprehension tests all are negative. Straight leg raise is intact with no extensor lag.

Gait: Gait pattern is normal with no limp.

Diagnosis Codes:

M22.42 Chondromalacia patellae, left knee

Impression:

Chondromalacia patella left knee.

ITB friction syndrome left knee, improved.

Snapping lateral hamstring tendon left knee.

Office Procedures:

This was at least a 25 minute visit with greater than 50% of the time spent counseling the patient. Counseling included discussion of diagnosis possibilities, treatment options, risks and benefits. The patient had many questions regarding these options and long term effects.

Treatment Plan:

The patient will continue a home exercise program he learned in physical therapy. He is to avoid squatting and climbing as this causes snapping in the knee. In light of that restriction I do not think he can work as a firefighter.

The patient is instructed to follow-up with me if pain persists or worsens. The patient was instructed in a home exercise program.



Alan L. Saperstein, MD

Date: 2/17/2016

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