

ATTACHMENT C
RESPONDENT(S) ARGUMENT(S)



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May 8, 2016

BY FAX AND MAIL 916-795-3972
 Cheree Swedensky
 CalPERS Executive Office
 PO Box 942701
 Sacramento, CA 94229-2701



Re: In the Matter of the Application for Disability Retirement of JON SULLIVAN,
 Respondent and the COUNTY OF COLUSA, Respondent

REQUEST FOR DECISION DECLINING ADOPTION OF PROPOSED DECISION AND ISSUANCE OF ALTERNATIVE DECISION

Dear CalPERS Board of Administration:

On behalf of Respondent John Sullivan we request the Board refuse to adopt the proposed decision in this matter, conduct a review of the record, and issue an alternative decision that finds Sullivan is entitled to ordinary disability retirement. The decision constitutes an abuse of discretion because it is not supported by the findings and the findings are not supported by the evidence. The expert witness offered by CalPERS testified that Sullivan could not work on ladders. Sullivan testified that he was required to work on ladders, lift and carry up to 100 pounds, lift and carry power tools, lawnmowers, and other tools weighing in excess of 100 pounds, and work with electrical equipment. His duties involve maintenance and repair of potentially hazardous equipment, machinery, and plumbing facilities. If we accept the expert witness testimony that he is addicted to opiates, he is not capable of performing his usual duties.

The expert testimony establishes that Mr. Sullivan cannot frequently bend at the waist. This testimony establishes Sullivan's incapacity to perform the usual duties of the job, and establishes that Sullivan is entitled to disability retirement. (See paragraph 24 of Decision). If we accept the opinion that Mr. Sullivan is an addict, the side effects of the drugs he has to take incapacitate him from the performance of duty and endanger both Sullivan and others in the performance of his usual duties.

It is unquestionable that the position of Building Service Worker requires "constant" [see Decision paragraph 6] bending and twisting of the neck and waist. It is also unquestionable that Dr. Khasagian found that the applicant could not frequently bend

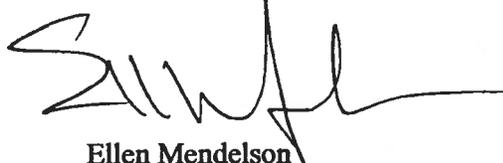
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at the waist in both his October 2014 and his March 2015 reports. [See Decision paragraphs 20 -22] Mr. Sullivan's condition, including his use of painkillers, prevents him from being able to perform his usual duties. These findings support this application. Mr. Sullivan cannot frequently bend at the waist. He is incapacitated from the performance of his usual duties, which require "constant" bending at the waist. The opinion of Dr. Khasagian supports rather than rejects a finding of disability. Mr. Sullivan's usual duties require constant bending.

Mr. Sullivan has been incapacitated from the performance of duty since he left work in March of 2013. The disability retirement application process started in August of 2013, when the County filled out for CalPERS the forms that described Mr. Sullivan's duties and the essential functions of the job. [See Decision Paragraph 6]. The County knew in August of 2013 that Sullivan was applying for disability retirement.

Please review the record in this case and find that Jonathan Sullivan is entitled to disability retirement.

Very truly yours,

A handwritten signature in black ink, appearing to read 'EMendelson', written over a horizontal line.

Ellen Mendelson
Attorney for John Sullivan

cc. E. Yelland, Esq. (by email)
J. Sullivan (by email)
Hon. E. Washington (by email)