

**ATTACHMENT C**  
**RESPONDENTS ARGUMENT**

Received

MAY 25 2016

15 May 2016

To CalPERS Board of Administration:

I wish to challenge the Proposed Decision of the Administrative Law Judge's (ALJ) findings regarding my application for CalPERS Disability Retirement. I believe my legal rights were denied by the ALJ when the documents I submitted in support of my claim were only allowed to be submitted as "hearsay" and were then subsequently dismissed and not considered in the ALJ's findings.

Additionally, I believe my rights were denied when CalPERS specifically scheduled the ALJ hearing on a date known by them to not allow my witness (Dr. Jackie Trischman) to attend. It should be noted that I submitted a whole year's worth of dates on which Dr. Trischman was available to attend and CalPERS scheduled a date that did not fit her schedule and refused to allow any rescheduling.

It has been over 5 years since the accident which caused my disabilities to no longer be manageable, and 4 years since I filed for Disability Retirement; yet CalPERS continues to drag things on utilising far more resources than I could ever hope to muster. One ultimately has to wonder why CalPERS would treat a disabled person thus, especially after having hired them and been so accommodating for so many years. I loved my work at California State University San Marcos (CSUSM), as was reflected in my reviews from both my students and my Department. I would gladly return to work if I were physically and mentally able.

I would ask the reviewers to please take a step back and consider ALL the evidence before making a decision and to recognise how this decision will be viewed by any and all current and future disabled persons whom might be employed by CalPERS. Are we to be treated fairly; or are we to be cast aside at the first opportunity simply because our disability has for some reason become unmanageable to a point wherein we are no longer able to perform our normal duties?

***History of events and claim:***

I was originally hired by CSUSM as an Adjunct Instructor in January 2005. I was hired with a known disability and was granted appropriate accommodations enabling me to fully perform my duties as defined in the job description. My original disability was as a result of an accident that occurred in 1986 while I was a CalPERS employee at Capistrano Unified School District driving school busses. That was a worker's compensation case that was settled and included vocational rehabilitation, which combined with grants and scholarships, enabled me to finish an advanced degree and take up positions at a number of Colleges and Universities as an Adjunct Instructor. This sort of work fully met the Permanent and Stationary (P&S) disability limitations associated with my disability as set forth by Social Security Administration and California Worker's Compensation Administrative hearings: no lifting greater than 10 lbs, no repetitive lifting, no more than 30 hours in any given week or 5 hours in any given day, must be allowed to walk, stand, sit, or lie down as needs dictate.

It should be noted that I worked VERY hard to overcome my disability limitations and was regularly presented to students as a role model of what can be achieved if you are willing to work for what you want. I truly enjoyed my work, as noted by in the many letters from my supervisors at the various Colleges and Universities, and was even recognised as runner up teacher of the year. Giving back to the community as an instructor of Earth Science, Oceanography, and Environmental Chemistry was my life and I wholly and completely enjoyed the work I did. This was regularly reflected in my annual evaluations at each of the institutions for which I worked.

I do need to mention here that due to my disability needs I regularly took the summers off between semesters to recover from the workload and do various mobility and stabilisation exercises to ensure I was again ready to return to my great jobs each fall. I also had to workout regularly during the semesters as well as regularly swimming and seeing my chiropractor to ensure the fusions in my lower vertebrae remained stable and would not leave me immobile. This "down time" was very important to my ability to remain functional as an instructor. I did of course also use this time to further my knowledge and skills as an instructor to ensure my students were always receiving the best instruction they could get.

Unfortunately, in May 2011, I was struck from behind while waiting at a stoplight when driving from MiraCosta College to CSUSM. I'd just finished teaching my morning courses and was heading to CSUSM to give a final lecture (my last for the semester), when the driver of the other vehicle (who was texting on his mobile phone) failed to notice I was stopped at a red light and struck my vehicle hard enough that I passed out. The impact was so hard that his license plate stamped an imprint into the bumper of my vehicle (The police report supplied to CalPERS, and the ALJ, states that the impact was approximately 35mph with no indication of slowing prior to impact). When paramedics arrived they were preparing to break the window of my vehicle when I regained consciousness and unlocked the doors. I was treated at Kaiser Permanente urgent care in San Marcos and sent home with a **concussion, whiplash and traumatic brain injury (TBI)**. As a result of my auto accident my husband had to go to CSUSM and Dr. Trischman asked him to pass out the final to my class as a take-home final exam. I had to take a couple days off from work, and was provided accommodation from my employers to finish out the semester (about 2 weeks); including allowing my husband to collect the final exams from the students the following week.

Through the summer months I continued to experience significant headaches and made regular visits to my doctor for evaluations and treatments. As a result of the pain and other symptoms I was unable to perform my normal summer routines to maintain my physical condition as I usually did during my summer breaks. However, I still made a concerted effort to return to work in the fall of 2011. I needed my husband to drive me in to work each day as I would become disoriented and often vomited if I sat upright in the car too long. My husband also assisted me in taking materials to and from my classes as well as passing out and collecting papers. More importantly my husband had to read the papers submitted by students as I could no longer read and comprehend the materials. He also had to add up scores, as I could no longer do simple math, and he entered the grades as I could no longer use the computer as a result of my traumatic brain injury. Additionally, he helped me organize my class prep such that I could follow a simple outline and keep track of what I was lecturing: My long-term memory seemed to function ok, but short-term was missing. I tried to cover for this in class by asking other students to answer questions from their peers, giving extra credit for the right answers. But, this was obviously not working well. I was completely unable to perform any higher order processing and could not work out any of the normal mathematics needed for the courses as a result of my accident and TBI. This was all part of the requested accommodations which the schools were more than willing to allow. They also provided other assistance as well. However, I still needed to cancel many classes during the fall semester and my performance was well below normal levels and was not meeting the expectations of the departments/schools or students. I again attempted to return to work in the spring of 2012, but was quickly aware that I was doing even



worse than before. Soon after the semester began, I was asked by my department chairs at MiraCosta College and CSUSM to take leave so they could hire a replacement while I recovered. (My CSUSM department chair at that time was Dr. Paul Jasien; he pointed out that if I missed any more classes due to my inability to work my students would not pass their classes as they would not have the minimum hours mandated to get credit for the class. I had to go out on disability in order for the department to justify, under union rules, the hiring of a replacement to finish out my semester. If I did not go out none of my students would pass and students who were on financial aid would no longer receive their money for failure to pass their full class load). I was devastated by this request, but recognised that my students were not getting what they were paying for and that it was only fair to them for me to take leave. My doctor fully supported this as he too had been trying to convince me that I needed time to recover and might not be able to return to my regular work as the injuries I had sustained had apparently tipped me beyond the ability to maintain my existing disability to the level required to continue working.

So, I applied for Disability Leave and even requested donations of Catastrophic Leave from my colleagues (as advised by CSUSM Human Resources) and received it from those at CSUSM. I applied for Social Security Disability, CalSTRS Disability Retirement, and CalPERS Disability Retirement. I was granted each in accordance with their legal requirements, **EXCEPT** CalPERS Disability Retirement.

Note: The Social Security case worker who reviewed my medical record and accident report stated that it is unusual for Social Security Disability Insurance (SSDI) to be approved on the first application. However the Social Security IME takes traumatic brain injuries very seriously and someone my age needs special care, he also wished me well and a good recovery.

When the CalPERS Disability Retirement was denied I called the Sacramento Office and was advised by the CalPERS representative on the phone to appeal the decision and to apply for Early Retirement as I would at least have additional income from the Early Retirement. He advised that as part of the appeal I should submit the award letters from the other agencies and when approved for Disability Retirement my Early Retirement would be withdrawn and replaced with Disability Retirement. He even walked me through filling out the forms for appeal and for Early Retirement as I was unable to understand the on-line forms. Up to this point I felt I was still receiving wonderful treatment and accommodations from CalPERS.

Unfortunately on appeal these other documents (mentioned below) don't seem to have been considered and in fact were challenged by the CalPERS attorney at the ALJ Hearing as being "hearsay" when the hearing was held April 2016. If one considers that the requirements for Social Security Disability are that the applicant must be determined incapable of ANY gainful employment, (a much more stringent set of requirements than those of CalSTRS or CalPERS – which only look at the ability of the applicant to perform their normal duties), the findings of the ALJ for CalPERS clearly contradicts those of both the State of California through CalSTRS and those of the US Federal Government through the Social Security Administration. Clearly two government agencies couldn't be that wrong! But, if one doesn't consider the other two findings, and refuses to allow or consider the testimony of the applicant's supervisors (employees of the State and members of CalPERS), and only takes the word of a doctor/Medical Examiner (ME) hired and paid by CalPERS (who

misrepresented many things on his medical report as stated in my letter to CalPERS submitted for the ALJ hearing – he even attempted on many occasions to bill me for the consultation threatening to put the bill into collection) then it could be understood how the ALJ might make such a decision. But, is it the right decision? Does it deny me my rights and discriminate against me as a disabled person? How can two separate Government Agencies be wrong when they use the same or more stringent criteria?

I feel I have been so mistreated by CalPERS throughout this whole episode: from being initially turned down when other agencies approved my applications, to being improperly advised to take early retirement, thus removing me from access to my Union representation, and then having CalPERS assign multiple attorneys to my case fighting and denying my application and appeal, and when I could not afford any legal representation due to my financial status of being on disability, the CalPERS attorney at the hearing utilised unfair tactics, taking advantage of my current mental abilities to deny my documentation from being considered, and the ALJ failed to challenge this and chose to accept this demand from the CalPERS attorney.

It should be recognised that this was an Administrative Hearing and not a criminal hearing and the documents being presented were legal documents from Government Agencies. There is no need to cross examine anyone with regard to their validity, and the Government is not required to provide any. What would a cross examination entail anyway? Asking every person who worked on the government agency's decision what they did to arrive at that decision? The documents I submitted were to establish that I did in fact have a disability that prevented me from performing my normal duties. In fact, Social Security Disability implies that I am unable to perform any gainful employment. Believe me when I say I wish they were wrong! I would LOVE to return to work if I could! I would take back my classes and enjoy every minute of each and every class. But, with the head injury that I have I do not have the skill or ability to perform such work any more.

Regarding the documents submitted that were not considered they were:

- Disability Retirement Award Letter from CalSTRS
- Disability Award Letter from Social Security Administration
- Police Report for automobile accident and Kaiser After Care Summary of injuries
- Letter from Dr. Jackie Trischman (CSUSM Chemistry Department Chair at time of my accident, and my supervisor during my employment at CSUSM)
- Letter from my husband about the impact of my injuries on him and the family
- Reference Letters from Department Chairs of other State of California institutions at which I worked (CalPERS and CalSTRS)

In conclusion I'd like to say I did everything in my power to remain a viable and valuable member of the department at CSUSM. My department colleagues have even stated they would enjoy having me back. I worked with my department trying to remain at work, and they provided fair and adequate accommodations as would be expected from a professional institution. They were more than understanding and very supportive. However, in the end I was asked to step down and take a leave of absence to recover and I followed their advice and the advice of Human Resources at CSUSM applying for Catastrophic Leave and Disability Retirement. I was similarly advised at

15 May 2016

MiraCosta College and followed a similar process (but with far better results). I have done everything asked of me and yet find myself being treated as a second class citizen now after 4 years of agony. That said, I would still willingly return to my position at CSUSM if I were physically and mentally able as I know my colleagues there are such wonderful people and the institution itself was and is so supportive of Disable Persons (students and employees alike).

I would also ask that CalPERS do their due diligence and follow up with their employees at CSUSM, Dr. Trischman, and Dr. Jasien, to validate my claims. (It should be noted that Dr. Trischman attended the medical exam with the ME hired by CalPERS and has read the report he submitted. She can attest to the errors and falsifications contained in his report and she has audio recordings of the whole exam which could be used to corroborate my claims of his improper and inaccurate report. I too have copies of these recording and could submit them upon request). I would also ask that the letters of reference I submitted from my prior employers be granted the same level of respect given the ME when he presented multiple documents from Institutions showing his credentials: these were all accepted at face value without any requirement or ability to cross examine their validity, as there were no witnesses from those institutions present for cross examination. And why should there be, this was an administrative hearing. My documents should receive the same treatment and I should receive the same level of respect as I too am a fully degreed, well respected academic from the sciences who was honored to have had the privilege of instructing young and inquisitive minds desiring to further their education and become qualified and skilled members of society. I was equally honored to have been able to represent women in the sciences and Disabled Persons during my tenure as an adjunct instructor at CSUSM and to be a role model to so many. I would give anything to be capable of doing so again.

Finally, I'm certain that something must have gone wrong in this process, as the treatment I've typically received from CalPERS, other than the denial and appeals process, has always been exemplary. From my first joining CalPERS in 1983 I've always been well treated and well advised by CalPERS and was building a wonderful retirement plan with great benefits: In many ways better even than those from CalSTRS. I attended many workshops sponsored by CalPERS that provided great advice and instruction on how to maximize my future retirement opportunities and I was looking forward to completing those plans and NOT taking early retirement. Also, although disabled from my bus driving job, CalPERS was very supportive to my rejoining as an Adjunct Instructor and my benefits started immediately upon my re-instatement. So, I'm confident that this must have all been a mistake as everyone I've spoken to in Sacramento has been so polite and concerned. Most recently I received a call from Thomas Barber and he seemed honestly concerned. I'm hoping that this has all been a mistake and that CalPERS continues to be a strong advocate for the disabled.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Patricia A. Anderson', with a long horizontal line extending to the right.

Patricia A. Anderson, MSc

P.S. My husband had to help me with writing this letter as I still have difficulty processing and writing. These are my words, but he did the typing and editing.