ATTACHMENT C

RESPONDENT(S) ARGUMENT(S)

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Licensed by	Crescent City, CA 95531	LISA FINTEL
U.S. Supreme Court Supreme Court of Nevada	Board Certified Specialist in Criminal Law by California State Bar Board of Legal Specialization	Special Case Investigator JULIA SCOTT
Supreme Court of Montana	(Se habla español.)	Administrative Clerk
Supreme Court of California U.S. Court of Appeals (9th Cir.)	and the state of the	MARISSA BORGES Medical Investigator
U.S. Court of Customs & Patent Appe U.S. Court of International Trade	als Erson's oc	1
U.S. Court of Veterans Appeals		
U.S. District Court (Eastern Calif.) U.S. Court of Military Appeals		
U.S. District Court (Nevada) U.S. Court of Claims	SEP - 8 2016	न स र
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Yvrok Tribal Court U.S. Tax Court	Conference Land Unit	

CHEREE SWEDENSKY Assistant to the Board CalPERS Executive Office P.O. Box 942701 Sacramento, CA 94229-2701

9-8-16

Dear Ms. Swedensky:

Please accept the attached 1 page medical report of Board Certified Orthopedic Surgeon, Joseph R. Meyers, M.D. and the 4 page letter with attachments from Mr. Matt Kime in rebuttal argument to please be submitted to the Board in opposition to the decision of Honorable Erin R. Koch-Goodman dated 8/11/16 and file stamped on 8/12/16. Thank you for your anticipated courtesy in this matter.

Respectfully submitted,

Jim Fallman

Jim Fallman Attorney for MATTHEW D. KIME

JOSEPH R. MEYERS, M.D. ORTHOPAEDIC SURGERY 440 9TH STREET CRESCENT CITY, CALIFORNIA (707) 465-5167 FAX: (707) 465-3857

September 8, 2016

Cal Pers Benefit Services Division PO Box 2796 Sacramento, CA ;95812-2796

RE: MATTHEW KIME EMI¹: CALIFORNIA DEPARTMENT OF CORRECTIONS DOI: 03 25 2002 CL#: TH213099

Ladies and Gentlemen:

This is an addendum to my 02 04 2016 letter to Cal Pers Benefits Services Division:

Officer Matthew Kime has a documented disc herniation at T3-4 and T7-8, each measuring 3 mm and both abutting the spinal cord.

As a Board Certified Orthopaedic Surgeon, with 50 years of practice, a QME medical evaluator, appointed by the State of California, Department of Industrial Relations, Division of Workers' Compensation Medical Unit, It is my opinion that the patient is not able to perform the duties as outlined in the job description for Correctional Officer. Specifically, he cannot defend against an inmate armed with a weapon, he cannot disarm, subdue and apply restraints to an inmate. He cannot lift 100 lbs intermittently.

To allow Officer Kime to attempt these job dutics will impose a grave risk of paralysis from further hemiation and disc protrusion at these two thoracic spinal levels.

It is my medical opinion that Officer Kime remains temporarily and totally disabled from his usual occupation as a Correctional Officer.

Sincerely,

Joseph/R . Meyers, Ma

JRM/ck.

My name is Matthew Davidson Kime and I have been medically retired from the Dept of Corrections, California State since August 28, 2003 due to an an inmate related assault on March 20, 2002. My injury has resulted in disk protrusions in my spine (t3-4 and t7-8), causing chronic back pain and limited mobility.

In order to be employed with CDCR, an officer must be able to perform all essential functions of all the various posts. Due to my injuries I am unable to perform the duties of a Correctional Officer for the Department of Corrections, Ca.

Below is a list of the mandatory CDCR duties that I am unable to perform:

Must be able to work overtime. Overtime is mandatory and could be 8 hours at one time and on very rare occasions, up to 16 hours in situations such as a riot. (See note #1 of attached).

Due to the protruding disks I am unable to sit, stand, or walk for extended periods of time without resting and stretching

Must range qualify with departmentally approved weapons, keep firearm in good condition; fire weapon in combat/ emergency situation (see note #2 attached)

Due to my injury I am unable to utilize the department issued mini 14 rifle unsupported

Must be able to swing baton with force to strike an inmate (see note #3 attached)

I am unable to rotate my upper body while generating enough force to effectively perform this function

Disarm, subdue and apply restraints to an inmate (see note #4 attached)

I am unable to perform this function as my injury prevents me from having the adequate strength to fulfill this requirement

Defend self against an inmate armed with a weapon (see note #5 attached)

I am unable to perform this function as my injury prevents me from having the adequate strength to fulfill this requirement

Walk occasionally to continuously (see note #6 attached)

Due to the protruding disks I am unable to sit, stand, or walk for extended periods of time without resting and stretching

Run occasionally, run in an all-out effort while responding to alarms or serious incidents, distances vary from a few yards up to 400 yards; running may take place over varying surfaces including uneven grass, dirt areas, pavement, cement, etc. Running can include stairs or several flights of stairs maneuvering up or down. (See note #7 attached)

Due to the protruding disks I am unable to sit, stand, or walk for extended periods of time without resting and stretching

Climb occasionally to frequently, ascend/ descent or climb a series of steps/ stairs, several tiers or stairs or ladders as well as limb onto bunks/beds while involved in cell searches. Must be able to carry items while climbing stairs (see note #8 attached)

Due to my injury i am unable to pull myself up ladders or climb onto the top bunk. I am also unable to carry heavy items while climbing stairs

Crawl and crouch occasionally, crawl or crouch under an inmates bed or restroom facility while involved in cell searches, crouch while firing a weapon or while involved in property searches, (see note #9 attached)

Due to the protruding disks I am unable to crawl or crouch

Stand occasionally to continuously, stand continuously depending on the assignment (see note #10 attached) Due to the protruding disks I am unable to sit, stand, or walk for extended periods of time without resting and stretching Sit occasionally to continuously, sit while performing record keeping or report writing activities; observing designated areas (see note #11 attached)

Due to the protruding disks I am unable to sit, stand, or walk for extended periods of time without resting and stretching

Stoop and bend occasionally to frequently, stoop and bend while inspecting cells, physically searching inmates from head to toe and while performing janitorial work including mopping and cleaning (see note #12 attached) Due to limited mobility due to injury i am unable to frequently stoop or bend

Lift and carry continuously to frequently: lift and carry in the light 20 lb maximum to medium 50 lb maximum range frequently through the work day and in the very heavy lifting range over 100 lbs, occasionally lift and carry an inamte and physically restrain the inmate including wrestling an inmate to the floor; drag/ carry an inmate out of a cell; perform lifting/ carrying activities while working in very cramped space. (See note #13 attached)

Due to injury I am unable to lift over 50 lbs.

Pushing and pulling occasionally to frequently; push and pull while opening and closing locked gates and cell doors throughout the work day; pushing and pulling may also occur during an altercation or the restraint of an inmate (see note #14 attached)

Due to protruding disks i have limited mobility and strength needed to complete these required tasks

Reaching occasionally to continuously; reach overhead while performing cell or body searches, etc. (See note #15 attached)

Due to protruding disks i am unable to continuously reach overhead to perform these tasks

Bracing occasionally; brace while restraining an inmate; during an altercation; or while performing a body search (see note #16 attached)

Due to protruding disks I lack the mobility and strength to accomplish this task

Twisting of the body frequently to continuously; twist his body in all directions while performing his regular duties; twisting may take place with the body in an upright position while either standing or walking (see note #17 attached)

Due to protruding disks I lack the mobility to perform this task

Remain functional with exposure to fumes, gases and various chemicals; such as but not limited to pepperspray and tear gas. Must be able to defend self, staff, and inmates during incidents when chemical agents are being deployed (see #18 attached)

Due to injury and limited mobility I am unable to defend myself, staff or inmates

To whom it may concern, I would also add that i have chronic pain, 24/7 which I manage with pain medication and It is against CDCR policy to take pain medication 8 hours before a shift

Mfine

Department of Corrections and Rehabilitation Division of Adult Institutions

Corractional Officer Essential Functions

The Correctional Officer may be required to work in conditions that require one or all of the following essential functions:

- Must be able to work in both minimum and maximum security institutions as well as male and female institutions;
- Must be able to perform the duties of all the various posts.

Must be able to work overtime. Overtime is mandatory and could be 8 hours at one time, and - on very rare occasions up to 16 hours in situations such as a riot.

- Must be able to wear personal protective equipment (stab proof vests), and; clothing and breathing apparatus to prevent injuries and experience to blood/air borne pathogens.
- Must range quality with departmentally approved weapons; keep firearm in good condition; fire weapon in combattemergency situation.
- Must be able to swing baton with force to sinke an inmate
- Disarm, subdue and apply restraints to an inmate:
- Defend self against an inmete armed with a weapon.
- Inspect inmates for contraband; conduct body searches.
- Read and write and count.

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XV. Walk occasionally to conflorously.

Run occasionally run in an all-out effort while responding to alarms or serious incidents; distances vary from a few yards up to 400 yards; running may take place over varying surfaces including uneven grass, cirt areas, pavement, cement, etc, running can include stairs or several flights of stairs maneuvering up or down.

Climb occasionally to frequently, ascent/descent or climb a series of steps/stairs, several flors of stairs or ladders as well as climb onto bunks/beds while involved in cell searches; must be able to carry items while climbing stairs.

Crawl and cronicit occasionally: crawl or crouch under an inmate's bed or restroom facility while involved in cell searches, crouch while firing a weapon or while involved in property searches.

Stand occasionally to continuously stand continuously depending on the assignment.

Sit occasionally to continuously: sit while partocrining record keeping or report writing activities; observing designated areas.

Posses a valid drivers license in order to operate a motor vehicle to patrol institutions; transport iterates to or frost alports, hospitals, court, or other facilities, etc.

Stoop and bend occasionally to frequently: stoop and bend while inspecting calls, physically searching inmates from head to toe, and while performing janitonial work including morphing and cleaning.

Lift and carry sortineously to frequently: lift and carry in the light (20 pound maximum) to medium (50 pound maximum) range frequently throughout the workday and in the very heavy lifting range (over 100 pounds) occasionally; lift and carry an inmate and physically restrain the immate inducting watesting an inmate to the floor, drag/carry an inmate out of a cell; perform lifting/carrying activities while working to very stamped space.

Continueusly wear equipment belt weighing 15 pounds.

Pushing and pulling decasionality to insquently: push and pull while opening and closing locked gates and cell doors throughout the work day; pushing and pulling may also occur during an altercation or the restraint of an inmate.

Reaching occasionally to continuously reach overhead while performing cell or body searches, etc.

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Department of Corrections and Rehabilitistion Division of Adult Institutions Correctional Officer Essential Functions

- Head and neck movement frequently to continuously throughout the workday. Move or use head/neck, while performing his regular duties including abserving and the surveillance of inmates; neck movements include both side to side as well as flexing downward and backward.
- Amstanovement occasionally to continuously.
- Hand and wrist movement frequently to collinuously: move/last as well as grasp and squeeze with their hands and wrists while parforming their regular duties. Fine finder desterity is required when report writing (i.e. insident reports) and in the loading and unloading of weapons, searching of inmates and in the operation of various communication devices. Moveluse hands and wrists independently of each other,

Bracing occasionally: brace while restraining an immate; during an altercation; or while performing a body search.

Press occasionally: press with his legs/feet while driving a vehicle.

Twisting of the body frequently to continuously: twist his body in all directions while performing is regular duties; twisting may take place with the body in an upright position while either

- standing or walking. Vision acuty of 20/60 of better in each eye without correction and corrected vision of 20/20 in each eye.
- Hearing acuity: Must meet standards as set forth in the California Department of Corrections and Rehabilitation's hearing protocol.
- Partiam regular dulies indoors or outdoors, or a combination of indoors or outdoors.
- Perform regular duties with exposed to varying weather conditions and temperatures as well as in temperature controlled environments.
- Perform regular duttes on a wide range or working suffaces; which may become slippery due to weather of spillage of librids and drease.
- Remain functional with exposure to fumes, gases and various chemicals, such as but not limited to pepper spray and tear gasses. Must be able to defend self, staff, and inmates during incidents when chemical agents are being deployed.
- Must have mental capacity to be aware/alert in their observation/identification of security risks. Correctional Officers are at risk to a variety of inmate behaviors, including but not limited to aggressive or violent inmates; psychological manipulation; or verbal abuse/massment. Correctional Officers must also have mental capacity for exposure to very unpleasant situations including trimates who have attempted or committed suicide by hanging themselves in their cell or slashing their wrists; or finitates who throw bodily fluids at them.

 Must have the mental capacity to judge an emergency situation, determine the appropriate use of force, and party out that use of force. Use of force can range from advising an inmate to cease an activity to fining a lethal weapon at an inmate when another life is threatened with great bodily harm or death.

Must have the mental ability to recall an incident in order to accurately document the incident in writing.

20 DATE HIRING AUTHORITY OR DESIGNEE SIGN HRC 28-00 E-PRINT 310 DATE OFFICE OF EMPLOYEE WELLNESS NAME

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