

ATTACHMENT C
RESPONDENT(S) ARGUMENT(S)

JAMES FALLMAN

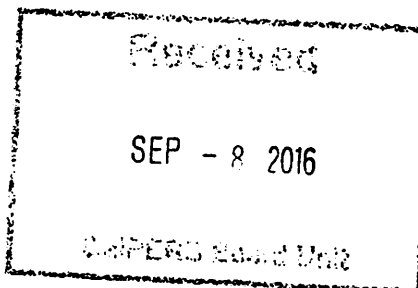
ATTORNEY AT LAW
A Professional Law Corporation
250 Leavitt Mall

Crescent City, CA 95531
Board Certified Specialist in Criminal Law by
California State Bar Board of Legal Specialization
(Se habla español.)

Ph: (707) 464-1858

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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
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
EMP: 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 duties will impose a grave risk of paralysis from further herniation 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, M.D.

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 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 inmate 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

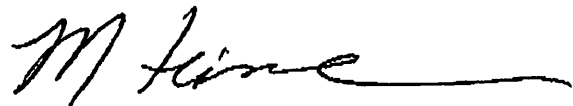
Twisting of the body frequently to continuously; twist his body in all directions while performing his regular duties ; twisting may take place with the body in an upright position while either standing or walking (see note #17 attached)

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



Department of Corrections and Rehabilitation
Division of Adult Institutions
Correctional 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.
- #1 • 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 exposures to blood/air borne pathogens.
- #2 • Must range qualify with departmentally approved weapons; keep firearm in good condition; fire weapon in combat/emergency situation.
- #3 • Must be able to swing baton with force to strike an inmate.
- #4 • Disarm, subdue and apply restraints to an inmate.
- #5 • Defend self against an inmate armed with a weapon.
- Inspect inmates for contraband; conduct body searches.
- Read and write and count.
- #6 • Walk occasionally to continuously.
- #7 • 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.
- #8 • Climb occasionally to frequently: ascent/descent or climb a series of steps/stairs, several tiers 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.
- #9 • Crawl and crouch 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.
- #10 • Stand occasionally to continuously; stand continuously depending on the assignment.
- #11 • Sit occasionally to continuously: sit while performing 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 inmates to or from airports, hospitals, court, or other facilities, etc.
- #12 • 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.
- #13 • Lift and carry continuously 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 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.
- Continuously wear equipment belt weighing 15 pounds.
- #14 • 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.
- #15 • Reaching occasionally to continuously: reach overhead while performing cell or body searches, etc.

