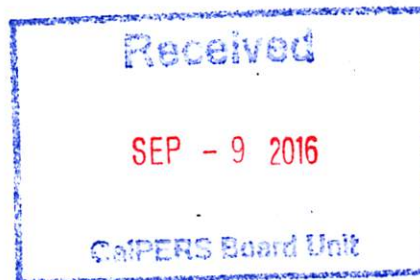


ATTACHMENT C
RESPONDENT'S ARGUMENT

September 7, 2016
 "Respondent's Argument"
 CalPERS Executive office
 P.O.Box 942701
 Sacramento, CA. 94229-2701
 Fax (916)795-3972

Ref No.2015-1020
 Herminia L. Arras



Presently

I'm a Cal Pers member as of 1995, Employed by Lake Elsinore Unified School District Transportation Dept, as a School bus driver, now retired due to Industrial Injury. I've had no accidents and no traffic Violations in my years Driving for L.E.U.S.D.I was apart of School Bus Rodeo Team for several years. Reference #1 Proposed Decision, Summary pg.2 top paragraph

Mrs.Arras was not substantially incapacitated from performing the usual and customary duties of a school bus driver at the time she filed her application for industrial disability retirement.

Defense: . I was placed out side the school bus into a office as Modified dutie..August 13, 2012 had Spasm, Stiffness, on upper & lower back along with tingling down to right leg & foot in L.E.U.S.D.school bus. On August 30,2012 I was placed on Work comp with Tri Star. For several Months. I received a letter VIA Certified and Regular mail in May 2013 from Sam Wensel Executive Director, Personal services that regarding my " personal" leave provisions & according to Classified Collective Bargaining Agreement Article 10 -Leave Provisions. 10.8, illness leave shall not exceed five school months or 108 days. There fore the Doctor placed me on Modifed duties that was excepted. I was able to continue medical care through the year through Tri-star wk. comp having more therapy , chiropractic & acupuncture treatment up until presently July 30, 2016 with discloser to work case allowing Life time Medical coverage on Upper & Lower back, Shoulder, Neck Right leg & foot, Right Wrist Included..

Reference#2 same page down to #3 Application claming to have right to receive an industrial disability retirement on the base of orthopedic injuries to her neck, back, and right leg , foot, and ankle. Mrs. Arras claimed "pain on lower lumbar area cause by prolonged sitting and driving over bumps.

Defense: Let the Records show in the MRI of back x-rays, Doctor Reports Emergency rooms. I Herminia Arras have given San Bernardino Cal Per's two C.D.s from: Doctor Matos, & Doctor Akmajain in April 2016 alongside of Angelina Romo and Janel Garcia. who went with me to deliver to 3rd floor main office. On September 24,2016 with Judge Kimberly J. Belvedere along with my husband Ruben Arras that Judge Belvedere stated we were credible and sincere "noted" 9-24-2016, Judge Belvedere stated that "she had nothing", "except what I had brought to her for that day". I felt deprive of my rights to display C.D of MRI. of Orthopedic Surgeons Report's. Prior to that day I was told by John Shipley that I could bring the MRI C.D.. & reports Prior to date on a phone conversation. I was also told that for my 3rd attempt to disclose "Respondents Argument" as I was told to title this request, I could only have 6 page's for the Board to look over on Monday September 12, 2016. My Husband Ruben Arras who's Worked for L.E.U.S.D for 20 years also a CalPERS member, noticed many Inconsistency's in Dates, Reports, Process's, as well as placing a Report that I don't feel came from Dr. Fiat? The date on his resent report was 2015. His Report that I would have remembered the Interview and the exam.. Dr.Fait's report ? When I met him I told him and John that I would have remembered Him as I have list of Doctors Business Cards on a sheet of paper. I told him maybe it was in passing.. Dr. Fait told me of the office he works out of in Moreno Valley, I said yes I know that place but that's were I went once to Dr. Kim in Moreno Valley for my Q.M.E.. as my husband agreed with me as he was with me on that date.. Dr. Faits Report also states many times at the appointment he said I had with him That I didn't remember or I had forgotten, It was over express that I had forgotten during questions he asked me on the report.

Page 2: "Respondent's Argument"

Reference from pages of Matthew G. Jacobs General Council Form's

Page #1 #24 Reference: statement suggest that I was working in the year 2014 Defense: Exhibit #1 retired pending disability. 5-30-14 being I was still covered by Tri-star work comp for therapy.

Defense: On August 13, 2012 I had a Industrial Injury will driving L.E.U.S.D. school bus, I had Spasms, numbness, tingling on upper neck, lower back, right side leg & foot. I was told to report to work comp. Doctor, due to being in a L.E.U.S.D. bus, it was reported on August 30, 2012. Work comp place me off my regular duties as a bus driver, then called me back to work for Modified work in LE.U.S.D. Transportation Department in May 2014. I received a letter Dated May 13, 2013 from Sam Wensel Executive Director Personnel Services. That in "Regarding your "personal" illness leave provisions accordance to Classified Collective bargaining Agreement I would have to request an extension to the number of days that I was already off. I was denied the extension, from L.E.U.S.D. Personal services, signed by Sam Wensel. I was called to a meeting on May 9th 2013 with Sam Wensel, Julie Scranton, Janive District Nurse, Elizabeth Miller, & Tootsie Bishop, at this meeting my Husband Ruben Arras and Attorney Ted Kennedy attended. I was given words from Janive that I was a liability driving a school bus because if an Emergency occurs I would not be able to pull a child off bus due to the weight limit of lifting from L.E.U.S.D. & also Doctors reports: school bus. Exhibit #3 form in file from Herminia Arras, 9-7-2016. As to the district on May 9th 2013. I followed through with request of an extension as I was still under going treatment and physical therapy and evaluations all that have been recorded and placed in records and files.

Prior a sever Industrial Injury while driving my LE.U.S.D. school bus in the year 1999. Not caused by me.. I had taken at tack team of students on the school bus at 4a.m. morning to a track meet at the University of Riverside, after dropping off students I was told to Park school bus around the reservoir where they had produce and crops. I was told to stay on dirt path and follow around to park behind another bus. I followed instructions and ended up in a water reservoir of 10 feet wide 10 feet deep. The bus tire's went in water reservoir along with front axle.. Bus was towed out. The University was sorry for not having a screen placed over ditch nor cones, lights, or roped off.. This caused pain to neck and shoulder area, through report to work comp test was done to my neck found to fracture disc damaged C-4, C-5, in 2000 Work comp covered surgery disc repair.. It was told and said that I may have more complications' later, like arthritis. I was never advised to switch to another jobs in L.E.U.S.D. after surgery. I never said that I was completely healed as stated on Dr. Fiats report.. I've had tenderness as Doctor Akmajain said I may have. As of 2011 noticed changes in my sleep pattern, difficulty in doing my regular house keeping, aches and pain on body. Doctors and specialists were puzzled until the MRI was taken in year of 2011 & 2012. Even then after the first set of MRIs were taken there was change noticed to the MRI. As Dr. Fiat stated in front of Judge on July 24, 2016 That anytime after having surgery as Herniated Disc the Degerated Disease increases. I addressed Dr. Fiats Response to the Judge that day as reference after having an Industrial Injury In School Bus property of L.E.U.S.D.. I showed my right leg, ankle & foot as evidence of on going swolleness, inflammation along with my pain medication taken daily according to daily activity.

Defense: Regular Doctor follow ups, Daily routine in & out of home not able to do. Not able to walk up or down stairs as a step well going into school bus. Stiffness in the Areas covered by Tri-star work comp. Swollen ankles & foot. Fatigue, sleepless nights, Headaches still occurring, spasms, stiffness, mood swings, shoulder & neck pain and soreness, shortness of breath, difficult to walk with inflammation to right leg ankle & foot. Inability to sit long periods of time, or stand long periods of time or clean, sweep, mop or do windows with out having spasms. Not able to work with difficulty of stiffness & spasms. Pain range is now in a 8 level out of 10.. I haven't had pain level no lower than a 5 ..Sexual relations have stop due to back, leg, neck.. Marriage rough because of this..

I'm Presently taking tramadol pain meds. Or Extra strength Tylenol daily I apply Hot & cold compus. I've been using electro pad stimulators applied to area of pain. I uses an electric back massager on areas of discomfort, stiffness, aches, I signed up for L.A. fitness center to go into pool only and soak in spa, walk in water, water movement for body parts. The judge said it wasn't enough evidence just to have pain. Again I had 3 Industrial Injuries while working for L.E.U.S.D. as a school bus driver, Not caused by me.. While drive school bus 1999, 2011 & 2012 I plead for the panel to understand I can not work or find employment any where else as my age and disabilities increase; My body will need surgery eventually for lower lumbar

due to Industrial Injury In a school bus not caused by me Herminia Arras of L.E.U.S.D. for 18 years.

On Thursday May 30th 2014 I Herminia Arras sent Paper work for Retirement pending Disability.

I was asked to meet with Sam Wensel on May 9, 2013 to discuss options due to liability of weight restrictions as to how much a child weight if an emergency occurred to carry or pull off school bus. There for I was given 3 options.

- #1 Retire
- #2. To take a complete physical and MRIs & x-rays
- #3 To apply for another position in L.E.U.S.D.

At this meeting There was Sam Wensel, Julie Scranton, Elizabeth Miller, Janiva who's District nurse at time. I had my Husband Ruben Arras attend and Attorney William Kennedy

First of all I Loved my Job and never thought I would have to be put off bus by options.
 Second I asked if I took this physical would I have to have x-rays & MRIs? I was told yes a complete do all over again. I refused due to radiation issues of my family blood line have had cancer. I Never know it was called "fitness for duty physical exam".
 Thirdly Sam Wensel told me I could apply for another position in district. I ask her would I have to apply for position? She responded yes! Apply, Test, Interview for position...Sam Stated there should be some openings as a cross guard walker for students. I went home to check on line. There were no openings! I was disappointed and I had only a few days to decide.

During this time I had been on Modified duty for L.E.U.S.D. transportation Department. I made a decision to Retire Pending Disability due to limitations in my everyday walk of life. & Restrictions put on my Body due to Industrial Injury. Please review MRI. From two other Doctors. Three Orthopedic surgeons Recommended Surgery.

Please consider all evidence & facts in accepting my Proposal.
 Gratefully
 Herminia . Arras



Exhibit

1

5/30/2014



Lake Elsinore Unified School District

Date of Last Date Worked

RESIGNATION NOTIFICATION

Reason & Comments:

Retirement PENDING District Disability.

Governing Board

Heidi Matthes Dodd
President

Juan L. Saucido
Clerk

Stan Crippen
Member

Tom Thomas
Member

Susan E. Scott
Member

To: PERSONNEL SUPPORT SI

From (please print): Herminia Arras

Position: School Bus Driver Location/Site: L.E.U.S.D. Transportation Dept.

Effective Date of Resignation 5-30-2014
(Last Working Day)

Reason: Retirement

Administration

Dr. Doug Kimberly
Superintendent

Dr. George Landon
Deputy Superintendent
Administrative & Fiscal Support Services

Dr. Gregory J. Bowers
Assistant Superintendent
Facilities & Operations

Dr. Alain Guevara
Assistant Superintendent
Instructional Support Services

Kip Meyer
Assistant Superintendent
Personnel Support Services

Sam Wensel
Executive Director
Personnel Support Services

Comments: Retirement Pending District Disability. Disability Not Cause by Employee's Fault. "1999" Driver was directed to drive a School bus around a reservoir at Riverside.

University at 4:30 A.M. For a High School track team meet after dropping off students, Driver was directed into a water wash drain. There were no lights, no cones, no barriers. "2012" Driver had severe front of bust (free) and axle went into ditch. Caused Humeral Spasm. Drain

Signature: [Handwritten Signature]

Date: 6/4/14

Problems -
"2000"
for
Disc
C4-C5
Humeral
Disc.

"Spasm 2012"
"Car pool Tunnel"

(951) 253-7000
545 Orange Street
Lake Elsinore, CA 92530
www.leusd.k12.ca.us

To: Herminia H. Given Tome 2013
From: Lake Elsinore Unified School District
July 1, 1998

SUMMARY OF PHYSICAL DEMANDS RATINGS Sam Wensel

JOB TITLE: Bus Driver

Report Identification Code = tbd

The following analysis entails an evaluation of the "Physical Demands" factors of the job, as it exists. This method provides a basis for permitting modification to fit the capabilities and needs of workers with disabilities.

on
May 9th 2013
Round table Meeting

Rating Symbol Key:

- NP = Not Present - Does not exist
- O = Occasionally - Up to 1/3 of the time
- F = Frequently - From 1/3 to 2/3 of the time
- C = Constantly - 2/3 or more of the time

1. STRENGTH:

A. Standing	15%
Walking	15%
Sitting	70%
B. Lifting	O 50 lbs.
Carrying	O 25 lbs.
Pushing	O 25 lbs.
Pulling	O 25 lbs.

Exhibit

3

Missing Page
Job Description
For # 9

2. CLIMBING
BALANCING

F
F

3. STOOPING
KNEELING
CROUCHING
CRAWLING

O
O
O
NP

4. REACHING
HANDLING
FINGERING
FEELING

C
C
O
O

5. TALKING:
Ordinary
Other

C
F

HEARING:
Conversations
Other Sounds

C
C
F

6. SEEING
Acuity, Near
Acuity, Far
Depth Perception
Accommodation
Color Vision

C
C
C
C
NP

**Southland
Spine &
Rehabilitation
MEDICAL CENTER**

**MAX H. MATOS, M.D., F.A.A.O.S., Q.M.E.
DIPLOMATE, AMERICAN BOARD OF ORTHOPAEDIC SURGERY**

June 24, 2013

Lauren Belger, Esq.
3536 Concourse Street Suite 210
Ontario, CA 91764

Tristar Risk Management
P.O. Box 2805
Clinton, IA 52733-2805

RE: **ARRAS, HERMINIA I.**
EMPLOYER **Lake Elsinore Unified School District**
OCCUPATION **Bus Driver**
DATE OF INJURY **CT 1/1/10 to 1/10/12, 1/19/12**
CLAIM # _____
WCAB # _____
SSR ID # _____
DATE OF EVALUATION **6/24/13**

**PRIMARY TREATING PHYSICIAN'S
PERMANENT AND STATIONARY REPORT**

Ms. Herminia I. Arras returns to my Riverside office today on June 24, 2013 for orthopaedic follow-up referencing the above date of injury.

This permanent impairment evaluation was performed in accordance with the American Medical Association *Guides to the Evaluation of Permanent Impairment*, 5th edition. I spent 1½ hours reviewing the history and performing the physical examination. Two and one-fourth hours were spent reviewing medical records, including my own records, and diagnostic studies. Three and one-fourth hours were spent rating impairment and formulating my opinions.

1520 NUTMEG PLACE, SUITE 110 COSTA MESA, CA 92626 PHONE

4354 LATHAM STREET, SUITE 100 RIVERSIDE, CA 92501 PHONE (

Exhibit

4

(3 Pages) 2 with Discrepancies
Page 2 Pulled from my file
Page 3 Pulled out of my file

RE: ARRAS, HERMINIA I.

June 24, 2013

Page 24

Southland Spine &
Rehabilitation Medical Center
Max H. Matos, M.D.,
F.A.A.O.S., Q.M.E. Riverside, CA.

DISCUSSION:

Ms. Herminia I. Arras is a 53-year-old bus driver whom I have followed for work related injuries. The patient has been treated conservatively and surgically, has had appropriate diagnostic studies, and has been evaluated by specialists as indicated. The findings and recommendations of all consultants are hereby incorporated by reference into this report.

It is my professional opinion that this patient's orthopaedic injuries have stabilized. No further significant improvement can be expected with additional conservative care. The patient has reached maximal medical improvement and can be considered permanent and stationary for purposes of rating. Impairment rating is performed in accordance with the *AMA Guides to the Evaluation of Permanent Impairment*, 5th edition.

Objective Factors of Disability:

Per physical examination and diagnostic studies summarized above.

Impairment Rating and Rationale:

Spine impairment is 45% WPL

Upper extremities impairment is 14% WPL

Pain impairment is 3% WPL

TOTAL COMBINED WHOLE PERSON IMPAIRMENT: 56%

Per Combined Values Chart, p. 8-2, 2005 CA PDRS

Cervical spine: Impairment of the cervical spine can be rated using the diagnosis-related estimates (DRE) method or ROM method. However, given that the DRE method provides a higher rating, this is the method chosen. According to *AMA Guides*, 5th edition on Chapter 15, page 380, it states, "In the small number of instances in which the ROM and DRE methods can both be used, evaluate the individual with both methods and award the higher rating."

For the sake of completeness and convenience, my ratings and rationale for both methods are provided below:

Cervical DRE: Clinical history and examination findings are compatible with a continuous trauma injury. There is loss of range of motion in all planes. There are no significant signs of cervical radiculopathy noted. However, she complained of occasional pain across the nuchal area with occasional radiation to both upper extremities. The pain increases with lifting, pushing, pulling, and prolonged neck positions. She occasionally wakes up at night due to pain. She

School Bus Driver
WK. Area: Transportation Dept.
ARRAS, Herminia Arras
Page 9 Lake Esbino Unified Sch. Dist.
CA. (951) 253-1000

(951) 275-5888
00147 ← Code # 3
From office of Doctor:
Max H. Matos, M.D. F.A.A.O.S.
Q.M.E.
(Date of Exam: April 12, 2014) (Part Beachwood)
OR

530-230 ← ?

Dr. Thomas W. Jackson, MD
4444 Magnolia Ave. Riverside CA
(951) 682-5661

- Tenderness.
- History of disc herniation with extrusion noted at L4-5 and L2-3.
- Weakness in the right ankle extensor.
- Decreased sensation to the LS dermatomal distribution right.

WORK RESTRICTIONS:

The examinee has returned to her usual and customary work as a bus driver. The examinee will be precluded from pushing, pulling or lifting greater than 35 pounds and no repetitive bending or stooping.

CAUSATION:

Causation is industrial based on cumulative trauma coupled with an underlying degenerative condition.

APPORTIONMENT:

The examinee's condition is a combination of cumulative trauma based on driving a large school bus which requires prolonged sitting and running over bumps. Therefore, her lumbar spine can be apportioned 50% industrial and 50% non-industrial due to the degenerative condition.

For her cervical spine, the examinee's job requires frequent turning and twisting of her head which would have resulted in cumulative trauma which would be apportioned 90%, and 10% due to a non-industrial degenerative condition.

For her carpal tunnel syndrome, there is cumulative trauma and is 100% industrial based on cumulative trauma.

FUTURE MEDICAL TREATMENT:

The examinee really responds to acupuncture treatment. Therefore, she is a candidate to receive up to 12 acupuncture sessions per year.

The possible need for decompression and fusion of the lumbar spine still remains as a possibility in the future.

She can be treated with medication including nonsteroidal anti-inflammatory medication and medication such as muscle relaxers as needed.

Code attendance as
WIC

Date Received : 051514