

**ATTACHMENT C**  
**RESPONDENT(S) ARGUMENT(S)**

January 31, 2017



Board of Administration  
California Public Employees' Retirement System  
State of California

RE: Scot Legeman  
Case No 2015-0794  
OAH No 2016060509

### **RESPONDENT'S ARGUMENT**

I do not agree with the decision by the Administrative Law Judge, Kimberly Belvedere dated December 22, 2016. I would like the board to consider the following and rule that I am eligible to apply for and receive a disability retirement.

### **WORK HISTORY**

I began my career with the California Department of Corrections and Rehabilitation (CDCR) in March 2002. I worked at the California Institution for Men until 2006. I then promoted to Correctional Sergeant and transferred to the California institution for Women (CIW). While at CIW, August 2008, I was assigned to the Investigative Services Unit (ISU), which conduct's investigations on inmates, staff and visitors. I was later terminated on May 12, 2012.

### **TESTIMONY OF MS. JONES, DECEMBER 13, 2016**

While in ISU this is where my work related injury took place. Ms. Jones testified in this matter on December 12, 2016. Ms. Jones stated at no time during the investigation did any allegations of disability or orthopedic conditions arise. This statement is false. On January 15, 2012, I filed a worker's compensation claim for pain and numbness in both of my hands and arms. As of that date I was taken off work and never returned. While off work and under the doctors care I participated in the investigation and was interviewed. This information can be verified by the interview recordings and off work records obtained in my medical file.

### **CALPERS STATED CASE LAW**

Upon review of the cited cases: Haywood v American River Fire Protection District, Smith v City of Napa and Robert C Vandergoot and the California Dept. of Forestry and Fire, these cases do not pertain to my application for industrial disability retirement and should not have been taken into consideration in determining an approval.

Haywood v American River Fire Protection District - Psychological claim

Smith v City of Napa - Injury matured after termination.

**REBUTTLE TO CALPERS STATED CASE LAW:**

Haywood v American River Fire Protection District – My work related injury was physical, carpal and cubital tunnel in both arms and hands.

Smith v City of Napa – My work related injury matured before the termination date as noted on the Physician Report on disability that was provided with my application.

Zimmon v. City of San Bernardino – Zimmon was terminated from employment and filed a disability retirement. The retirement was awarded based on his work related injury that matured prior to his termination.

**CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT LAW JANUARY 1, 2015:**

Under the California Public Employees' Retirement Law section 21151. Applicability—Specified State Member or Local Safety Member (a) Any patrol, state safety, state industrial, state peace officer/firefighter, or local safety member incapacitated for the performance of duty as the result of an industrial disability shall be retired for disability, pursuant to this chapter, regardless of age or amount of service.

Section 21151 outlines my right for a disability retirement. I was incapacitated for the performance of duty as the result of an industrial disability which was reported on January 15, 2012 prior to the termination date.

Section 21154 (d) while the member is physically or mentally incapacitated to perform duties from the date of discontinuance of state service to the time of application or motion.

Section 21154 (d) outlines the time that I may apply for a disability retirement because I have been physically incapacitated in performing the duties as a Correctional Sergeant since January 15, 2012 which is prior to my termination date.

**CALIFORNIA GOVERNMENT CODE:**

California Government Code sections 20046 and 20027 are specific to an industrial disability which I fall under the guidelines of.

**Section 20046:**

"Industrial," in reference to the death or disability of any member of this system who is in a membership category under which special benefits are provided by this part because the death or disability is industrial, means disability or death as a result of injury or disease arising out of and in the course of his or her employment as such a member.

**Section 20027:**

"Disability," "disabled," or "incapacitated" means, with respect to qualification for an allowance payable to a surviving child, inability to engage in any substantial gainful occupation by reason of any physical or mental impairment that is determined by the board, on the basis of competent medical or psychiatric opinion, to be of permanent or extended and uncertain duration.

**WORK RELATED INJURY:**

As a result of the work related injury I was taken off work for cubital tunnel and carpal tunnel in both of my arms and wrists. CDCR has never disputed my workers compensation claim and I have had the following surgeries thus far, with additional surgeries pending:

**LEFT ARM AND HAND:**

Cubital Tunnel Release and Carpal tunnel release at the same time on my left arm and wrist. Both unsuccessful and both surgeries were repeated.

**RIGHT ARM AND HAND:**

Cubital Tunnel Release and Carpal tunnel release at the same time on my right arm and wrist. Cubital tunnel surgery was unsuccessful because the doctor did

Scot Legeman  
Case No 2015-0794  
OAH No 2016060509  
**RESPONDENT'S ARGUMENT**

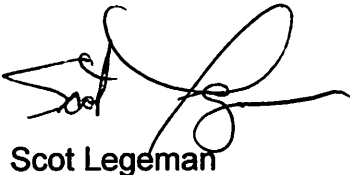
or not. As you can see, I tied to exhaust all remedies to repair the damage to my arms and hands prior to filing for a disability retirement.

**CONCLUSION:**

In conclusion, the cases cited by Calpers do not pertain to my circumstance in regards to my disability and the mature date. All the doctors that treating me since January 15, 2012, stated that my disability became permanent on the date of injury. This is noted on the Physician Report on disability that was provided with my application. This information proves the maturity date and that it is a physical injury that I cannot be healed of regardless of how many more surgeries I have.

I did not delay the filing of a disability retirement due to the fact that I was under doctor's care from January 15, 2012 to the present. I did not nor could I rush or prolong the medical treatment that I received in order to apply at a sooner date. I applied in accordance with Public Employees' Retirement Law section 21154 (d). Therefore, I am asking the board to look into the facts that I have stated about my work related injury and reverse the decision and allow my application for disability retirement to be processed.

Thank you for your time and consideration in this matter,



Scot Legeman