

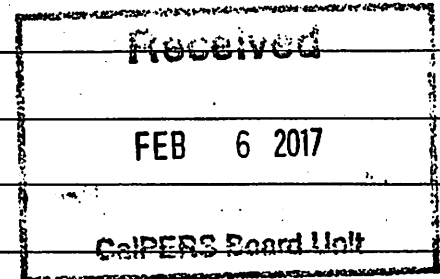
ATTACHMENT C
RESPONDENT'S ARGUMENT

Respondent's Argument

CalPERS

Reference # 2015-0380

The Matter of Richard Ayala
Application for Industrial
Disability Retirement.



To whom it may concern,

My name is Richard Ayala and this is my written argument of my denial for Industrial Disability Retirement. I would like to precedent the whole part of the Board's decision. I will state the facts in this letter.

I would like to start with governing code Section 2151, which states if any patrol, state safety, state industrial, state peace officer, 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.

If you refer back to CalPERS Physicians Report on Disability prepared by Dr. Cyril W. Rebel on June 27, 2014. In section 2 it states origin of injury is work related. In section 4 it states a Labreal tear. In section 5 #1 it ask is the member substantially incapacitated from performance of the usual duties of the position for their current employer, Dr. Rebel marked yes. In section 5 #2 will the incapacity be permanent, Dr. Rebel marked yes it would. If you refer to Dr. Jeffery M. Lundeen State appointed examiner AME report it clearly states my injury to my left shoulder and hand is a result of a injury

while on duty at my job.

In Section 21156, It states, if the medical examination and other available information show to the satisfaction of the board, that the member in the state service is incapacitated physically or mentally for the performance of his or her duties and is eligible to retire for disability, the board shall immediately retire him or her for disability. In the physicians reports I presented to you it clearly states in their examination I was incapacitated physically with a labrel tear in my left shoulder. It wasn't until I had surgery on October 6, 2015 on my left shoulder by Dr. Peter Simonian orthopedic surgeon, that in fact Dr. Simonian physically found and saw superior labrel tears, meaning more than one.

In your factual findings #3 Callers claims I did not have any surgery to date. This is in fact untrue and would have been factual knowledge to you if all of my doctor reports that I put into exhibits were taken into consideration and not deemed merely hearsay, as stated in section 21156, that ALL available information can be presented to the board.

I feel it is unjust that my denial was based on the fact that my state appointed doctor, Dr. Jeffery M. Lundeen who was in fact supnea and did not show up to my hearing, all of my medical reports and evidence was deemed hearsay. I've attached a copy of the supnea for Dr. Jeffery Lundeen. I feel I was not given a fair hearing as my medical evidence and doctor reports were not taken into consideration.

As it states in California law evidence code § 15161, If doctor

reports are prepared during business hours they can be admitted as evidence, which none of mine was and only considered hearsay. If doctor reports are merely hearsay than why are they protected by State and Federal law as the Information privacy act (civil code) Section 1798.40.

In Section 21116 it states, If a member is entitled to a different disability retirement allowance according to whether the disability is industrial or nonindustrial and the member claims that the disability as found by the board, is industrial and the claim is disputed by the board, The workers Compensation Appeals Board, using the same procedure as in workers' compensation hearings, shall determine whether the disability is industrial.

Workers' Compensation did in fact determine my disability is industrial and permanent and would not be able to return to my normal job duties. They also concluded I would need further treatment and surgery. When trying to present this evidence, I was denied and it was considered a completely different process that is not taken into consideration at all, and deemed hearsay. That is in fact not the case in your Section code 21116.

The fact is no matter what the board decides, I will never be cleared medically to return to work, which is in my evidence.

I ask that the board would take all of my medical reports and workers' Compensation findings into evidence in my case

Sincerely,
Richard T. Ayala

REF NO. 2015-0380

FORGOT TO ATTACHE TO MY APPEAL
THIS IS THE SUBPOENA I SENT TO JEFFREY LUNDEEN, M.D.

SINCERELY

Richard T. Oyala

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION

WORKERS' COMPENSATION APPEALS BOARD

Case No. ADJ9542333

OF APPLICATION HAS WHEN FILED, CASE NUMBER
MUST BE INDICATED REGARDING OF DATE OF INJURY

RICHARD AYALA

CDCR VALLEY STATE PRISON

vs.

AND

Claimant/Applicant

Employer/Insurance Carrier/Defendant

SUBPOENA

The People of the State of California Send Greetings to:

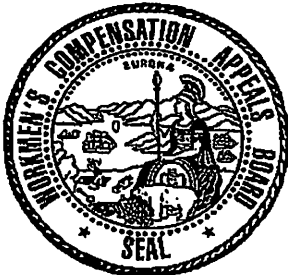
JEFFREY LUNDEEN, M.D., 7033 N Fresno St Ste 201, Fresno, CA 93720-2976

YOU ARE HEREBY COMMANDED to appear before a Workers' Compensation Judge of the WORKERS' COMPENSATION APPEALS BOARD OF THE STATE OF CALIFORNIA at

2349 Gateway Oaks Dr Ste 200 Sacramento, CA 95833

on the 29th day of November, 2016, at 9 o'clock A. M., to testify in the above-entitled action.

For failure to attend as required, you may be deemed guilty of contempt and liable to pay to the parties aggrieved all losses and damages sustained thereby and forfeit one hundred dollars in addition thereto. This subpoena is issued at request of
Richard Ayala, Pro-Per, Telephone No. (559) 871-1634



WORKERS' COMPENSATION APPEALS BOARD
OF THE STATE OF CALIFORNIA

Secretary, Assistant Secretary, Workers' Compensation Judge

Date October 31, 2016

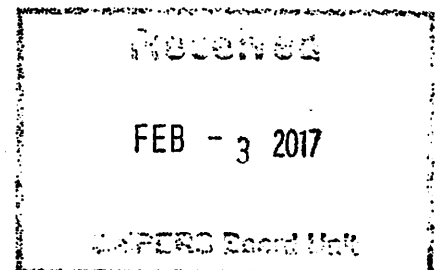
This subpoena does not apply to any member of the Highway Patrol, Sheriff's Office or city Police Department unless accompanied by notice from the Board that deposit of the witness fee has been made in accordance with Government Code 68097.2, et seq.

FOR INJURIES OCCURRING ON OR AFTER JANUARY 1, 1990 AND BEFORE JANUARY 1, 1994:

If no Application for Adjudication of Claim has been filed, a declaration under penalty of perjury that the Employee's Claim for Workers' Compensation Benefits (Form DWC-1) has been filed pursuant to Labor Code Section 5401 must be executed properly.

[SUBPOENA INVALID WITHOUT DECLARATION]

DIA WCAB 30 (Side 1) (Rev.06/94)



**DECLARATION FOR INJURIES OCCURRING ON OR AFTER
JANUARY 1, 1990 AND BEFORE JANUARY 1, 1994,
FOR WHICH AN APPLICATION FOR ADJUDICATION OF CLAIM HAS NOT BEEN FILED**

STATE OF CALIFORNIA, County of FRESNO Case No. ADJ9542333

The undersigned states:

That he/she is (one of) the attorney(s) of record/representative(s) for the applicant/defendant in the action captioned on the reverse hereof, and that an Employee's Claim for Workers' Compensation Benefits (DWC Form 1) has been filed in accordance with Labor Code Section 5401 and California Code of Regulations, title 8, section 10120 (Administrative Director's Rules and Regulations), by the alleged injured worker in this action, or, if the worker is deceased, by the dependent(s) of the decedent, and that a true copy of the form filed is attached hereto.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, at _____, California.

Signature Address Telephone

DECLARATION OF SERVICE

STATE OF CALIFORNIA, County of _____

I, the undersigned, state that I served the foregoing Subpoena by showing the original and delivering a true copy thereof, together with a copy of the Declaration in support thereof, to each of the following named persons, personally, at the date and place set forth opposite each name.

<u>Name of Person Served</u>	<u>Date</u>	<u>Place</u>
------------------------------	-------------	--------------

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, at _____, California.



Signature