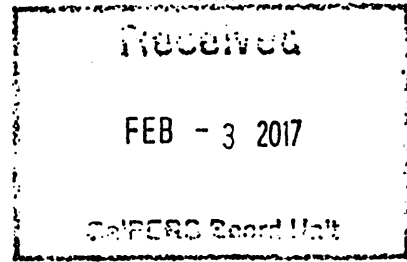


ATTACHMENT C
RESPONDENTS ARGUMENT

Fax



TO:	Cheree Swedensky	FROM:	Scott Cotteen
COMPANY:	CalPERS Executive Office	COMPANY:	
FAX:	9167953972	FAX:	
SUBJECT:	Respondent's Argument	DATE:	Friday, February 03, 2017

Scott Michael Cotteen

February 3, 2017

CalPERS Executive Office
P.O. Box 942701
Sacramento, CA 94229-2701
Attn: Cheree Swedensky, Assistant to the Board

Re: Respondent's Argument, Ref No. 2013-0461

To whom it may concern:

This letter is being submitted to ask the Board to affirm the decision by Judge Berg, as outlined in the Proposed Decision of the Administrative Law Judge, heard on November 28, 2016. The decision by the Board will not set precedent, but will merely correct an unforeseen problem created by *Dept. of Justice v. Bd. of Administration* (2015) 242 Cal. App. 4th 133.

Prior to 2015, the California Highway Patrol (CHP) could, with sufficient grounds, deny a reinstatement from an industrial disability retirement even though CalPERS had approved that reinstatement. In its decision, the court found that agencies, such as the CHP, could no longer require employees to complete additional requirements that, in essence, made them re-apply for the original position. It was this decision which set the stage for the situation that is currently before the Board.

To summarize, the industrial disability retirement (IDR) in question began in December 2006 and, in January 2013, CalPERS approved a request for reinstatement, however, the CHP immediately appealed (as was their standard procedure at the time) and the process was stopped. At that time, the CHP would only authorize reinstatement if an employee could successfully pass the same physical requirements as those for new officers. Based on discussions with the CHP, it was clear that passing the physical requirements would be difficult for someone with 23 years of CHP service. As a result, a request was made to cancel the reinstatement process since it was clear that successfully passing was not probable. Both the CHP and CalPERS were notified and acknowledged the request for cancellation in March 2013.

Two and one-half years later, in January 2016, notification was received from CalPERS indicating that the IDR was cancelled and the reinstatement had been approved. Based on the 2015 court decision, the CHP had withdrawn its appeal and notified CalPERS, which allowed the process to move forward. During this time, no letters or other communications were received from either organization. More importantly, even though three years had past from the time of the original CalPERS decision to reinstate, no inquiry was made to determine if there had been any changes in physical condition that would affect the reinstatement.

CalPERS Executive Office
February 3, 2017
Page 2

Unfortunately, my physical condition had changed and it was my belief that I was no longer capable of working as a peace officer. This opinion was supported by my physician at the Haider Spine Center, as well as Dr. Matan, the state medical examiner. In fact, at the administrative hearing on November 28, 2016, Dr. Matan testified that "there is no question that everything is significantly worse" and that he [Dr. Matan] "would be very hesitant in now concluding that Mr. Cotteen could return to work."

While it is true that CalPERS approved reinstatement in January 2013, the testimony at the administrative hearing clearly indicates that if reinstatement were considered today, it would be denied based on a deteriorated physical condition. It is only because of the delayed process and the 2015 court decision that this case comes before the Board now. As such, I am asking that the Board affirm Judge Berg's decision and reinstate my IDR effective January 25, 2016.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Cotteen", with a horizontal line extending to the right.

Scott M. Cotteen

FAX JOURNAL REPORT

TIME : 02/03/2017 05:41
 NAME : CALPERS BOARD UNIT
 FAX : 9167953972
 TEL : 9167953972
 SER.# : 000M8J483677

NO.	DATE	TIME	FAX NO./NAME	DURATION	PAGE(S)	RESULT	COMMENT	
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