

ATTACHMENT C
RESPONDENT(S) ARGUMENT(S)

MEMORANDUM:

DATE: March 3, 2017

TO: Board of Administration CalPERS
c/o Cheree Swedensky, Assistant to the Board
FAX: 916.795.3972

FROM: Thomas W. Barkley, Jr.
Respondent, Case No. 2016-0300
OAH No. 2016070775

RE: Proposed Decision Denying Disability Retirement –
Jennifer M. Russell, Administrative Judge
Dated January 18, 2017



I ask the Board to please reconsider all of the facts in this case in light of the unfortunate chain of events that occurred as I appealed the initial decision of Disability Retirement being denied.

First, as pointed out in the proceedings, I was not given adequate time to respond to CalPERS before a court date was set. When I called the Administrative Assistant, she said that she had "gone ahead and booked (the date)." When asked why she had not waited until I could have responded, she replied, "Because that is what my attorney (Kevin Kreutz) told me to do!"

In addition, I believe that it was unfair that the judge did not offer a continuance as requested. Although there were some very personal reasons why I was not able to appear at the hearing in December, I fully disclosed these and submitted all required documentation. Still, a continuance was not granted to simply hear my case.

I further ask that the Board carefully examine all of the evidence in this case, including the numerous inconsistencies, contradictions, and omissions made by Dr. Thomas Fell, who was hired by CalPERS to conduct the independent orthopedic examination on October 6, 2015. I submitted a written document contesting specific components of the report which were submitted on my behalf at the hearing by Mr. Shipley. Judge Russell references excerpts of my complete document on pages 7-8 of the Proposed Decision.

Finally, I had a follow up appointment with the orthopedic surgeon in this case, Dr. Terrance Kim, on Wednesday, March 1, 2017. His two page follow up report is attached that I request to be included as an important exhibit in this case. You will see that Dr. Kim substantiates the findings that he made 2 years ago about my physical limitations which would directly impact my job. It is very important that the Board note the specifics of the job description outlined on page 2 of the Proposed Decision, as well as the required checklist form signed by the Benefits Manager at California State University, Los Angeles and taken into consideration by Dr. Kim.

I believe there was simply misjudgment in this case by Dr. Fell, as well as at several subsequent levels described above and in the collective records. Thank you for your time to objectively consider my case.

Thomas W. Barkley, Jr.

Barkley, Thomas Wesson Jr. (MR # 091345307)

Encounter Date: 03/01/2017

Barkley, Thomas Wesson Jr.MRN: 091345307
Description: 53 year old male**Progress Notes** Encounter Date: 3/1/2017Status: **Outpatient**Kim, Terrence T, MD
Surgery Orthopedics
SPINE CENTER

RE: BARKLEY, THOMAS WESSON

MR#: [REDACTED]

DATE OF VISIT: 03/01/2017

DR REFERRED FOLLOW-UP VISIT

CHIEF COMPLAINT: Followup.

HISTORY OF PRESENT ILLNESS: Mr. Barkley is status post a C4-7 laminectomy, decompression done on 12/22/2014. This was nearly 3 years ago. He comes in today with new complaints of pain. It was noted that he continues to have neck stiffness, right ulnar nerve numbness and tingling which has been chronic. He states, however, he has had new onset of low back pain. It was noted that he has a previous diagnosis of an L5-S1 isthmic spondylolisthesis, grade 1. This was from several years ago. He describes it as right greater than left buttock pain that radiates down the posterior thigh into the foot, more on the left than the right even though the pain in the buttock is on the contralateral side. The patient states there is no specific etiology or event that caused his symptoms to worsen. It was noted that he has been taking anti-inflammatories, activity restrictions to no avail. He is here today to discuss the new workup and intervention.

It was noted that the patient had these symptoms approximately 2 years ago, at which point, we had discussed possibly an L5-S1 bilateral selective nerve root block.

PHYSICAL EXAMINATION:

His incision is well-healed. His strength is 5/5 throughout.

IMAGING: No new images are present on today's clinic visit.

Barkley, Thomas Wesson Jr. (MR # [REDACTED])

Encounter Date: 03/01/2017

PLAN: At this point, I had a long discussion with the patient. He is now healed from his C4-7 laminectomy. Despite this, the patient should remain on physical limitations which will not be different from his prior physical limitations. With a cervical laminectomy without instrumentation or fusion, the concern is always restenosis, disk herniation, progressive degenerative disk disease that may worsen and cause significant restenosis events. As a result, we have always limited him from any heavy bending, lifting more than 10 pounds, any twisting of his neck, any overhead activities, any prolonged sitting, standing or anything physically strenuous, and these physical limitations will remain the same.

In regard to his lumbar spine, I recommended a new MRI of the lumbar spine to rule out a disk herniation and an update in imaging to determine the cause of his new onset right greater than left buttock pain, left leg radiculopathy. Once we get the MRI of the lumbar spine, we will likely proceed with bilateral L5-S1 selective nerve root blocks. The patient was appreciative. We will see him back.

Terrence T Kim, M.D.

TTK/MEDQ/[REDACTED] D: 03/02/2017 T: 03/02/2017 JOB#: 826136

Office Visit on 3/1/2017