ATTACHMENT C

RESPONDENT’S ARGUMENT
To: Cherie Swedensky, Assistant to the Board

From: Sherry Donnell Ref No. 2017-1224 case #06004104 and 06036450

Please forward to the sitting Administrative Law Judge in the aforementioned case: Sherry Donnell Ref No. 2017-1224

Dear Administrative Law Judge, and Board of Administration,

An appeal has been calendared for consideration by the Board of Administration (Board) of the California Public Employees Retirement System.

I wanted to attend but I am unable to attend the proceeding.

I am forwarding the Panel Qualified Medical Evaluation supplemental report for your review. I am asking with all due Respect that you review Dr. Baneijee report.

On July 31, 2018, I provided the entire QME report from Dr. Sanjay Banerjee MD. QME to Adm. Law Judge Kimberly J. Belvedere at the Administrative Hearing. I am hoping the complete QME report was included in their report and provided to you because Dr. Sanjay gave me a thorough medical examination. Also the Kaiser medical Doctor Pham, who has provided medical treatment to me for the past four (4) years and Dr. Pham treated me, referred me to physical therapy ect...to help me heal. Dr. Pham’s permanent and stationery report was also submitted.

Please review for fairness to me as I worked for the State of California for many years and had no intention of retiring but I could no longer place myself in peril and pain.

With All Due Respect,

Sincerely,

Sherry Donnell
Panel Qualified Medical Evaluation
SUPPLEMENTAL REPORT

RE: Donnell, Sherry C

Date of Evaluation: INITIAL; 2/22/2018. SUPPLEMENTAL REPORT; 5/8/18

Employer: State of California- Parole and Community


Social Security Number: xxx-xx-xxxx

Date of Birth: [redacted]

WCAB case No: ADJ10577344, ADJ 10577364

Claim No: 06036450, 06004104

Occupation: Parole officer/Peace officer

Interpreter: none

Insurance Company: Darlene Sutherland, State Comp Ins Fund, PO box 65005, Fresno, CA 93650-5005. T- 707 452 7518, F- 707 646 0233

"Defense Attorney:

Applicant Attorney: Brian Kramer, Rowen, Curvey and Win, 5900 Sepulveda Blvd, Sherman Oaks, CA, 91411. T- 818 981 9960, F- 818 781 8512
Panel Qualified Medical Evaluation - Supplemental Report

Dear Ms. Sutherland and Mr. Kramer, Esq,

As requested by letter dated 4/24/18 from Ms. Sutherland, and letter dated 4/30/18 from Mr. Kramer, Esq. I am issuing this supplemental report to readdress the issues of apportionment before the case goes into front of Judge Cole on 5/24/18.

Relevant background and history of this case can be found in my initial PQME report dated 2/22/18. Additional repeated records were sent by Ms. Sutherland from Kaiser on the job. This consisted of records I had already reviewed for my PQME first report dated 2/22/18 (PRA form dated 7/7/17, P and S report dated 7/7/17 from Dr. Pham-PFT).

After reviewing the additional repeat records and advocacy letter from both parties my medical opinion is as follows:

Dr. Pham on his P and S report initially dated 2/6/15 apportioned 80% due to industrial injury/20% non-industrial factors for injury occurring on 6/3/14.

In a subsequent P and S report by Dr. Pham dated 7/7/17, Dr. Pham apportioned 50% to industrial factors/50% to non-industrial factors for the same injury on 6/3/14 with no reasoning as to why and on what basis his opinion had changed. Also, he did not explain why and how he arrived at this new apportionment rating.

I have reviewed my initial opinion on apportionment on my PQME report dated 2/22/18. At this point I do not see a basis or a compelling reason to change my opinion on this matter for the following reasons:

Although this is not a cumulative trauma case, the subject was employed with the state for 24 years as a peace/parole officer. This is a physically demanding job that involves take downs, chasing, restraining, having altercations with subjects. So, her MINIMAL degenerative changes on her MRI are at least partly, probably almost wholly due to the nature of the job she did for 24 years.

The 2 accidents and the 2 claims are within 3 months of each other. Therefore, it is medically probable she did not recover fully from the first accident before the second accident occurred. The 2 injuries are inextricably intertwined and apportioning each one out as to which accident caused the WPI is speculative only. (Ref: The Benson Decision; 74 Cal. Comp. Casas 133,116: The Wilkson Doctrine- repeated by SB899).

If we assume Dr. Pham is using the Escobedo v. Marshalls case to base his 50% apportionment, we see that in that case the QME Daniel Ovadin MD opined:...
"In my opinion, there is a medically reasonable basis for apportionment given the trivial nature of the injury that occurred on October 28, 2002 and the almost immediate onset of right knee symptoms that occurred shortly after the left knee injury. The Applicant has obvious, significant degenerative arthritis in both knees and essentially worked in a fairly congenial environment. Although denying any prior problems with her knees, it is medically probable that she would have had fifty percent of her current level of knee disability at the time of today's evaluation even in the absence of her employment at Marshalls.

In this case there are major reasons why the 50% non-industrial apportionment does not hold merit.

1. Patients 2 industrial accidents were not "trivial"
2. Her MRI L spine dated 10/14 showed mild facet degeneration, minimal disc bulges and minimal degenerative changes- this is the opposite of significant arthritic changes.
3. Subject did not work in a congenial environment like a retail store, her work environment was the opposite of congenial.

(ref: Marlene Escobado v. Marshalls; and CMA Insurance Co., WCAB En Banc Decision WCAB Not. GRO 0029816, GRO 0029817 Filed April 19, 2005)

The issue of apportionment is difficult, and both sides of the argument have merit. Section 4663(c) provides, in part:

"In order for a physician's report to be considered complete on the issue of permanent disability, it must include an apportionment determination..."

The question I fundamentally ask myself when deciding on apportionment is:

How much disability/impairment would this person have AT THIS POINT if they did not work for this company, doing the job that they did, for as long as they did?
What was the nature of the accidents/injury- were they severe or trivial, how much degeneration on imaging exists and based on the type and length of work they did, is the degeneration caused by the work/injury in question?

Bearing the aforementioned in mind, it is medically probable that my opinion still holds as to 90% industrial and 10% non-industrial/prenexisting.

Ultimately it is up to Judge Cole to decide, and I am sure it will be a fair and just decision.
COMPLEXITY FACTORS AND FEE JUSTIFICATION

This report is being prepared under the guidelines of the Industrial Medical Council, Division of Workers' Compensation as a Qualified Medical Evaluation supplemental report.

This is to attest that I spent 1 hour in reviewing additional reports, letters and 1 hour in researching case law and writing this report. This report is being billed as a ML 106 (supplemental report) for a total of 2 hours.

DECLARATION/DISCLOSURE

"I declare under penalty of perjury that I have actually performed this examination and the time spent in performing this evaluation is in compliance with the IMC guidelines (5307.1; 5307.6). I was assigned in the preparation of this report by Jim Malone, Workers Compensation Consulting."

"I declare under penalty of perjury that the information contained in this report is true and correct to the best of my knowledge and belief, except as to information that I have indicated I received from others. As to that information I declare under penalty of perjury that the information accurately describes the information provided to me."

"I have not violated labor code section 139.3 and the contents of this report and bill are report are true and correct to the best of my knowledge. This statement is made under penalty of perjury."

Physician's signature ______________________

Physician Name: Sanjoy Banerjee MD, QME

Executed at Riverside County, California on May 8th 2018.

California License No. A90939
Board Certified Anesthesiologist
Board Certified Pain Medicine
Board Certified Addiction Medicine
Qualified Medical Evaluator- State of California
Assistant Professor. Dept. Of Medicine. Loma Linda University