ATTACHMENT C

RESPONDENT(S) ARGUMENT(S)
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Subject: Respondent's Argument

I am hereby respectfully informing the Board of Administration that I am against the Proposed Decision under Case No. 2018-0934 and OAH No. 2018110171.

In my simple mind, the decision rendered on this case was anchored on my failure to present my treating physicians and other providers as witnesses. My reason is simple as well; lack of funding. Absent the probity of these would be witnesses and declaring submitted medical findings to be hearsay; a simple John Doe like me has no chance of winning. Though it is true that the burden of proof is on the respondent, as cited on Harmon v. Board of Retirement (1976), I still believe that my case was not given an equal chance.

In receiving your letter, I was delighted to read that no oral argument is allowed.

I am assuming that the Board has in its possession all documentary evidences from both sides for their use in rendering a decision. If this is true, the following are my arguments in support of my against the proposed decision:

- A very impressive Curriculum Vitae of the opposing CalPers Medical Examiner was included on their report; whereas, my medical providers or other providers Curriculum Vitae are nonexistent. Let me be clear that I am not attacking the credibility of their examiner but rather the lack of comparison on the judge's view of each examiner's credibility through their professional training and experiences. After all, this case was decided on the credibility issue as cited on number 8 of the Factual Findings of the Proposed Decision.

As cited on the Proposed Decision, page 4, Factual Findings #10; upon CalPers examiner's review of their own IME report, the QME report of my examiner, and the accompanying evaluation by my physical therapist, the CalPers examiner agreed to the findings of the QME about the existence of a permanent disability. But the CalPers examiner added that he just felt that this could be normal and age-related. I wonder if
the judge will just absorbed such opinion as a fact if he is in view also of two other impressive curriculum vitae of my affirming medical examiners and other medical providers.

- On the CalPers IME submitted, on page 2, he cited the position of Food Technician as a medium scale on the Physical Demand Level.

  Food Service technicians offloads provision delivery trucks; to include frozen foods. If assigned to the main kitchen, you will be loading and pushing food cart trays for delivery to the sublet kitchens. These food cart trays are multi-level, could be six feet tall and weighs more than 75 pounds.

- On the CalPers Examiner's Summary Report, he cited that I was uncooperative and exaggerated my walk on my heels exercise.

  I have a chronic gout problem. Walking on my heels is a feat I dreaded.

- Again on his Summary Report, he cited few other things worthy of pondering like using the not so definitive word “probably” not “substantially incapacitated; the skimpy physician's record and the unseen QME Report and electrodiagnostic studies.

  Despite the existence of these impairing circumstances, he formed an opinion that is solely based from an ocular and personal evaluation.

  Footnote: During the Administrative Hearing, I have to spend $40 copying fee from my personal fund to provide them copies of medical documents. This is to show how “skimpy” my medical file on their side.

I now lay it to the Board the rightful decision to my case. Thank you for your time and the opportunity to address your good office.

Very/Respectfully,

Fernando M. Malasan