

ATTACHMENT C

RESPONDENT'S ARGUMENT

1 **JOHN F. MARTIN, ESQ. (SBN 52618)**
2 **MARTA R. VANEGAS, ESQ. (SBN 278328)**
3 **BRITTANY C. JONES, ESQ. (SBN 324593)**
4 **MARTIN & VANEGAS, APC**
5 3100 Oak Road, Suite 230
6 Walnut Creek, CA 94597
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9 Attorneys for Respondent,
10 Maximillian Sebolino

11 **BOARD OF ADMINISTRATION**
12 **CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT**

13 In the Matter of the Application for Industrial
14 Disability Retirement of:

15 Maximillian Sebolino,

16 Respondent

17 and

18 Salinas Valley State Prison, California
19 Department of Corrections and Rehabilitation,

20 Respondent.

OAH CASE NO. 2018090834

Agency Case No.: 2018-0611

**RESPONDENT MAXIMILLIAN
SEBOLINO'S ARGUMENT IN
OBJECTION TO THE PROPOSED
DECISION**

Hearing Date: April 10, 2019
Hearing Location: Monterey, CA
Judge: Perry O. Johnson

21 Respondent Maximillian Sebolino (hereinafter "Mr. Sebolino") respectfully submits the
22 following brief in objection to the Proposed Decision. Mr. Sebolino requests that the Board find
23 him substantially incapacitated from performing his usual duties and grant his appeal of
24 CalPERS determination denying his disability retirement.

25 **FACTS**

26 Mr. Sebolino worked as a Medical Technical Assistant ("MTA") at the Salinas Valley
27 State Prison from August 2010 until January 2016. On April 6, 2015, Mr. Sebolino was escorting
28 a patient to a treatment room for a medical procedure when, without provocation, the patient

1 became aggressive and assaulted Mr. Sebolino, striking him about his face on two occasions. As
2 a result of this incident, Mr. Sebolino developed debilitating physical and mental disabilities. He
3 returned to work on October 6, 2015 yet had to be taken off less than three months later, on
4 January 4, 2016, because he could not be accommodated. Within that period of time, Mr.
5 Sebolino was instructed to work only two to three days per week.

6 On August 10, 2017, Mr. Sebolino submitted an application for industrial disability
7 retirement. In filing the application, Mr. Sebolino claimed disability on the basis of cervicalgia,
8 myalgia facet syndrome of the cervical spine and cervical disc disorder, as well as post traumatic
9 stress disorder ("PTSD"). Mr. Sebolino noted on his application that due to his psychological and
10 physical conditions as well as his physician's restrictions, he is no longer able to perform the
11 essential functions of his job.

12 From August 2017 until March 2018, CalPERS obtained medical reports concerning Mr.
13 Sebolino's condition from Dr. Nader Achackzad, Dr. Marta Corona, Dr. Joel Scheinbaum, Dr.
14 Anurahda Reddy, Dr. Pompan, and Dr. Alberto Lopez. After review of these reports, CalPERS
15 determined that Mr. Sebolino's orthopedic and psychological conditions were not disabling. As a
16 result, CalPERS concluded that Mr. Sebolino was not substantially incapacitated.

17 By letter dated March 13, 2018, CalPERS informed Mr. Sebolino that his application had
18 been denied and advised him of his appeal rights. On April 11, 2018, Mr. Sebolino filed his
19 appeal. On September 18, 2018, CalPERS filed its Statement of Issues, which limited the appeal
20 to the issue of whether, at the time of Mr. Sebolino's disability application, on the basis of
21 orthopedic (neck) and psychological (PTSD) conditions, Mr. Sebolino is substantially
22 incapacitated from the performance of his usual and customary duties as an MTA.

23 The matter was heard on April 10, 2019, in front of Administrative Law Perry Johnson.
24 Mr. Sebolino presented testimony from a licensed psychologist, Dr. LeKisha Alesii. Mr.
25 Sebolino testified on his own behalf. Dr. Lopez and Dr. Pompan testified for CalPERS.

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ARGUMENT

The Proposed Decision cannot be relied upon for two distinct reasons. First, the report and testimony presented by CalPERS expert Dr. Lopez were not credible as a matter of law. Second, Dr. Alesii and Mr. Sebolino presented reliable testimony that Mr. Sebolino was substantially incapacitated.

1. CalPERS Expert Dr. Lopez Did Not Provide Credible Evidence

Mr. Sebolino strenuously objects to Finding #19 that Dr. Lopez’s report was “thorough, reasonable, and logical.” Dr. Lopez is the *only* psychiatrist to opine that Mr. Sebolino was not substantially incapacitated, after only one hour of evaluation. Although Mr. Sebolino returned to work after the incident, he was never released to full duty. Thus, Dr. Lopez’s conclusion that Mr. Sebolino can return to full-duty work when he only worked part time is premature.

The Proposed Decision highlighted points of Dr. Lopez’s testimony that have little to no bearing on the issue at hand. For instance, the Proposed Decision placed great importance on Mr. Sebolino’s ability to maintain a social life; however, as Mr. Sebolino emotionally recounted on the stand, his familial relationships remained strained ever since the incident. “Maintaining” a social life does not presume a functional one, nor does it provide an accurate description of Mr. Sebolino’s social struggles. Further, the frequency of Mr. Sebolino’s interactions with his treating psychologist have little bearing on whether his mental state precludes him from working. A person with PTSD can still harbor severe symptoms even if he does not receive any psychiatric treatment or depression/anxiety medication.

Moreover, Dr. Lopez’s report contains very few medical conclusions, and instead consists of irrelevant and superficial observations. The ineffectiveness of Dr. Lopez’s evaluation is illustrated by the “Mental Status Examination” portion of his report, which addresses Mr. Sebolino’s retention and speech abilities, and states that Mr. Sebolino has had no suicidal ideations. Astoundingly, this is the extent of Dr. Lopez’s mental status examination. There is no

1 discussion as to how these sparing details play a role in Dr. Lopez's disability determination, and
2 no adequate explanation was provided during his testimony.

3 The only test performed on Mr. Sebolino was the MMPI-2, to which Mr. Sebolino gave
4 inconsistent responses and rendered the test invalid. An invalid test should not be used to
5 discredit PTSD symptoms. As opposed to Dr. Alesii's detailed and thorough evaluation of Mr.
6 Sebolino's medical history and current social struggles, Dr. Lopez's "Psychological Testing
7 Results" section contained a brief eight-sentence description of the invalid test results. There was
8 no discussion as to Mr. Sebolino's trauma-related symptoms (numbness, detachment,
9 hypervigilance) or whether Mr. Sebolino comes within the established criteria of the DSM-5, yet
10 Dr. Lopez's report was deemed "convincing evidence."

11 Furthermore, Dr. Lopez's reliance on Mr. Sebolino's surveillance video is fruitless, given
12 that the scope of his evaluation was limited to Mr. Sebolino's psychiatric concerns, not his
13 physical capabilities. Dr. Lopez did not provide a convincing response to why *multiple pages* of
14 his report was dedicated to this video, which, as argued at the hearing, did not purport to show
15 Mr. Sebolino engaging in *every essential* job function. The scarcity of relevant medical
16 information and arbitrary statements illustrates that Dr. Lopez did not provide reliable,
17 competent medical evidence. The utter lack of any adequate, detailed analysis of Mr. Sebolino's
18 condition refutes the conclusion in the Proposed Decision that Dr. Lopez's report is "well-
19 reasoned." On the contrary, listing a patient's medical history, including a few sentences on his
20 subjective complaints, and then concluding that he is not substantially incapacitated after no
21 medical explanation should hardly be considered "persuasive."

22 Dr. Lopez did not provide competent medical evidence that Mr. Sebolino is
23 substantially incapacitated from the performance of his duties. Dr. Lopez's failure to explore the
24 full extent of Mr. Sebolino's trauma-related symptoms evidences severe inadequacy.
25 Categorizing such a report as "credible, persuasive, and compelling" severely misclassifies the
26 quality of the report.

1 **2. Mr. Sebolino's Witnesses Established that he was Substantially Incapacitated**
2 **from Performing his Job Duties**

3 In Finding #17, the Proposed Decision states that the import of Dr. Alesii's opinions were
4 undermined by the nature of her evaluation, given Dr. Lopez's **opinion** that an evaluation
5 performed by a webcam diminishes the integrity of the evaluation. As evidenced by Dr. Alesii's
6 testimony, her evaluation of Mr. Sebolino was HIPPA-compliant, meaning that it conformed to
7 the numerous rules and regulations enforced by the Office for Civil Rights.

8 Devaluing a psychologist's HIPPA-compliant evaluation because of another doctor's
9 *opinion*, and thereby placing that opinion above national regulations is illogical. Moreover, the
10 sheer amount of medical analysis and reasoning contained in Dr. Alesii's report illustrates that
11 the manner of the evaluation has little to no bearing on the quality of the results. Dr. Lopez
12 conducted a face-to-face interview with Mr. Sebolino yet only managed to perform one test
13 (which was rendered invalid) and list sparse descriptions of Mr. Sebolino's attire and subjective
14 complaints. The fact that Dr. Alesii provided a more comprehensive, in-depth analysis of Mr.
15 Sebolino over a webcam suggests that it is not the manner of the evaluation, but the quality of
16 the evaluator, that should be critiqued.

17 Furthermore, the Proposed Decision conclusively states that Dr. Alesii's opinions and
18 testimony are unpersuasive and unreliable. The Decision fails to provide any explanation for
19 these conclusions, however, instead citing Dr. Alesii's testimony and then swiftly concluding
20 that her opinion is not credible. The Decision wholly ignores Dr. Alesii's consistent and
21 informative testimony detailing how Mr. Sebolino endorses trauma-related symptoms and why
22 he fits within the DSM-5 criteria.

23 Moreover, as Dr. Alesii stated in her reports and reiterated in her testimony, objective
24 findings demonstrate that Mr. Sebolino falls within the diagnostic criteria for PTSD. In footnote
25 #5 the Proposed Decision includes an exhaustive list of the manifestations of PTSD. Mr.
26 Sebolino fits squarely within Section (E). Dr. Alesii explicitly notes in her report that Mr.
27 Sebolino suffers from **hypervigilance, exaggerated startled responses, and sleep**
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1 **disturbances, all of which are listed in Section (E). This is the determination of a neutral**
2 **evaluator, not one who has previously testified on CalPERS behalf. Nevertheless, the Proposed**
3 **Decision discounts Dr. Alesii's report in favor of Dr. Lopez's, without proper justification.**
4 **Further, Mr. Sebolino presented credible testimony that he has become more irritable since the**
5 **incident and has even succumbed to angry outbursts. There is no reasonable explanation for why**
6 **the Decision concluded that Mr. Sebolino was not substantially incapacitated by reason of PTSD.**

7 **Finally, Finding #27 astoundingly concludes that since Mr. Sebolino could spontaneously**
8 **voice quick, emotionally unencumbered, pointed responses on cross examination, he was neither**
9 **truthful nor straightforward regarding his PTSD symptoms. The notion that a person who**
10 **presents himself well during a hearing cannot harbor emotional or psychic pain is extraordinarily**
11 **misleading and not supported by any medical evidence. Whether Mr. Sebolino provided pointed**
12 **responses at an administrative hearing has no bearing on whether, at the time of his disability**
13 **application, Mr. Sebolino is substantially incapacitated from the performance of duties at work.**

14 **CONCLUSION**

15 **At the time of his application for disability retirement, Mr. Sebolino was substantially**
16 **incapacitated from performing the usual duties of his position as a Psychiatric Technician. Mr.**
17 **Sebolino presented credible testimony and medical evidence in support of this conclusion. Thus,**
18 **Mr. Peterson respectfully requests that his application for disability retirement be approved.**

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21 **DATED: July 29, 2019**

MARTIN & VANEGAS, APC

22 **By: Brittany Jones**
23 **Brittany C. Jones, Esq.**
24 **Attorneys for Respondent**
25 **Maximillian Sebolino**

1 **JOHN F. MARTIN, ESQ. (SBN 52618)**
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9 Attorneys for Respondent

AUG 10 2018

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11 **BOARD OF ADMINISTRATION**
12 **CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT**

13 In the Matter of the Application for Industrial
14 Disability Retirement of:

15 **MAXIMILLIAN SEBOLINO,**
16
17 **Respondent.**

Ref. No. 2018-0611

RESPONDENT'S ARGUMENT

18
19 Respondent respectfully submits the following brief in objection to the Proposed
20 Decision. Respondent requests that the Board find him substantially incapacitated from
21 performing his usual duties and grant his appeal of CalPERS determination denying his disability
22 retirement.

23 **FACTS**

24 Respondent worked as a Medical Technical Assistant ("MTA") at the Salinas Valley
25 State Prison from August 2010 until January 2016. On April 6, 2015, Respondent was escorting
26 a patient to a treatment room for a medical procedure when, without provocation, the patient
27 became aggressive and assaulted Respondent, striking him about his face on two occasions. As a
28 result of this incident, Respondent developed debilitating physical and mental disabilities. He

1 returned to work on October 6, 2015 yet had to be taken off less than three months later, on
2 January 4, 2016, because he could not be accommodated. Within that period of time, Respondent
3 was instructed to work only two to three days per week.

4 On August 10, 2017, Respondent submitted an application for industrial disability
5 retirement. In filing the application, Respondent claimed disability on the basis of cervicgia,
6 myalgia facet syndrome of the cervical spine and cervical disc disorder, as well as post traumatic
7 stress disorder ("PTSD"). Respondent noted on his application that due to his psychological and
8 physical conditions as well as his physician's restrictions, he is no longer able to perform the
9 essential functions of his job.

10 From August 2017 until March 2018, CalPERS obtained medical reports concerning
11 Respondent's condition from Dr. Nader Achackzad, Dr. Marta Corona, Dr. Joel Scheinbaum, Dr.
12 Anurahda Reddy, Dr. Pompan, and Dr. Alberto Lopez. After review of these reports, CalPERS
13 determined that Respondent's orthopedic and psychological conditions were not disabling. As a
14 result, CalPERS concluded that Respondent was not substantially incapacitated.

15 By letter dated March 13, 2018, CalPERS informed Respondent that his application had
16 been denied and advised him of his appeal rights. On April 11, 2018, Respondent filed his
17 appeal. On September 18, 2018, CalPERS filed its Statement of Issues, which limited the appeal
18 to the issue of whether, at the time of Respondent's disability application, on the basis of
19 orthopedic (neck) and psychological (PTSD) conditions, Respondent is substantially
20 incapacitated from the performance of his usual and customary duties as an MTA.

21 The matter was heard on April 10, 2019, in front of Administrative Law Perry Johnson.
22 Respondent presented testimony from a licensed psychologist, Dr. LeKisha Alesii. Respondent
23 testified on his own behalf. Dr. Lopez and Dr. Pompan testified for CalPERS.

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ARGUMENT

The Proposed Decision cannot be relied upon for two distinct reasons. First, the report and testimony presented by CalPERS expert Dr. Lopez were not credible as a matter of law. Second, Dr. Alesii and Respondent presented reliable evidence that Respondent was substantially incapacitated.

1. CalPERS Expert Dr. Lopez Did Not Provide Credible Evidence

Respondent strenuously objects to Finding #19 that Dr. Lopez’s report was “thorough, reasonable, and logical.” Dr. Lopez is the *only* psychiatrist to opine that Respondent was not substantially incapacitated, after only one hour of evaluation. Although Respondent returned to work after the incident, he was never released to full duty. Thus, Dr. Lopez’s conclusion that Respondent can return to full-duty work when he only worked part time is premature.

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13 physical capabilities. Dr. Lopez did not provide a convincing response to why *multiple pages* of
14 his report was dedicated to this video, which, as was argued at the hearing, did not purport to
15 show Respondent engaging in *every essential* job function. The scarcity of relevant medical
16 information and arbitrary statements illustrates that Dr. Lopez did not provide reliable,
17 competent medical evidence. The utter lack of any adequate, detailed analysis of Respondent's
18 condition refutes the conclusion in the Proposed Decision that Dr. Lopez's report is "well-
19 reasoned." On the contrary, listing a patient's medical history, including a few sentences on his
20 subjective complaints, and then concluding that he is not substantially incapacitated after no
21 medical explanation should hardly be considered "persuasive."

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24 full extent of Respondent's trauma-related symptoms evidences severe inadequacy.
25 Categorizing such a report as "credible, persuasive, and compelling" drastically misclassifies the
26 quality of the report.

1 **2. Respondent's Witnesses Established that he was Substantially Incapacitated**
2 **from Performing his Job Duties**

3 In Finding #17, the Proposed Decision states that the import of Dr. Alesii's opinions were
4 undermined by the nature of her evaluation, given Dr. Lopez's "**opinion**" that an evaluation
5 performed by a webcam diminishes the integrity of the evaluation. As evidenced by Dr. Alesii's
6 testimony, her evaluation of Respondent was HIPPA-compliant, meaning that it conformed to
7 the numerous rules and regulations enforced by the Office for Civil Rights.

8 Devaluing a psychologist's HIPPA-compliant evaluation because of another doctor's
9 *opinion*, and thereby placing that opinion above national regulations is illogical. Moreover, the
10 sheer amount of medical analysis and reasoning contained in Dr. Alesii's report illustrates that
11 the manner of the evaluation has little to no bearing on the quality of the results. Dr. Lopez
12 conducted a face-to-face interview with Respondent yet only managed to perform one test
13 (which was rendered invalid) and list sparse descriptions of Respondent's attire and subjective
14 complaints. The fact that Dr. Alesii provided a more comprehensive, in-depth analysis of
15 Respondent over a webcam suggests that it is not the manner of the evaluation, but the quality of
16 the evaluator, that should be critiqued.

17 Furthermore, the Proposed Decision conclusively states that Dr. Alesii's opinions and
18 testimony are unpersuasive and unreliable. The Decision fails to provide any explanation for
19 these conclusions, however, instead citing Dr. Alesii's testimony and then swiftly concluding
20 that her opinion is not credible. The Decision wholly ignores Dr. Alesii's consistent and
21 informative testimony detailing how Respondent endorses trauma-related symptoms and why he
22 fits within the DSM-5 criteria.

23 Moreover, as Dr. Alesii stated in her reports and reiterated in her testimony, objective
24 findings demonstrate that Respondent falls within the diagnostic criteria for PTSD. In footnote
25 #5 the Proposed Decision includes an exhaustive list of the manifestations of PTSD. Respondent
26 fits squarely within Section (E). Dr. Alesii explicitly notes in her report that Respondent suffers
27 from **hypervigilance, exaggerated startled responses, and sleep disturbances**, all of which are
28

1 listed in Section (E). This is the determination of a neutral evaluator, not one who has previously
2 testified on CalPERS' behalf. Nevertheless, the Proposed Decision discounts Dr. Alesii's report
3 in favor of Dr. Lopez's, without proper justification.

4 Further, Respondent presented credible testimony that he has become more irritable since
5 the incident and has even succumbed to angry outbursts. There is no reasonable explanation for
6 why the Decision concluded that Respondent was not substantially incapacitated by reason of
7 PTSD. Respondent continues to seek and receive psychiatric/behavioral treatment from his
8 treating psychologist, Dr Corona, for irritability, anger management, and depression.

9 Finally, Finding #27 astoundingly concludes that since Respondent could spontaneously
10 voice quick, emotionally unencumbered, pointed responses on cross examination, he was neither
11 truthful nor straightforward regarding his PTSD symptoms. The notion that a person who
12 presents himself well during a hearing cannot harbor emotional or psychic pain is extraordinarily
13 misleading and not supported by any medical evidence. Whether Respondent provided pointed
14 responses *at an administrative hearing* has no bearing on whether, at the time of his disability
15 application, Respondent is substantially incapacitated from the performance of duties at work.

16 **CONCLUSION**

17 At the time of his application for disability retirement, Respondent was substantially
18 incapacitated from performing the usual duties of his position as a Psychiatric Technician.
19 Respondent presented credible testimony and medical evidence in support of this conclusion.
20 Thus, Respondent respectfully requests that his application for disability retirement be approved.

21 DATED: August 16, 2019

MARTIN & VANEGAS, APC

22 By: Brittany Jones
23 Brittany C. Jones, Esq.

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In the Matter of Maximillian Sebolino
Ref No.: 2018-0611
CalPERS ID.: 1607922358

PROOF OF SERVICE

I, **Michelle Moore**, declare that I am employed in the City of Walnut Creek, County of Contra Costa, State of California, and am over the age of eighteen years and not a party to the within entitled action; my business address is 3100 Oak Road, Suite 230, Walnut Creek, California 94597. On August 16, 2019, I served the following:

Respondent's Argument

served in the manner(s) described below on the parties of said action, and addressed as follows:

Cherre Swedensky, Assistant to the Board
CalPERS Executive Office
PO Box 942701
Sacramento, CA 94229-2701

 X **First Class Mail.** I caused said documents(s) to be deposited in the mail at my business address, addressed to the addressee(s) designated. I am readily familiar with the practice for collection and processing of correspondence and pleadings for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business.

I declare under penalty of perjury, under the laws of the State of California, that the forgoing is true and correct. Executed on **August 16, 2019**, Walnut Creek, California.



Michelle Moore

Martin & Vanegas, APC
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P.O. BOX 5331
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