

**ATTACHMENT A**

**RESPONDENT'S PETITION FOR RECONSIDERATION**

**"Petition for Reconsideration"**

August 24, 2019

CalPERS Board of Administration:

This document serves as the "Petition for Reconsideration" relative to Reference Number 2018-1035. I hereby request that the CalPERS Board reconsider my appeal of accepting a late application for Industrial Disability Retirement. At your August 21 meeting, the CalPERS Board of Administration adopted as their own decision the decision made by an Administrative Law Judge dated May 22, 2019. At face value, I understand why the Board would have been inclined to adopt the judge's decision in this matter. I also understand very well why the judge ruled the way that he did. I contend that I went into that hearing not represented by an attorney and that I did not have a clear understanding at the time as to why my application for industrial disability retirement had been denied by PERS staff. It was only during the hearing and researching afterwards that I fully understood the basis for the denial. During the hearing I was unable to represent my case adequately based on the fact that I did not understand the basis for the initial denial. The judge made his decision based on my inability to represent my case at the time. I am hopeful that the Board will reconsider this matter based on the statements I use in this document and not rely solely on the May 22 decision made by the Administrative Law Judge. I believe the arguments made in this document appropriately address the reasons for the initial denial by PERS staff. I hope that these statements clarify the history in this matter and directly address why I believe I deserve an industrial disability retirement.

I served in the El Segundo Fire Department for just over 30 years, with the last 10 years serving as Fire Chief. I sustained numerous injuries as a result of cumulative trauma during my years of service. These injuries include severe damage to the lumbar spine and cervical spine; damage to the right and left hip resulting in bilateral hip replacements in the latter years of my career; damage to the right knee; hypertension, carpal tunnel syndrome in the right wrist; and an umbilical hernia. I have undergone one surgical procedure (laminectomy) of the lumbar spine as well as numerous treatment and procedures for the lumbar and cervical spine. My primary treating physician recommends fusion procedures for both the lumbar and cervical spine. I take numerous medications daily for the treatment of pain in my lumbar and cervical spine as well as hypertension. Agreed upon Medical Examiners (AME's) have deemed each of the injuries described above as 100% apportioned to continuous trauma related to the performance of my job duties at the El Segundo Fire Department; with the exception of the cervical spine which was apportioned 90% continuous trauma and 10% degenerative process. I am in constant pain and am limited in my ability to perform routine daily functions and care for myself. I have previously provided all related documentation and reports to support my claims regarding these injuries to PERS on multiple occasions.

I am aware that I failed to comply with Government Code 21152 which requires that an application for Industrial Disability Retirement shall be made within four months after the discontinuance of service. I retired on a service retirement on October 2, 2015. I submitted an

**application for Industrial Disability Retirement on June 7, 2016, just over eight months after my discontinuance of service. I contend that I requested to correct the error or omission made in a reasonable time after discovery of the right to make the correction. I further contend that the error or omission was made as result of inadvertence and/or excusable neglect as described in Section 473 of the Code of Civil Procedure.**

**In my years of service with the Fire Department, I was many times at work in severe pain and with reduced capacity to perform my expected job duties. I persevered thinking I was being a good employee. I despised the abuse of the worker's compensation system that I witnessed in my years of service. I did not like the stigma associated with that abuse. To that end, I hid my injuries from the City and in most cases did not report my injuries or the pain I was in until late in my career when I could no longer tolerate the pain. I had been self-medicating with 20-30 ibuprofen daily. After many years of low back pain and two or three years of pain in my left hip which caused me to walk hunched over and with a limp, I finally began to take action on my injuries. On December 19, 2011, I reported the injuries of my back and left hip to the City. I underwent an MRI of my lumbar spine on March 13, 2012, which identified significant damage at numerous levels of my lumbar spine. On July 9, 2012, I underwent a left hip replacement surgery. On June 26, 2013, I underwent an MRI of my cervical spine which identified significant damage at multiple levels of the cervical spine. On November 24, 2014, I reported an injury to my right hip to the City of El Segundo. On April 14, 2015, I underwent right hip replacement surgery.**

**On May 27, 2015, I began completing an application for service retirement with the intent of submitting it to PERS 90 days prior to my planned retirement. I planned to retire on October 2, 2015 and therefore planned to submit my application to PERS for service retirement on or about July 2, 2015. During the time when I was completing my application for service retirement I had considered whether to apply of Industrial Disability Retirement (IDR) instead. I elected not to pursue an IDR at the time because I again did not like the stigma associated with abuse of the system. Further, my hope for many years had been to continue to work after retiring from El Segundo. My plans were to serve as interim Fire Chief for other agencies after retiring from El Segundo and/or teaching in the field of fire technology and administration.**

**In the coming few months after submitting my application for service retirement to PERS I began to realize that my injuries were severely worsening. My right hip was not healing as expected post-surgery and has left me with pain and stiffness in the hip. Also, my low back pain had gotten so bad that I had extreme difficulty even getting dressed especially putting on socks and shoes. I sought treatment on July 1, 2015 with my primary treating physician on who ordered an x-ray and anti-inflammatories. The x-ray indicated instability in my lumbar spine. Additionally, at some point in the three-month time frame between submitting my service retirement application and my planned retirement date, I began to experience severe sciatic pain radiating form my low back down to my left calf. Although I was beginning to realize that my injuries had mounted to the point that I could not properly perform my job duties as expected, I chose to persevere with the last few months and make every effort to transition the Fire Department to the next Fire Chief in the most efficient and effective manner possible.**

I service retired on October 2, 2015 and met with an attorney on October 6, 2015. My intent in meeting with the attorney was to determine what could be done for me to help me deal with my many injuries. I had finally decided to put myself and my health as a priority instead of worrying about stigma and doing what I thought was right not to appear as another worker's compensation system abuser. It was clear to me at this point that I was severely damaged due to continuous trauma and that I would not be able to work again as I had planned. The attorney suggested that we could possibly pursue an Industrial Disability Retirement. The attorney indicated that he would consult with the City's attorney to determine whether he and the City would support us pursuing an IDR. Sometime after our meeting my attorney responded to me to indicate that he spoke with the City's attorney and that they wanted me to see a doctor to ascertain the extent of my orthopedic injuries. I saw the doctor that the attorney directed me to see on March 1, of 2016. The doctor found that all of the orthopedic injuries that were described at the beginning of this letter were a result of continuous trauma associated with my more than thirty years of firefighting activity. In terms of work status, the doctor indicated that I was retired, however, "he would not be able to perform his usual and customary duties if that were not the case."

The date of March 1, 2016 is significant to this appeal. Although it is nearly five months after my retirement and one month past the four months that I had to submit an application to PERS for IDR, this date is the first time that I had tangible knowledge and evidence that my injuries likely would qualify me for an IDR. Shortly after this date is apparently when my attorney and the City's attorney agreed that I should pursue a late IDR. At the direction of my attorney I submitted the application for IDR to PERS on June 7, 2016.

I acknowledge that this application was submitted some four months after the deadline described in the Government Code. However, I contend that I made efforts to correct this error or omission in a reasonable time after discovery of the right to make a correction as described in Government Code Section 20160. I learned shortly after March 1, 2016 based on the doctor's medical report and consultation with my attorney that I had made an error in not seeking an IDR previously and that I had the right to seek correction within six months. I sought to correct the error by submitting an application for IDR on June 7, 2016. This submittal was made just over three months after the time when I became aware of my ability to request a correction. Furthermore, I contend that the error or omission made by me was made out of inadvertence and/or excusable neglect as described in Section 473 of the Code of Civil Procedure. The doctor indicating that I was unable to perform my duties was key to me knowing that an IDR could be warranted. I did not have this information until or about March 1, 2016. The lack of this information prior to March 1, 2016 or thereabouts led to the error and omission out of inadvertence and/or excusable neglect. However, I clearly acted to correct the mistake within the six month time frame of becoming aware of my right to seek correction.

My employment with the El Segundo Fire Department and the injuries I sustained during the course of my employment have severely impacted my quality of life and career potential indefinitely. Based on the arguments and information provided above, I respectfully request that

**the CalPERS Board of Administration reconsider my appeal of accepting the late application for Industrial Disability Retirement (Reference Number 2018-1035). Thank you for your time, effort, and consideration.**

**Respondent - Reference Number 2018-1035**

THE MAILBOX  
531 Main Street  
El Segundo, California 90245  
(310) 322-2363 fax (310) 322-9035

---

FAX COVER PAGE

DATE: 8-26-19  
TO: MATTHEW G. JACOBS  
FROM: KEVIN SMITH  
RE: PETITION FOR RECONSIDERATION  
FAX NUMBER: 916-795-3659  
PAGES INCLUDING COVER PAGE: 5  
COMMENTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_