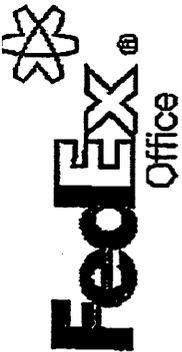


ATTACHMENT A

RESPONDENT'S PETITION FOR RECONSIDERATION



Fax Cover Sheet

Date 8-29-19 Number of pages 4 (including cover page)

To:

Name Cherec Swedensky
Company GALPERJ
Telephone [REDACTED]
Fax 916-795-3972

From:

Name DAVID SIMPSON
Company [REDACTED]
Telephone [REDACTED]

Comments

Came through ATT MAC
mail box as well →
emailed [REDACTED] 8/29



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August 26, 2019

Cheree Swedensky, Assistant to the Board
Executive Office
California Public Employees' Retirement System
P. O. Box 94229-2701
Sacramento, CA 94229-2701
Fax: (916) 795-2972

AUG 29 2019

**PETITION FOR RECONSIDERATION
REF NO. 2018-1165**

I do hereby challenge the ruling made by the Administration Law Judge (ALI) against my claim for CalPERS Disability Retirement benefits. My challenge is based on the fact they failed to apply the laws of the State of California pertaining to the admissibility of evidence I presented to prove my condition of being disabled.

At the hearing the lawyer for CalPERS asked that my evidence only be accepted as hearsay and the ALI failed to act in the best interest of the laws of the State of California in as much as she allowed my evidence be submitted only as hearsay. The ALI's failure to apply and protect the laws of the State of California, and therefore my civil rights, are demonstrated in the fact that the documents I submitted from all previous medical doctors, test results, and updated documentation from said doctors are clearly admissible in accordance with the California Evidence Code 1271.

1271. Evidence of writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered to prove the act, condition, or event if:

- a) the writing was made in the regular course of business;
- b) the writing was made at or near the time of the act, condition or event.

The failure of the ALI to accept my evidence supporting my claimed "condition" of being disabled and to apply appropriate weight to said evidence, against any evidence submitted to the contrary by CalPERS, when making the ruling did violate my Civil Rights to equal protection under the law, and is therefore tantamount to discrimination under the law.

The evidence I submitted that should have been accepted and given full faith, and weight against that submitted by CalPERS are:

Supporting Claim of "condition" of Disability

1. Document from CalPERS awarding Disability Retirement
2. All Medical Records from High Desert Medical Group and all other medical facilities

All of these documents are "Evidence of a writing made as a record of an act, condition, or event" that were "made in the regular course of a business" and "at or near the time of the act, condition, or event" and are therefore fully admissible as evidence supporting the claim of my condition.

Additionally, it should be noted that just because the CalPERS IME states in his report that I'm able to perform my duties, contractually my employer at CDCR has no legal obligation to admit me to return to work without a note from my treating physician releasing me to return to work, as evidenced by the continued treatment for my ongoing condition. Therefore, regardless of the CalPERS IME report, my treating physician is unwilling to release me to return to work, and therefore my employer, CDCR, is unable to offer me continued employment under the original terms of my contract citing the contractual rules that once an employee is released on long-term disability there must be a release note for return to work provided by the employee's treating physician.

I ask that my evidence be granted the full weight it should carry against the limited evidence submitted by CalPERS and their "expert witness." It should be noted that I have challenged the credibility of the IME used by CalPERS and have submitted credible evidence that shows the IME's failure to recognize and note numerous physical conditions that were clearly present at the time of his physical evaluation. As previously stated he made many false and erroneous statements in his report all of which my medical records from treating physicians refute. His claim at the hearing that these were mere subjective opinions should fail to hold any weight when compared to the records of treating physicians. Furthermore, if in fact these are subjective opinions then one must ask just how credible is the report written by the IME if CalPERS failed to submit a COMPLETE MEDICAL RECORD for the IME to review and not a condensed medical file that someone pieced together for his review.

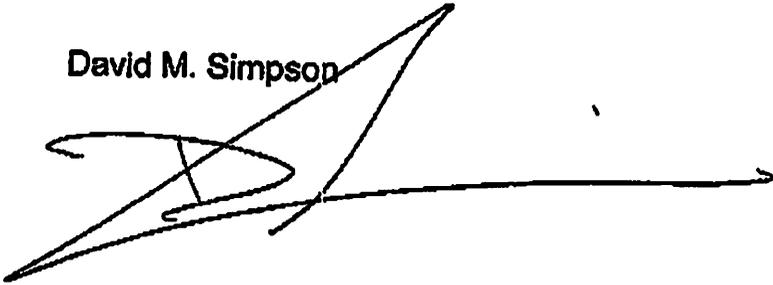
By the preponderance of evidence supporting my claim of disability (inability to perform my normal duties as a Correctional Officer for CDCR, combined with the inability to meet the contractual requirements necessary to return to work, there is no logical or legal way in which CalPERS can deny my medical retirement

disability benefits without further discriminating against me due to my disability and denying me my civil right of equal protection under the law.

I respectfully request that CalPERS re-evaluate my claim for Disability Retirement and that they take in to account ALL evidence legally submitted to support my claim.

Sincerely,

David M. Simpson

A handwritten signature in black ink, appearing to be 'David M. Simpson', written over the printed name. The signature is stylized with a large, sweeping 'D' and 'S'.