

ATTACHMENT C

RESPONDENT(S) ARGUMENT(S)

fax

Subject: Respondent's Argument

Date: January 29, 2020

To: Cheree Swedensky
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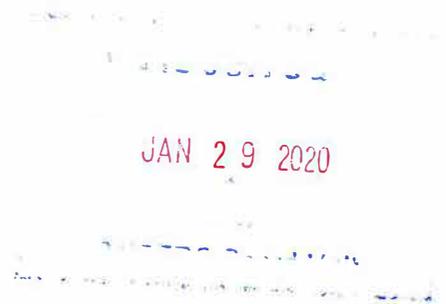
From: Kerry S. Danis
 Phone Number:

Comments:

Please find attached my three page response to denial of Case No. 2019-0409

OAH No. 2019061162

Respondent's Argument to Proposed Decision



January 27, 2020

Re: RESPONDENT'S ARGUMENT

To: The Board of Administration of the California Public Employees' Retirement System (CALPERS)

From: Kerry S. Danis

This letter is my personal response to the denied ruling. I am responding against the proposed decision. I am not a litigious person, and therefore not experienced in the legal process.

However, due to PTSD being so misunderstood, and so prevalent (many suicides & stress related absences) in the prison work environment, I feel it is imperative to continue to attempt to shine a light on it.

In fact as I was retiring, stress was becoming a part of the 40 hour in-service required by every prison employee working for CDCR.

This appeal, is for myself, but it is also for all those (past and present) who continue to work for the state of California in the very stressful prison environment. Unless one has worked in this kind of environment personally, it is difficult to imagine the emotional impact produced over time environmentally.

ISSUE

Whether at the time of my application, on the basis of my psychological (anxiety, depression and mental inability to work safely (later recognized as PTSD by two licensed therapists)) conditions, was I substantially incapacitated from the performance of my usual and customary duties as an academic teacher for respondent CDCR?

- My two therapists (Naimark, Stroup) who have been treating me for a number of years (and didn't collaborate) stated I am suffering from PTSD.
 - The triggers for this assessment of PTSD involve working with mentally disordered outpatients in a level IV prison (equivalent to Pelican Bay) environment.
- In the denial much more weight was given to the state's appointed psychiatrist's evaluation (Dr. Lopez) than to my own two therapists (Naimark, Stroup) who have known me for a much longer time.
- In the appeal conversation telephonically, I asked Dr. Lopez if he had ever had any work experience in a prison environment. He stated in the negative that he had never worked in a prison, much less a level IV yard (such as the yard I worked on at MCSP).
- One of my therapists (Stroup from NM) has in fact worked in a prison environment as a supervisor, and is well familiar with the need to be alert, focused and above all safe. In a prison environment it is not possible to be safe, if one is distracted or emotionally compromised.
 1. Part of the denial was based on no credentials presented for my two therapists.
 2. Both therapists are well qualified, licensed in the two states (CA and NM respectively) they practice. I have copied the URLs documenting their credentials to verify their competence in assessing and diagnosing clients.
 - a. Ann Naimark (CA license details are on internet)
<https://search.dca.ca.gov/details/2001/LMFT/30446/49704eebc8eface8d2c004b22f48a18d>

b. Julianne Stroup (license details for NM)

<http://verification.rld.state.nm.us/Details.aspx?result=20b7bacc-a6b6-4136-af61-c26d59627700>

- Over time, according to both of my therapists, I was, and continued to suffer from PTSD. Just the thought of returning to work causes me to become emotional to the point of crying.
 1. I am physically able to do my job;
 2. But I am substantially incapacitated by PTSD mentally & emotionally rendering me
 3. Unable to return to work without fearing for my safety or that of other's safety.
- This substantial mental incapacity due to PTSD, is triggered by the environment of working in a prison.
- I was and still am unable to return to work due to my emotional state. I fear for my own safety, and the safety of others due to my substantial incapacity due to PTSD.

Throughout the denial response section of Independent Medical Examination (IME) based on Dr. Lopez's evaluation of me were several inconsistencies and/or discrepancies.

The record states that I was never assaulted at work (page 6 of denial). I didn't bring it up in my disability, (or to Dr. Lopez in the hour he saw me), but I have had documented assaults at work by inmates. In addition, there have been many well documented verbal assaults from inmates throughout my years working with CDCR.

JOB DUTIES (from the job description for CDCR teacher)

10% of the Essential Duties and responsibilities involve keeping the work area safe and secure.

Special Requirements involve maintaining an empathetic and objective understanding of inmates & demonstrating emotional stability, tact, patience, open-mindedness and high moral standards.

Special Physical Characteristics require agility and endurance to perform during stressful (physical, mental, and emotional) situations encountered on the job.

- Due to the PTSD, I was not able to focus on my job as my emotional state impacted my ability to focus and attend to the security of my job.
- The DSM-IV regarding PTSD traumatic stressors, states that a "traumatic stressor usually involves a perceived threat to life (either one's own life or that of another person) or physical integrity and intense fear, helplessness or horror."
- Due to the combination of work related assaults (physical and verbal), sitting in on IDTT meetings regarding out patients (inmates) and having a son who is mentally unstable, I experienced ongoing and consistent intense "fear, helplessness and horror".
- These stressors impacted me to the point of being substantially incapacitated in my ability to perform my job in the work environment of a prison. All of this led to me being unsafe to perform my job which in turn created more stress.

In conclusion, I am sure there is more to be said on this topic and in relation to the discrepancies in my denial. I believe I have done the best I can do, given my limitations and objectivity. I do believe my therapists were as competent as well as objective as Dr. Lopez; perhaps more so as they know me

better. They have spent more time with me, and one (Stroup) had actually worked in the New Mexico state prison system having firsthand experience of working behind the walls.

My substantial incapacity to continue in my job went well beyond discomfort as suggested in the closing pages of the denial. I made the right decision for my own mental health; and for the safety of myself and those I worked with. Thank you for considering my arguments.

Signed,



Kerry S. Denis