

ATTACHMENT C
RESPONDENT'S ARGUMENT



California Public Employees' Retirement System
Legal Office

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FEB 24 2020

January 27, 2020

Ref. No. 2020-0021

Certified Mail – Return Receipt Requested

Moses M. Sarinana
Administrative Law Research Group, Inc.
333 University Avenue, Suite 200
Sacramento, CA 95825

Subject: In the Matter of Accepting the Application for Industrial Disability Retirement of CHARLES A. THERRIEN, Respondent, and CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION, Respondent.

Dear Mr. Sarinana:

Pursuant to the Sacramento Superior Court Order for Remand, dated December 20, 2019, this matter has been calendared by the Board at its regular meeting on March 18, 2020, for consideration to set aside its Final Decision and to remand the matter to the Office of Administrative Hearings.

Should you wish to provide written argument to be included in the agenda item, it should be no longer than six pages, and must be received by CalPERS no later than February 26, 2020. All written argument will be included in the agenda item and mailed simultaneously to the Board and all parties. Your argument will not be disclosed to me, the assigned attorney in this matter until then. Please redact personal information, as Respondent Arguments become a public document when included in the agenda item. Please title your submission as "Respondent's Argument" and send it to:

Cheree Swedensky, Assistant to the Board
CalPERS Executive Office
P.O. Box 942701
Sacramento, CA 94229-2701
Fax: (916) 795-3972

If you have any questions about this procedure, please contact me directly.

Sincerely,



Kady Pasley
Legal Secretary
Legal Office

KMP

Enclosure

cc: Personnel Officer, California Department of Forestry and Fire Protection

"RESPONDENT'S ARGUMENT"

FEB 24 2020

February 14, 2020

Dear Honorable CalPERS Board Members,

My name is Charles A. Therrien I am a retired Fire Captain with the California Department of Forestry and Fire Protection hereinafter CAL FIRE. I served the great state of California and its citizens for over 25 years.

My Biography:

I started my career 1974 -1980 I was a Volunteer Firefighter with the Sunnymead Volunteer Fire Department. At that time, Sunnymead Volunteer Fire Department was part of the Riverside County Fire Department/California Department of Forestry and Fire Protection.

In 1981, I was hired as a Limited Fire Apparatus Engineer with the California Department of Forestry and Fire Protection. I attended a Fire Apparatus Engineer Academy in Ione, California for two weeks prior to being assigned to Riverside County Fire.

During my Limited Fire Apparatus term assignment, I was responsible for the care and maintenance of the fire engine and Fire station, I supervised two to three firefighters.

In 1982, I was hired as a full-time permanent Fire Apparatus Engineer, at which time I attend an eight-week Fire Apparatus Engineer Academy in Ione. Upon completion, I was assigned to Riverside County Fire Department as a station relief Fire Apparatus Engineer between three stations.

In 1986, I was promoted to a Fire Captain, I was assigned the position of Fire Crew Captain at the training center in Chino, California. During this assignment I trained inmate firefighters in a classroom setting and in the field on proper firefighting techniques. I worked with inmate firefighter crews on several major fires in California. I supervised seventeen to eighteen inmate firefighters at any given time.

In 1989, I transferred from the training assignment to a schedule B fire station. This was a California Department of Forestry and Fire Protection State Fire Station in Riverside, CA. I was one of two Fire Captains with a crew of three firefighters and fifteen Volunteer Firefighters.

In 1995, I transferred to a schedule A fire station, this was a California Department of Forestry and Fire Protection Fire Station/Riverside County. At the time I was the only Fire Captain with a crew of two firefighters and a Volunteer crew of twenty. I also supervised a Fire Apparatus Engineer and two firefighters on the opposite shift.

I worked several assignments to gain knowledge and experience to qualify for the position of Battalion Chief.

In 2007, I made a very difficult decision to retire from the CAL FIRE due to various health issues.

Prior to my service retirement I was experiencing hostile work environment from my co-worker and my Battalion Chief (Immediate supervisor) I decided to file a lawsuit against my department (CAL FIRE) and two employees creating the hostile work environment shown below pages 4-6 during the lawsuit process my attorney at the time retired in 2011 some 4 years later I dropped the lawsuit and the case was dismissed, see below pages 4-6.

In or around December 23, 2014 I was diagnosed with throat cancer I filed a workers comp claim with State Compensation Insurance Funds (SCIF) in or around August 2018 SCIF accepted and settle my case pursuant to the Firefighters Bill of Rights [Presumption Law] Labor Code §3212.1 (***California*** *The term "injury" as used in this division, includes cancer, including leukemia, that develops or manifests itself during a period in which any member described in subdivision (a) is in the service of the department or unit, if the member demonstrates that he or she was exposed, while in the service of the department or unit, to a known carcinogen as defined by the International Agency for Research on Cancer, or as defined by the director. The compensation that is awarded for cancer shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by this division.*)

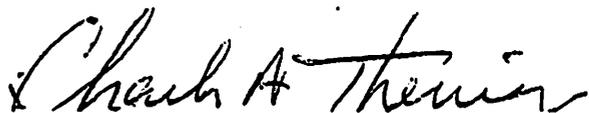
During my chemotherapy treatment I learned I could file for Industrial Retirement Disability with CalPERS in or around April 27, 2017 I filed an application with CalPERS based on the above information. My application was denied, I filed for an administrative hearing which took place on August 14, 2018 during the proceeding attorney for CAL FIRE Bruce Crane, esq. testified that I was eligible for rehire and that ***I was not terminated***, which counsel for CalPERS alleged.

On September 6, 2018 a post decision from the ALJ proceeding over my hearing denied my application based on resided precedential case *Haywood v. American River Fire Protection District* which **DO NOT** mimic my argument from the beginning.

On or about October 2018 I filed for a reconsideration with the CalPERS board citing that I was not terminated from employment therefore the argument submitted to the board by CalPERS legal was not accurate, on December 19, 2018 the board denied my reconsideration.

On January 16, 2019 I filed a PETITION FOR WRIT OF MANDAMUS PURSUANT TO CCP 1094.5 with the California Superior Court County of Sacramento my hearing was set for December 20, 2019 during the proceedings the honorable judge Arguelles set forth "Interdictory Order Remanding the Case to the CalPERS Board (see 3 pages attached order) in the judges order an "exhibit F" comes into play as the judge at the time did not have the proof of the exhibit F never took place as shown below pages 4-6 enclosing I ask the board to remand this matter to the Office of Administrative hearing (OAH) so that may have a fair decision as outlined in Administrative proceedings.

I, Charles A. Therrien declare under **penalty of perjury** under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.



Charles A. Therrien

Superior Court of California, County of Riverside

Minute Order

Case Name: THERRIEN VS MOORE	
Riverside Civil	Injunction Prohibiting Harassment-Violence (R)
Case Number: RIC480162	File Date: 9/11/2007
Action Date: 10/4/2007	Department: 45
Action Time: 8:30 AM	
Action Description: Hearing on Order to Show Cause re: Harassment as to BRAD MOORE	
<p>Honorable Judge James A Edwards, Presiding</p> <p>Clerk: P. Brawdy</p> <p>Court Reporter: K. Chechile</p> <p>CHARLES ALLEN THERRIEN present-Pro Per</p> <p>BRAD MOORE represented by THEODORE S. DRCAR - ATTY T.DRCAR present.</p> <p>All parties in this proceeding are sworn.</p> <p>PETITION FOR HARASSMENT denied.</p> <p>Notice waived.</p> <p>Print Minute Order</p> <p>Print Minute Order</p>	

2/4/2020

RIC499660 Case Report - Riverside Civil & Small Claims

RIVERSIDE SUPERIOR COURT

PUBLIC ACCESS

Case Report

Case RIC499660 - THERRIEN VS CALIFORNIA DEPARTMENT OF FORESTRY

Case RIC499660 - Complaints/Parties

Complaint Number: 0001 — CMP 2nd Amended Complaint of CHARLES THERRIEN 10/13/2010
Original Filing Date: 05/19/2008
Complaint Status: Dismissed 05/27/2011

Party Number	Party Type	Party Name	Attorney	Party Status
1	Plaintiff	CHARLES THERRIEN	KODAM & ASSOICATES	Dismissed 05/27/2011
2	Defendant	CALIFORNIA DEPARTMENT OF FORESTRY AND	DEPUTY ATTORNEY GENERAL	Dismissed 05/27/2011
3	Defendant	BRAD MOORE	DEPUTY ATTORNEY GENERAL	Dismissed 01/24/2011
4	Defendant	STEVE CURLEY	DEPUTY ATTORNEY GENERAL	Dismissed 01/24/2011

Case RIC499660 - Actions/Minutes

Viewed	Date	Action Text	Disposition	Image
	05/29/2012 8:30 AM DEPT. RIDST	DATE TO SET OSC RE DESTRUCTION OF FILE (DISMISSAL)		
	06/20/2011 8:30 AM DEPT. 06	HEARING ON OSC RE: DISMISSAL AFTER UNCONDITIONAL SETTLEMENT PURSUANT TO CRC 3.1385(B).	Vacated	

Minutes Print Minute Order

2/4/2020

RIC498660 Case Report - Riverside Civil & Small Claims

N	06/01/2011	ACKNOWLEDGMENT OF FULL SATISFACTION OF JUDGMENT FOR JUDGMENT DEBTOR, CHARLES THERRIEN FILED.	Not Applicable	
	05/27/2011	DATE TO SET OSC FOR DESTRUCTION (DISMISSAL) IS SET 5/29/12 AT 8:30 IN DEPT. RIDST		
N	05/27/2011	REQUEST FOR DISMISSAL WITH PREJUDICE ENTIRE ACTION FILED	Not Applicable	
	05/06/2011 8:30 AM DEPT. 06	ORDER TO SHOW CAUSE RE: DISMISSAL OF CASE FOR FAILURE TO PROSECTUTE AS TO CHARLES THERRIEN	Vacated	N/A
N	05/03/2011	NOTICE OF SETTLEMENT OF ENTIRE CASE FILED - UNCONDITIONAL SETTLEMENT CRC 3.1385 [FORM CM 200].		
	05/03/2011	HEARING ON OSC RE: DISMISSAL AFTER UNCONDITIONAL SETTLEMENT PURSUANT TO CRC 3.1385(B) SET ON 6/20/11 AT 8:30 IN DEPARTMENT 06.		
	04/06/2011 8:30 AM DEPT. 06	ORDER TO SHOW CAUSE RE: DISMISSAL OF CASE FOR FAILURE TO PROSECTUTE AS TO CHARLES THERRIEN	Continued	N/A
Minutes Print Minute Order				
	03/16/2011	NOTICE OF ENTRY OF JUDGMENT FILED BY BRAD MOORE.		N/A
N	03/10/2011	AMENDED JUDGMENT OF DISMISSAL FILED BY CHARLES THERRIEN	Not Applicable	
N	03/09/2011	NOTICE OF HEARING ON OSC REGARDING DISMISSAL OF CASE BY CALIFORNIA DEPARTMENT OF FORESTRY AND, BRAD MOORE, STEVE CURLEY FILED.	Not Applicable	
	03/07/2011 8:30 AM DEPT. 06	HEARING RE: STATUS CONFERENCE	OSC SET	
Minutes Print Minute Order				
N	02/17/2011	MEMORANDUM OF COSTS (SUMMARY) IN THE AMOUNT OF \$\$740.00 BY CALIFORNIA DEPARTMENT OF FORESTRY AND, BRAD MOORE, STEVE CURLEY FILED.	Not Applicable	
	02/09/2011	CHANGE ATTORNEY ON CHARLES THERRIEN FROM KODAM & ASSOCIATES TO KODAM & ASSOCIATES ON ALL COMPLAINTS.	Not Applicable	
N	02/09/2011	NOTICE OF CHANGE OF PLAINTIFFS COUNSEL CONTACT INFORMATION BY CHARLES THERRIEN FILED.	Not Applicable	
N	02/01/2011	ANSWER TO 2ND AMENDED COMPLAINT OF CHARLES THERRIEN BY CALIFORNIA DEPARTMENT OF FORESTRY AND REPRESENTED BY DEPUTY ATTORNEY GENERAL FILED. (OVER \$25,000.00)	Not Applicable	
N	01/24/2011	ORDER FOR (JUDGMENT) OF DISMISSAL IS GRA AND FILED; HONORABLE COMMISSIONER JOHN W. VINEYARD.	Not Applicable	
Minutes Print Minute Order				
N	01/07/2011	NOTICE OF CONTINUANCE OF STATUS CONFERENCE - BY CALIFORNIA DEPARTMENT OF FORESTRY AND FILED.	Not Applicable	
N	01/07/2011	NOTICE OF RULING RE: ON DEMURRER TO 2ND AMENDED COMPLAINT FILED	Not Applicable	
N	01/04/2011	STIPULATION FOR THE APPOINTMENT OF COURT	Not	

FEB 24 2020

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

DATE / TIME JUDGE	December 20, 2019 / 9:00 A.M. James P. Arguelles	DEPT. NO. CLERK	17 Slort
CHARLES A. THERRIEN, Petitioner, v. CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM and DOES 1 through 50, Inclusive, Respondents.		Case No.: 34-2019-80003058	
Nature of Proceedings:	Interlocutory Order Remanding the Case to the CalPERS Board		

This is an action for administrative mandamus pursuant to CCP § 1094.5. The issue is whether Petitioner Charles A. Therrien (Therrien) is eligible for industrial disability PERS retirement. Therrien served the California Department of Forestry and Fire Protection (CalFire) between 1988 and 2007. In the face of disciplinary charges, Therrien applied to Respondent CalPERS for a service retirement in 2007. The application was granted. In 2017, Therrien applied to convert his service retirement into an industrial disability retirement. CalPERS rejected the application without considering whether Therrien was actually disabled. Therrien appealed the rejection, but the administrative law judge (ALJ) and CalPERS Board (Board) affirmed.

In its adopted written decision (Decision), the Board concluded that judicial and precedential administrative authorities rendered Therrien ineligible for a PERS disability retirement. (See Decision, pp. 5-9.) Broadly speaking, these authorities bar a PERS member who is separated from employment from receiving a disability retirement absent the potential for reinstatement with the employer. In some of the cases, there was no such potential because the employee had executed a settlement agreement precluding further employment. Therrien did not expressly forfeit further employment with CalFire as a means to settle the discipline pending when he secured a service retirement. When the Board denied Therrien's appeal for disability retirement, it did so with an understanding that Therrien had not promised to forego future employment with CalFire.

When Therrien filed the writ action at bench, he attached several exhibits to his petition. One of the attachments appears to be an agreement that Therrien signed in 2011 (the "2011 Agreement"). (See Pet., Exh., F.)¹ The 2011 Agreement appears to memorialize the settlement of FEHA causes of action that Therrien leveled against CalFire and CalFire employees in Riverside County Superior Court in 2008. Therrien tendered the 2011 Agreement in the administrative proceedings giving rise to the case at bench, but only as evidence that workplace stress had rendered him disabled. (See Admin. Record 00202, lines 13-22.) The ALJ and the Board decided that the 2011 Agreement was irrelevant to the limited issues before them, and the 2011 Agreement was not admitted into the record.

Like the Board in the proceedings below, the parties initially approached this writ action without regard to the 2011 Agreement. When the court discovered the 2011 Agreement attached to the petition, however, it questioned whether the provisions precluding Therrien's reinstatement with CalFire might provide a straightforward basis on which to resolve the case. The court requested supplemental briefing, and the parties agreed in their submissions that the 2011 Agreement was properly before the court. Based on rules of contractual interpretation, Therrien nonetheless argued that provisions in the 2011 Agreement preserved his right to a disability retirement notwithstanding other provisions barring his reinstatement.

On 12/19/19, the court posted a tentative ruling on the merits of Therrien's writ petition. For the first time at oral argument on 12/20/19, Therrien's counsel asserted that the 2011 Agreement never took effect. Therrien's counsel referred to recently discovered information establishing that the 2011 Agreement was drafted for "internal" purposes only. He tendered a witness to testify in this regard.

After an on-the-record discussion with counsel, the court proposed remanding the case to the ALJ/Board for additional findings about the validity and impact of the 2011 Agreement. Both sides agreed to the proposal.²

Accordingly, the court REMANDS this matter to the Board to reconsider its Decision in light of the 2011 Agreement. The Board, or any ALJ assigned in the first instance, shall consider whether the 2011 Agreement ever took effect and, if so, any impact it has on Therrien's eligibility for an industrial disability retirement. Nothing in this order is otherwise intended to limit or control the Board's discretion.

¹ The copy of the 2011 Agreement in the court's files does not contain any countersignature on behalf of CalFire.

² The court initially contemplated a final order remanding this case such that further writ review would require the commencement of a new superior court case. After conducting legal research, the court elects to enter an interlocutory order that will allow the parties to return to this court without the need for a new case. (See *Valces of Wetlands v. State Water Resources Control Bd.* (2011) 52 Cal.4th 499, 525-532.)

Once the Board has complied with this order, the parties may return directly to this court for further proceedings.

SO ORDERED.

Dated: December 20, 2019




Hon. James P. Arguelles
California Superior Court Judge
County of Sacramento

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the Clerk of the Superior Court of California, County of Sacramento, certify that I am not a party to this cause, and on the date shown below I served the foregoing Interlocutory Order Remanding the Case to the CalPERS Board by depositing true copies thereof, enclosed in separate, sealed envelopes with the postage fully prepaid, in the United States Mail at Sacramento, California, each of which envelopes was addressed respectively to the persons and addresses shown below:

Matthew G. Jacobs, General Counsel
Preet Kaur, Senior Staff Attorney
CalPERS
P. O. Box 942707
Sacramento, CA 94229-2707

Yuri Kvichko, Esq.
Law Office of Yuri Kvichko
520 Capitol Mall, Ste 150
Sacramento, CA 95814

I, the undersigned deputy clerk, declare under penalty of perjury that the foregoing is true and correct.

Dated: December 23, 2019

Superior Court of California,
County of Sacramento

By: 
S. SLORT
Deputy Clerk