ATTACHMENT C

RESPONDENT(S) ARGUMENT(S)

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Received
AUG 26 2020
CalPERS Board Unit

GERI E. CHILELLI
[redacted]

RESPONDENTS ARGUMENT

August 24, 2020

RE: Case Number 2019-0639, OAH Number 2019101143

Cheree Swendensky, Assistant to the Board
CalPers Executive Office
PO Box 942701
Sacramento, CA 94229-2701

To Ms. Swendensky,

I am replying to a letter that I received denying my appeal for disability. I was originally scheduled for a hearing in March 2020. However, due to the first signs of the pandemic and the subsequent order from the governor pertaining to restrictions on group gatherings. I was contacted to reschedule the hearing for July. I had contacted OAH a day earlier to verify that the hearing would indeed take place and I was advised very firmly that I was required to be at the hearing. I had called because I had broken my left humerus two days earlier and had to be cut out of my clothes when I was released from the hospital, as I could not get anything over my head due to severe pain and weakness. Therefore, I called to confirm the hearing and verify the protocol regarding social distancing and implementation of wearing masks only to have the hearing canceled on or about two days earlier. An in person hearing was originally scheduled. However, I was notified by mail shortly before the hearing date informing me that the "hearing" would actually be a conference call.

The original denial was based on the grounds that I was terminated from my position for absence without leave (AWOL). I had not called in sick for five consecutive days. However, this situation was beyond my control. My husband had summoned a rescue crew and I was taken to the hospital, as I was unresponsive and he was very concerned. I remained in the hospital for a period of about ten days. Much of this time I did not recall. I was unable to make decisions regarding my health care, as I was on life support. I was diagnosed with CDiff, which is a serious and very contagious intestinal infection. I was also diagnosed with a number of GI bleeds. These were reoccurring and the medical staff would no sooner cauterize one when another would occur and they would have to repair them as they occurred. I was also diagnosed with starvation and failure to thrive.

I had had some nutritional issues in the past and have to take dozens of pills a day to stabilize the nutritional values, iron being one of them. I was severely anemic and the hospital staff was concerned about me bleeding to death due to the internal bleeding. During my stay I was also diagnosed for the first time with liver disease. The only cure for liver disease is a liver transplant. My family had been advised to plan for the worst. They did not hold out much hope of me surviving. I had had symptoms of the disease previously, such as the nutritional situation and frequent episodes of broken bones. I had reported a number of what appeared to be unrelated symptoms. However, once I was diagnosed, all of these symptoms were actually indicative of liver disease.

I had previously broken my left femur, in my early 50's. This is considered a blunt force trauma injury at such a relatively young age. Not reminiscent of a simple fall in my home. This was followed shortly after by a broken clavicle. I was unable to call my employer, as I was physically unable and unresponsive. My husband had to make life and death decisions on my behalf, while supporting our family on one income and caring for our minor, school aged child. Since my release from the hospital on or about June 2018, I have broken a toe, a rib, my right wrist and my left humerus in separate instances. I am still attempting to rehabilitate my wrist and my humerus. I had broken my femur in December 2017. I was in the hospital and later a nursing facility for six weeks, over Christmas. I required extensive rehabilitation. Due to my anemia, a transfusion was needed. I initially returned to work full time in March 2018. My physician amended my schedule as I required more time to convalesce.

He originally changed my hours from eight hours to four hours for a period of time. He then increased the hours to six hours a day for a period of time. Finally I was placed back on eight hours a day. I very quickly discovered that the building is not handicapped accessible. My employer, the California Board of Accountancy, had moved to this building in April of the previous year. The previous building was handicapped accessible. The new building has two very heavy double glass doors that open into a vaulted lobby. The property management company did put a ramp in and it has the handicapped decal on the front door. However, there is no button to push to open the door. I was in a wheel chair. When I was released from the hospital after the liver disease and I had gone from 126 pounds to 92 pounds in a matter of weeks.

My husband had to get me into my office, which was on the third floor. I was so weak that I could not open a soup can with a pull top. Therefore, I could not have possibly pulled the front doors open. Once in the building, he would take me to my office. This required a swipe key and physically opening the door and pushing me through. Therefore, once in the office, I did not have access to the bathroom, the break room, or any of the suites as they did not provide accommodation for my handicap. The refrigerators in the break room were tucked behind a table and chairs, making access impossible.

I actually bent the screws in my femur because if I did venture to go into another area, I would literally have to push the door open with my leg, as I could not get close enough to pull the door open to allow access with a wheel chair or walker. I had to have the hardware in my leg replaced at a later date. Due to my nutritional deficiencies the surgeon would not perform the outpatient procedure, for fear of me bleeding to death due to the iron deficiency, until I was stabilized. In the event of an emergency the elevator is taped off and the employees were required to use the stairs. Since I am at a high risk for breaks, and have balance issues, I cannot use the stairs and they had locked the emergency exits that would prevent rescue workers to reach me. There was not a plan in place that would define how they intended to get me off the third floor, in a wheel chair and my doctor has indicated I am not to use stairs.

I had filed a complaint with the DFEH due to the access issues. They failed to close the case because my employer would not agree to providing access into the building or any other area. They agreed to a "partial" reasonable accommodation. They would rework my actual desk area. Which was so narrow that I had to back the wheel chair out as I could not turn it around. However, that did not solve the problem of getting into the building or other areas that were not accessible. I am one of three people out of over 100 employees that was not permitted to eat at my desk. Due to my nutritional needs I was instructed to eat between six to eight small meals a day at specific intervals. These meals had to consist of all the food groups. My doctor requested that I be permitted to eat at my desk. This request was denied. Therefore, I was missing a lot of meals.

I literally was not permitted to eat, which contributed to the starvation and failure to thrive diagnoses, as I did not have access to the break room, there was no way to have access to food and I could not store it. Since I had to take dozens of pills a day it is not a discreet undertaking. I have had people comment "it looks like your popping pills again". Since I could not take them with food, there were many times that I was bent over a garbage can violently heaving. I had attempted to discreetly tuck a meal on my desk only to have my manger take a photograph of the meal when I was away from my desk. She would then attach it to an e-mail and send it to me chastising me for not following the no eating at my desk policy, that for all intent and purposes only applied to me.

I was not permitted to leave my area without first contacting another employee to cover my area. It was not unusual to have to wait ten or fifteen minutes and place ten calls attempting to reach someone. Management had other employees reporting back to them regarding everything I did. More than once, I was not at my desk and I was not scheduled for break. I received an e-mail from my manager regarding that. I was not at my desk because I could not find anyone to cover my area. I had been advised that I am expected back on time. I had a half hour lunch. If it took 15 minutes to find someone to cover my area, I was expected to take a 15 minute lunch. I was advised of that by management in front of a union steward.

Due to the liver disease I am prescribed a diuretic to reduce the fluids in my system. Also, I am prescribed a medication in which the whole purpose of the medication is to cause chronic diarrhea. This is to purge the buildup of ammonia in my system which is caused by the liver disease. Not the best two medications to be on when you cannot leave your work area for 15 minutes for a bathroom break. After I was released from the hospital on or about June of 2019, I was released with a hospital bed, as I was too weak to get out of a conventional bed. I was released against the recommendation of the in-charge nurse and only with the firm recommendation that I be released with in home services for a period of six weeks. This actually involved a team of medical professionals who all had their own appointments twice a week. This included a registered nurse, a nurse's assistant, a physical therapist, a social worker, two appointments total for an occupational therapist. I also had telephone appointments regularly with a dietitian, an orthopedic specialist, a bariatric surgeon, a GI specialist, among others.

I have had to go in for frequent ultrasounds to check the progress of the liver disease to insure that it is stable. Also, liver disease patients have a higher than normal possibility of developing liver cancer, which is how my mother's liver disease progressed. I have had edema due to the retention of water because my liver is not functioning properly. Rescue vehicles are a common sight in front of my home. If I did not answer the telephone when I was contacted by medical staff, the Sheriff would be dispatched for a well fair check. Due to the swelling in my lower legs and feet, I am required to elevate my feet above my heart and am unable to sit or stand for long periods of time, which is required in my duty statement and I certainly could not put my legs above my heart while at my desk. The weakened state of my bones, is a direct result of the liver disease as the nutrients are not being properly distributed.

After I was separated from employment, I appealed the decision, once I was well enough. The respondent agreed to change the reason for my separation from AWOL to a voluntary resignation. The binding stipulation all parties signed indicated that this would not go in my personnel file and I would not be held responsible. It also indicated that they did nothing wrong and I did nothing wrong. Which was made explicitly clear in the stipulation. However, this was not the case because my disability ***was*** specifically denied based on the AWOL, which means it most certainly was in my personnel file. Also, if I didn't do anything wrong then why is my disability being denied? During the telephone "hearing" the CalPers attorney, the Administrative Law Judge, the court reporter and myself were the only ones on the line. Since it was a conference call I was not allowed to have any witnesses subpoenaed. I was also not allowed to question the respondents, the Department of Consumer Affairs or the witness as they were not on the line. I had been given previous information indicating I *would* be allowed to ask questions of the respondent and the witness.

I have paid into disability for over 35 years. This would provide medical, dental and vision coverage for myself and my family for life. It would provide benefits to my minor child until she is 26. I attempted to provide medical information and the Administrative Law Judge would not permit it. I had also provided all medical records in a timely manner. Based on the stipulation I dropped my DFEH claim. There was a great deal of effort explaining that I could not request a right to sue or file a claim against the respondent. I acted in good faith. However, neither party can pick and choose which part of the stipulation, after the fact that they wish to ignore. Therefore, since I have been denied for the very reasons that the stipulation was to prevent, the entire stipulation is negated. If the respondent is not bound by it, I certainly am not. I will be reopening the discrimination and harassment claims and request a right to sue, as is my right. The respondent certainly cannot prevent me from doing so.

During this call the Administrative Law Judge had removed a large number of exhibits that the CalPers attorney attempted to present as they were irrelevant or duplicate information. In addition, she noted that the attorney had indicated there were missing exhibits that were reflected in the list of exhibits being discussed. His reply was that he could not put his hands on it right at the moment; however, he would get that to her at a later date. This was accepted by the Administrative Law Judge, much to my surprise. I am required to have supporting information by a specific deadline, not after the fact. I also voiced my concern that correspondence was being sent to me from CalPers and their attorney that gave a deadline to respond that was before the letter was even sent. Why make a deadline and notify me after the fact? However, when they set a deadline for them to prepare, they schedule it nine months out. I have a serious medical condition and will never be able to work. The Administrative Law Judge would not permit me to present this information.

The original denial indicated that I did not qualify for disability because the reason for my disability is different than what was indicated. How can that determination be made if they did not review my medical records? It has never changed. My medical records would clearly indicate that I am disabled. Furthermore, the Administrative Law Judge referred to two cases that set a standard. She asked about three times, what these cases had to do with my situation. Those cases specifically related to employees that attempted to seek a settlement from their employer when they were terminated with cause. They had not followed procedures. I was not terminated for cause. I was not in disciplinary action at the time of my separation from employment. I resigned because my medical condition would not permit me to perform the job duties and they would not provide a reasonable accommodation.

When I inquired about letters being sent to me that I could not possibly meet the deadline indicated, the Administrative Law Judge asked the CalPers attorney if I had missed a deadline. His response was a very clear "No". However, when it was denied upon appeal the reason given was that I had missed a deadline. The reason for denial changed from an AWOL to a different reason. It is quite apparent that everything is being "thrown at this" in the hope that something "sticks". I should not be put in a position for wondering if I should seek medical attention for a life ending illness, or to feed my child. She should not be worrying about this either. I do qualify for disability. I am disabled. There is a big difference between paying someone disability because they do not want to work and those that have a legitimate disability and can no longer work. My long time primary care physician who I have had for over 30 years has recently retired. My new primary care physician has indicated that I am a full time job (for him).

Since I separated from service, I was treated for pneumonia twice, had multiple hospital stays, have broken a large number of bones, had ascites, which is a buildup of fluid in the abdominal cavity that had to be drained. They drained six liters of fluid. Because the puncture wound was not sutured and allowed to drain, I had to go back to the emergency room to have it sutured. I had to call a rescue crew as I developed a very high fever and chills. I was laying on the couch five feet from the front door and could not get up to unlock the door for the rescue crew. One of them had to go around the back of the house and fortunately the back door was unlocked. I was treated for sepsis due to the leaking open puncture hole in my abdomen. Another two liters of fluid was drained from my abdomen. Any of these situations is potentially lethal. I had many of these problems at the same time. I

If I lose my medical coverage, it is a death sentence. I do not shower without someone in the house, as I would not be able to summon medical care should I fall. My most recent trip to the emergency room was the result of experiencing symptoms that could be related to internal bleeding. This was confirmed and I was advised that I would not be leaving any time soon. An ultrasound confirmed that I had a bleeding ulcer and they had to do a surgical procedure to repair it. They can no longer get blood out of my body or start an IV. One time it took six radiologists and two doctors to try to insert a catheter for the contrast dye. They never did get one and had to use the smaller needle that had already been inserted into a small vein in my hand, which they actually needed a larger catheter and could not get one. I have also been put on medication to support my kidney function, as they have also observed a problem with my kidneys.

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This situation is of a critical nature. If it not acted upon, I may very well expire before the disability claim is approved. My minor child is very bright. This is causing an extremely stressful time for myself and my family and is only adding to my medical and mental health. I have been bullied by the Department of Consumer Affairs, the Board of Accountancy, CalPers and their legal counsel. I should be permitted to focus on my health, instead of this additional stress. I do not want to tell my daughter that college is not in her cards as she has been planning for college since grade school. I am requesting that this information be removed from my personnel file. Thank you for your prompt attention to this matter. Please advise me of any additional information or clarification that I can provide. Under penalty of perjury, this information is tree and correct to the best of my ability. I am prepared to provide you with the names of other parties that can provide verification.

Sincerely,

Geri E. Chilelli

Geri E. Chilelli