

ATTACHMENT C

RESPONDENT(S) ARGUMENT



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Fax Cover Letter

From Donald White

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To BOARD SERVICES UNIT COORDINATOR

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Date 9-8-22

Respondent's Argument

***Donald W. White and Sierra Conservation Center,
Department of Corrections and Rehabilitation.***

Agency Case No. 2021-0846

OAH No. 2022030066

Over my 30-year career in the prison system, I have sustained a number of injuries, broken bones, cracked ribs, pulled muscles, exposure to disease from needle sticks to outright gassing. I was on the CRT team for over 15 years of my career and was very much in the physical aspects of being a Correctional Officer. I could have left this career in 2012 due to one of my injuries, however I had two children to take care of, so I decided to try to stick it out and continue until retirement age. I've had a total of 4 surgeries, all work related, left foot sesamoid bone removal due to injury sustained during CRT training 2006, Right ankle repair and re-alignment due to altercation with a combative Inmate 2011, Right knee meniscus repair due to the same combative Inmate at the same time as the ankle injury, Right knee replacement, due to cumulative injury from 2012. I have also been advised by a surgeon that I may need back surgery due to an injury sustained while at work in 2012 caused by an assault by and inmate.

Every one of my significant injuries were during work as a correctional officer and each one of them is documented at the time of the injury, from training, combative Inmate to assault on a peace officer.

I cannot understand CalPERS' reluctance to grant me industrial disability simply due to a late application. My gross pay will be exactly the same (to the cent), the only difference will be my tax withholdings.

Reason for Late Industrial Disability Application

On October 24th, 2019 I was placed on Total Temporarily Disabled (RE: Right Knee) work status Pending Orthopedic Surgeon Consult Oct 29, 2019, I was in the process of trying to see an approved state fund surgeon regarding my knee. I started this process with a number of different doctors, sometimes waiting months, only to be turned down at the last moment by the

physicians due to various reasons, sometimes because my original injuries were old and sometimes due to the doctors not wanting to deal with state fund.

At the time I was placed on Total Temporarily Disability, Work Comp would not pay for my time off of work because my original injuries were over five years old. I had already used most of my sick leave and vacation time due to my injuries and I found myself in a situation where I felt that I should retire as soon as possible.

Upon contacting CalPERS, I was informed that I could apply for Service credit retirement or industrial disability retirement, however to apply for industrial disability retirement, I only had 30 days to complete the doctor's portion of the package or my disability retirement would be denied and I would not be able to apply for industrial disability at a later time. I was not informed by CalPERS that I could apply for Industrial Disability and then later, re-apply after the doctor's portion of the application was completed. When talking in person to the CalPERS representative, I was informed that I should not turn in my industrial application until after I was able to confirm with a treating doctor. I will note that the counselor/ representative seemed rather new and had to leave a couple times and consult with either another representative or supervisor, I'm not sure who, before returning and answering my questions. I was also informed by the same representative that normally I had only 9 months from the date of my retirement to change to industrial disability, but due to not being able to see a doctor in this time period that I had up to two years after my retirement date although I might have to explain the delay.

I originally applied for service credit retirement because I simply could not work anymore due to my injuries and I still had not been able to see a State Fund Approved Orthopedic surgeon and my general practitioner State Fund doctors wanted an Orthopedic Surgeons opinion prior to completing the Doctors portion of my Industrial disability application. During my hearing I learned that I could have seen any doctor at any time, however I did not know this at the time of my retirement.

Upon reviewing the case documents submitted by Calpers, I was surprised to read the answers from CDCR return to work coordinator Pam Cassaretto 21: Exh. CDCR'S Response Letter.

she claims that I did not stop work because of a disabling condition and that I was not off work prior to my retirement therefore I was not offered an interactive process. During the hearing She rectified that statement by stating

that I was off work since October 24th 2019, and that for some reason She did not view my attendance record prior to filling out the form. Subsequently I was not offered to participate in an Interactive Process, nor was I even made aware of it.

My mistake in filling out the late application was due to misguided and/or wrong advice I received from CalPERS, my personnel office and to some extent my Work Comp attorney, my work comp attorney attempted to help me out in this matter by submitting my information to a Workers' Compensation Judge and receiving an order to grant my Industrial Disability on Nov 1st 2021, however, even He was not aware of the correct procedures regarding CalPERS.

During the hearing I was told that I should have been aware of all of these timelines and errors, however I do not work for CalPERS, so I trusted the advice I received from sources I thought would be more informed than myself.

Feel free to use any of my statements or documents for any future training or co-ordination between CalPERS, State Fund, Work-Comp or CCDR personnel.

Thank you.
Donald White





Right Knee
Replacement
2021

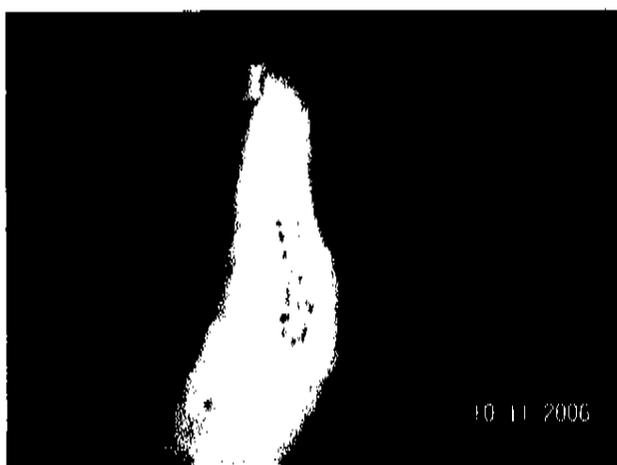
Cumulative
Trauma since
2011



Right Knee
Meniscus Surgery 2012
Combative Inmate



Right Ankle
Surgery 2011
Combative Inmate



Left Foot
Sesamoid Bone
Removal 2006
CRT Training

10 11 2006