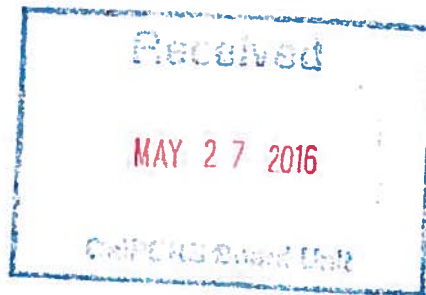


ATTACHMENT A
RESPONDENT'S PETITION FOR RECONSIDERATION

Petition for Reconsideration

PERS case #2015-0580.

May 25th, 2016



Dear CalPers Board,

Please consider this letter a Petition for Reconsideration in the matter of the involuntary reinstatement from Industrial Disability Retirement.

To my knowledge Calfire has never responded regarding this case however, they have strict physical standards listed on their medical forms that I am physically unable to comply with. Attached you will find a copy of the job duties that must be considered when medically clearing a candidate for the Job as a Firefighter 1.

I draw your attention to Attachment #1: Cal Fire Physical/Mental Stress Job Description, Firefighter 1, page 1, Paragraph 5, second sentence which states, "The individual must have the necessary strength and agility required for extensive bending, stooping and squatting" and page 2, paragraph 7 which expands the Firefighter 1 duty to include, "working in isolated areas, walking or running on uneven rough terrain, and remaining on duty 24 hours or longer without a break while performing these duties" Additionally, please review Attachment 1, page 2 Section: Category 1 – Arduous Physical Work, paragraph 1 in its entirety. Please review Attachment 2, note that. Dr Saperstein's report dated Feb 17, 2016 under Treatment Plan, I do not have this ability and Dr Saperstein's medical opinion report directs that I do not perform these specific repetitive actions due to the on-the-job injury sustained July 30th, 2011, which remains consistent with the determining medical decision which deemed me disabled.

As stated in my previous letter to the Board dated May 1, 2016, because of my injury I could be a danger to myself or others in an emergency situation. In fact the boxed in final statement on the Medical Release form, page 2 of Attachment 1, requires the Doctor to certify that "... THE EMPLOYEE IS ABLE TO SAFELY PERFORM THESE DUTIES WITHOUT SIGNIFICANT INCREASED RISK OF INJURY TO SELF OR OTHERS BECAUSE OF MEDICAL CONDITION".

I ask that the Board refer this matter to the Medical Clearance Officer at CalFire to determine if they would accept a firefighter back into service that has been directed by a medical Doctor not to squat or climb before making the final determination to reinstate me. I believe that the CalFire Medical Clearance officer has the final say on whether they actually accept me back to work or not, given my continued medical condition.

I have also included for your review the documents I sent to the PERS Board, dated May 1st, 2016.

Thank You for your reconsideration in this matter.

A handwritten signature in black ink, appearing to read "J. Conway", with a stylized, cursive script.

Jordan M. Conway

Attachments: 2

CAL FIRE PHYSICAL/MENTAL STRESS JOB DESCRIPTION



FIREFIGHTER I

A DESCRIPTION IS GIVEN BELOW OF THE PHYSICAL AND MENTAL STRESSES TO WHICH A FIREFIGHTER I IS SUBJECTED TO AT CAL FIRE. YOUR JUDGMENT IS NEEDED AS TO THE EMPLOYEE'S CAPACITY TO PERFORM THE REQUIRED DUTIES. IN YOUR CONCLUSION, TAKE INTO ACCOUNT THE LONG-RANGE OUTLOOK FOR CONTINUED PERFORMANCE, AND THE EMPLOYEE'S ABILITY TO SAFELY PERFORM THESE DUTIES WITHOUT SIGNIFICANT INCREASED RISK OF INJURY TO SELF OR OTHERS BECAUSE OF MEDICAL CONDITION.

Firefighter I's work, as a temporary employee, under the close supervision of a Captain or Engineer, to do the heavy physical work involved in firefighting as a member of a fire crew. The primary purpose of the Firefighter I is to fight fires as a member of a fire crew using tools and equipment such as a shovel, axe, McLeod, Pulaski, and back pump. However, during the periods when there are no fires, the Firefighter I must perform certain other related duties in order to build and maintain the organization at a high degree of efficiency. The individual must keep physically fit for the rigorous duties of fighting wildland fires, as a member of a large striking force. A large part of the training to efficiently perform these duties will be conducted "on the job". Formalized training is given to the Firefighter I's in the techniques of fire control, as far in advance as possible of the time that they are called upon to perform this very hazardous and difficult type of work.

When the Firefighter I is not on the fire line, additional projects may involve clearing trails, cutting brush, assisting in building repair, and grounds and equipment maintenance and repair; inspect, clean and repair fire house and equipment; sharpen fire tools, paint equipment and buildings, perform semi-skilled or laboring construction work, and perform general station housekeeping and kitchen duties.

When assigned to an emergency incident, the Firefighter I is expected to have the endurance to perform arduous physical tasks in emergency situations throughout the state. The Firefighter I may be assigned to the night shift and required to sleep during the day to be ready for the following night shift. Day sleeping due to the times of shift change, combined with high temperature (100 degrees F), smoke, dust, and noise, makes rest quite difficult to obtain. Normal regularity of meals becomes impossible in these situations; also, the firefighter must be capable of responding to the above demanding stressful situations at all times.

A Firefighter I must have visual acuity (Snellen) of not less than 20/100 without correction in each eye, corrected to not less than 20/30 in one eye; must have color vision sufficient to correctly identify vehicles and have color vision adequate to successfully perform the duties as measured by the Ishihara Pseudo-Chromatic Plate Test; hearing adequacy within speech frequencies (uncorrected); and full use of both hands and feet. The individual must have the necessary strength and agility required for extensive bending, stooping, and squatting, and must have no more than a mild susceptibility to poison oak. The Firefighter I must be able to work in situations where heat is intense, in addition be able to tolerate heavy smoke, dust and exposure.

The incumbent may be required to wear respiratory protection equipment (including self-contained breathing apparatus (SCBA). The use of such equipment may place a physiological burden on the incumbent that varies with the type of equipment used, the job and workplace conditions in which the equipment is used, and the medical status of the incumbent. As such, Cal/OSHA requires that the incumbent be annually medically cleared to be fit-tested for respiratory protection equipment. This clearance process consists of a comprehensive medical evaluation including a review of the incumbent's medical history, a complete physical examination, and vision, hearing, spirometry, and exercise treadmill tests.

The incumbent typically is required to perform psychologically stressful and/or physically demanding duties consistent with firefighting, disaster response, and emergency medical response, including working in isolated areas, walking or running on uneven rough terrain, and remaining on duty 24 hours or longer without a break while performing these duties.

CATEGORY I - ARDUOUS PHYSICAL WORK

Duties involve field work requiring physical performance calling for above-average ability, endurance, and superior condition, including occasional demand for extraordinarily strenuous activities in emergencies, under adverse environmental conditions and over extended periods of time; requires running, walking, difficult climbing, jumping, twisting, bending and lifting over 25 pounds; and the pace of work is typically set by the emergency situation.

THE UNDERSIGNED CERTIFIES THAT HE/SHE HAS READ THE CAL FIRE PHYSICAL/MENTAL STRESS JOB DESCRIPTION FOR THE EMPLOYEE NAMED BELOW AND THAT IN HIS/HER JUDGMENT THE EMPLOYEE HAS THE CAPACITY TO PERFORM THE REQUIRED DUTIES, HAS TAKEN INTO ACCOUNT THE LONG-RANGE OUTLOOK FOR CONTINUED PERFORMANCE, AND THE EMPLOYEE IS ABLE TO SAFELY PERFORM THESE DUTIES WITHOUT SIGNIFICANT INCREASED RISK OF INJURY TO SELF OR OTHERS BECAUSE OF MEDICAL CONDITION.	
EMPLOYEE NAME (PRINT)	WORK UNIT
MEDICAL PROVIDER'S NAME (PRINT)	DATE
MEDICAL PROVIDER'S SIGNATURE	
ADDRESS (PRINT)	
TELEPHONE	

Attachment 2

BOCA RATON ORTHOPAEDICS AND SPORTS MEDICINE

OFFICE AND OPERATIVE ORTHOPAEDICS
ARTHROSCOPY AND SPORTS MEDICINE

1905 Clint Moore Road, Suite 214
Boca Raton, FL 33496-2660
(561) 241-8668 - Fax (561) 912-9556

MARC BERGMAN, MD
ALAN L. SAPERSTEIN, MD
MELVIN D. YOUNG, MD
ERIC W. LLOYD, MD

DIPLOMATES, AMERICAN BOARD OF ORTHOPAEDIC SURGERY

Name: Jordan M Conway

DOB: [REDACTED]

Account: [REDACTED]

DOS: 2/17/2016

Original Chief Complaint 26 year old male complaining of left knee pain.

History of Present Illness:

The patient returns today for follow up. There has been no significant changes in the current symptoms. There has been no change in the character or location of the problem. There are no new symptoms or accompaniments. The patient went for 4 sessions of physical therapy followed by a home exercise program. He notes that pain in the left knee has persisted. He describes it as a tightness. It is deep within the knee. He does note some snapping posterolaterally that occurs with squatting and climbing. He has applied topical Tiger balm to the knee with some relief. He avoids NSAIDs due to a history of peptic ulcer disease.

Conservative Care History: There has been no change in the symptoms with ice, heat, rest, anti-inflammatory medication, home exercise program, bracing and pain medication.

Medical History

Past Medical History: No known medical conditions.

Medications: Takes no medications

Allergies: Penicillins

Review of Systems

Vital Signs: Height: 5ft 6.00in, Weight: 140lbs BMI 22.59

Left Knee Examination

Inspection: Inspection of the knee reveals no effusion. There is no ecchymosis. There is no deformity.

Palpation: There is no tenderness over the medial joint line, lateral joint line, patella tendon, quadriceps tendon or anterior aspect of the patella. There is mild tenderness over the medial facet of the patella. There is no tenderness over the iliotibial band at the lateral epicondyle.

Range of Motion: Knee range of motion is 10° of hyperextension to 145° of flexion. There is no pain on range of

DIGITALLY SIGNED

Patient Name: Conway, Jordan M

DOB: [REDACTED]

motion testing. Some snapping is noted of the lateral hamstring tendon as he goes from flexion to extension.

Strength: Strength testing is 5/5 in the quadriceps and hamstrings.

Sensation: Sensation is intact.

Reflexes: Reflexes are normal and symmetric.

Special Tests: Anterior drawer, Lachman, Pivot shift, Valgus stress, Varus stress, posterior draw, external rotation stress and apprehension tests all are negative. Straight leg raise is intact with no extensor lag.

Gait: Gait pattern is normal with no limp.

Diagnosis Codes:

M22.42 Chondromalacia patellae, left knee

Impression:

Chondromalacia patella left knee.

ITB friction syndrome left knee, improved.

Snapping lateral hamstring tendon left knee.

Office Procedures:

This was at least a 25 minute visit with greater than 50% of the time spent counseling the patient. Counseling included discussion of diagnosis possibilities, treatment options, risks and benefits. The patient had many questions regarding these options and long term effects.

Treatment Plan:

The patient will continue a home exercise program he learned in physical therapy. He is to avoid squatting and climbing as this causes snapping in the knee. In light of that restriction I do not think he can work as a firefighter.

The patient is instructed to follow-up with me if pain persists or worsens. The patient was instructed in a home exercise program.



Alan L. Saperstein, MD

Date: 2/17/2016

DIGITALLY SIGNED

May 1, 2016

PERS Board

In the Matter of: Jordan Conway:

PERS case # 2015-0580

OAH case # 2015071344

Dear Board Members:

I am writing you this letter because I was told that I am not allowed to speak during the hearing regarding the above-mentioned case.

I was employed by CALFIRE as a firefighter until I was medically retired due to injuries I sustained to my left knee while actively fighting a wildland fire on July 30th, 2011. I continue to suffer from the injury I sustained and have pain in my knee on a daily basis. After my injury I went through a full course of corrective medicine including physical therapy and medications. I have seen four Doctors including Orthopedic Surgeons who all told me that my injuries would be lifelong. Some even said I was at maximum medical improvement. After two and a half years of trying to go back to the fire department, I was unsuccessful because my knee was never able to carry the weight up the steep inclines that is required in wildland firefighting. For example, in a firefighting move called a hose lay, firefighters have to carry significantly large and heavy loads, 50+ pounds, of fire hose up the mountain across rough, uneven terrain to get water to the area where the fire is actively burning. This is a very common method of fighting wildland fires that I am unable to perform because I cannot carry the weight of the hose and counter the torque force that it

places on my knee. Simple yard work requires me to rest often and still produces pain in my injured knee.

On March 8th, 2016 I represented myself in an administrative hearing.

Unfortunately I am not an attorney and was not familiar with the process of the hearing. I was under the belief that if I simply showed the 3 doctors reports that I had which all say I cannot return to work as a firefighter and explained what I have to do to modify my daily routine that any reasonable person would understand my disability. Even though I brought reports from Doctors that have recently examined my knee which stated that I cannot return to work as a firefighter, a State Doctor who has never physically examined my knee, reviewed the reports and gave an opinion that I can in fact return to work as a firefighter. The Judge stated that because the Doctors reports that I produced did not say which duties of a firefighter I cannot perform and the Doctors that wrote them were not present to be cross examined, they were not as persuasive as the State's Doctor's direct testimony.

As a firefighter I am required to hike up and down hills and cross side hills on uneven terrain all while carrying between 50 -100+ pounds of equipment. While I would love to return to work as a firefighter I am sure that doing so would present a potential life threatening danger to myself, other firefighters that would be depending on me to complete tasks that I cannot do due to my injury, and the public that we are charged with protecting. In order for me to return to work as a firefighter for CalFire they will be required to accommodate my disability by modifying my duties. It is unrealistic to believe that CalFire will be able to

consistently modify my duties so that I can return to full employment with them.

Wildland firefighters are routinely assigned to different shifts working with different supervisors whose only concern is that the firefighters they are sending to perform a job do so in a safe and efficient manner. Having a firefighter on their truck that is a potential danger to the other members of the crew is not an option. The job I had as a firefighter is not a desk job where my physical disabilities can be accommodated, it is a safety related job which requires the employee to be in top physical condition capable of lifting and carrying heavy weight on a regular basis including being prepared to carry an injured fellow firefighter or member of the public to safety.

In an effort to find out what if any accommodations CalFire could provide me so I can return to work I spoke with Chief Dustin Hale at Fresno Kings Unit Headquarters. He is the Chief in charge of injured personnel, who has informed me that the fire department knows nothing about what is going on with this case. However, firefighters are not returned to duty until they are medically cleared to complete all duties of a firefighter. I have also contacted Melissa Solorio at region office in Fresno. She is in charge of all worker's comp cases and on-duty injured personnel cases who also has not been notified as to the nature of this case. Both can be reached at their offices. Melissa's contact is (559)243-4100 and Chief Hale's contact is (559)243-4300.

As a result of the injury that I sustained on July 30, 2011, I have to deal with my knee by modifying the way I work. For heavy loads, anything over 25 pounds, I use tools like wheeled carts and dollies that carry the weight so my knee does not

have to. This is not an option when fighting fire. This is why I was never able to return to work as a firefighter. Because of my disability, caused by the injury to my knee, I am now a potential liability to the State of California, and more importantly a potential danger to my colleagues, myself, and the public of California if I were to try to return to work as a firefighter. I hope that the members of the Board recognize the major difference between working in a position that requires little physical ability and working in a position where other people's lives depend on your physical ability. At the very least CalFire and the Doctor they use to conduct firefighter readiness evaluations should be consulted in this matter prior to deciding that I should return to a job that I am no longer physically qualified to do.

Thank you for your time reviewing my case.

Sincerely,

A handwritten signature in black ink, appearing to read "Jordan M. Conway", written in a cursive style.

Jordan M. Conway



Physical Requirements of Position/Occupational Title

888 CalPERS (or 888-225-7377) TTY (877) 249 7442 Fax (916) 796 1260

Section 1

This form must be completed by the member and their employer to supplement the physical requirements listed on the member's job duty statement/job description.

Member Information

Jordan M Conway

Name (First Name Middle Initial Last Name)

Serial/Security Number or CalPERS ID

Fire Fighter 1

Job Title/Job Description

CGL-Fire

Name of Employer

Current Street Address

City

State

Zip

Section 2

Indicate with a check mark (✓) the frequency required for each activity listed at the right.

Physical Requirements Information

Activity	Never	Occasionally Up to 3 hours	Frequently 3-6 hours	Constantly Over 6 hours	Distance/ Height
Sitting		✓			
Standing			✓		
Walking		✓			
Working			✓		
Climbing		✓			
Kneeling		✓			
Crouching		✓			
Squatting		✓			
Bending (neck)		✓			
Bending (waist)		✓			
Twisting (neck)			✓		
Twisting (waist)			✓		
Reaching (above shoulder)		✓			
Reaching (below shoulder)		✓			
Pushing & Pulling			✓		
Fine Manipulation		✓			
Power Grasping			✓		
Simple Grasping		✓			
Opposite Use of hands				✓	
Keyboard Use		✓			
Mouse Use		✓			
Lifting/Carrying					
0 - 10 lbs				✓	
11 - 25 lbs				✓	
26 - 50 lbs			✓		
51 - 75 lbs			✓		
76 - 100 lbs		✓			
100 + lbs		✓			

Continued on page 2

Section 2 (continued)

Indicate with a check mark (✓) the frequency required for each activity listed at the right.

If there is not enough space to enter all your additional requirements or comments, attach a separate sheet. Be sure to use a label, or clearly write your name and Social Security number on each attachment.

Physical Requirements, continued

Activity	Never	Occasionally Up to 3 hours	Frequently 3-5 hours	Constantly Over 6 hours	Distance/ Height
Walking on uneven ground				✓	
Drilling		✓			
Working with heavy equipment		✓			
Exposure to excessive noise			✓		
Exposure to extreme temperature, humidity, wetness				✓	
Exposure to dust, gas, fumes, or chemicals				✓	
Working at heights		✓			
Operation of foot controls or repetitive movement		✓			
Use of special visual or auditory protective equipment			✓		
Working with bio hazards (e.g., blood borne pathogens, sewage, hospital waste, etc.)		✓			

Section 3

This form must be completed and signed by you and your employer and sent to a medical specialist along with other documentation

**The medical specialist
must be the treating
physician specializing in
your disabling condition**

Signature of Employer and Member

If you are a Disability Retirement Election applicant your employer must provide you a copy of this completed form. Your employer must send the signed original to CalPERS.

Also, you must attach your current job duty statement/job description and a copy of the *Physical Requirements of Position/Occupational Title* form to the *Physician's Report on Disability* form prior to sending them to a medical specialist. Complete document submittal requirements are described in *A Guide to Completing Your CalPERS Disability Retirement Election Application*.

If you are a Request to Work While Receiving Disability/Industrial Disability Benefits applicant or a Reinstatement from Disability/Industrial Disability Retirement applicant, you must attach the job duty statement/job description of the prospective job to a copy of this completed *Physical Requirements of Position/ Occupational Title* form prior to sending them to a medical specialist. You must submit the resulting medical report and other required documents to CalPERS. The *Physician's Report on Disability* form is not required.


Signature of Employer Representative

1. AO

CHIVERS Business Partner 60

Signature of Member

Pratap Kumar

10/12/13
D1 a (am/da/nu)

~~491~~ 493-4300
Phone Number

- 6/12/13
Dun (တရားရုံး)

Page 10:

CLIPERS Benefit Services Division • P.O. Box 2796 Sacramento, California 95812 2796