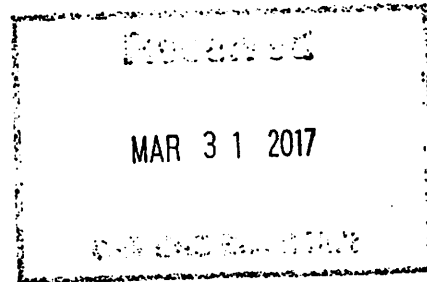


ATTACHMENT A

RESPONDENT'S PETITION FOR RECONSIDERATION

CANTRELL ▪ GREEN, A Professional Corporation
 DANNY T. POLHAMUS, STATE BAR NO. 82661
 UAN: CANTRELL GREEN LONG BEACH 5041891
 Post Office Box 1700
 Long Beach, California 90801
 Telephone (562) 432-8421
 Facsimile (562) 432-3822



Attorneys for Harry Sagala

**BEFORE THE BOARD OF ADMINISTRATION
 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

IN THE MATTER OF THE APPLICATION FOR
 INDUSTRIAL DISABILITY RETIREMENT

OAH No. 2015060988
 Agency No. 2014-0399

HARRY SAGALA,

Respondent,

RECONSIDERATION

vs.

CALIFORNIA DEPARTMENT OF STATE
 HOSPITALS - PATTON,

Respondent.

Respondent, Harry Sagala, appeals the March 20, 2017 Decision. In so doing, Respondent relies upon his post-hearing brief. However, the following two additional objections to the ALJ Proposed Decision are made.

1. The Proposed Decision is not based upon substantial evidence.

The ALJ seems to base her conclusion on the belief that the CalPERS physician should be given more weight because of his credentials. She states that Keolanui G.Chun, M.D has a board certification in orthopedic surgery whereas Respondent's physician does not. She therefore gives more weight to the opinion of Dr. Chun. The ALJ does, of course, have the duty to analyze and determine credibility. However, on this case, the ALJ merely comes to the conclusion without any

1 overt evidence of analysis. Note page 10 of the Proposed Decision. The ALJ states the following:
2 "Based on Dr. Stokes' testimony, it appears that Dr. Stokes did not understand or apply the
3 CalPERS criteria for disability retirement."

4 The problem is that there is not a smidgeon of discussion as to what Dr. Stokes allegedly did
5 not understand. The ALJ has concluded without discussing. There is no support for the conclusion.
6 "Substantial Evidence is relevant evidence that a reasonable mind might accept as adequate to
7 support a conclusion." Hosford v. State Personnel Board (1977) 74 Cal.App.3d 302, 307. In our
8 case, there was no evidence presented to support the ALJ's conclusion that Dr. Stokes did not
9 understand the CalPERS criteria for disability. Therefore, the Proposed Decision is unsupportable.

10
11 *II. Adequate attention was not given to Pertinent Job Duties.*

12 The ALJ appropriately listed and described Respondent's job duties as a psychiatric tech at
13 Patton State mental hospital under Factual Findings numbers eight and nine. These include, among
14 other things: the ability to climb two flights of stairs in 5.5 seconds or less; sprint 150 feet over a
15 course requiring vaulting and dodging of obstacles; drag an unconscious 165-pound client 20 feet in
16 10 seconds or less; lift over 100 pounds; and, per Finding of Fact number seven, participate in
17 takedowns of combative or assaultive patients. Although all these duties are listed clinically in the
18 initial portion of the Decision, they are never discussed at all in the Discussion portion of the
19 Proposed Decision. Not a smidgeon or a speck.

20 This is pertinent. Even a healthy individual would have difficulty performing this strenuous
21 job. But an individual with spinal pathology?

22 So, the Proposed Decision is based upon the belief that Dr. Chun's credentials demand more
23 respect and the unsubstantiated opinion that Dr. Stokes does not understand CalPERS disability
24 law. The ALJ never delves into the enormous physical demands of the job when proffering her
25 opinion that the Respondent is capable of substantially performing his job duties.

26 Never discussed other than a brief reference is the multi-page manual which graphically
27 depicts, in drawing form, the physical moves needed to "take-down" a combative patient.

28 ///

1 Respondent passionately suggests that the Board peruse the drawings found at Respondents
2 Exhibit C-13, page 2. The drawings dramatically illustrate the physically demanding nature of the
3 job which at times resembles the activities required of a safety officer. Patton States Hospital treats
4 a great number of criminals suffering from psychiatric impairments.

5 The ALJ dismisses with little discussion the opinion of Dr. Stokes; but there are other
6 physicians in addition to Dr. Stokes who have provided diagnoses not given attention by Dr.Chun.
7 These include Dr. Van Dyke, Dr. Hafezi and Dr. Bergey. There is a plethora of diagnoses/findings
8 including:

- 9 1. C5-C6 Disc herniation
- 10 2. Cervical radiculopathy
- 11 3. Contracture of the cervical spine
- 12 4. Contracture of both shoulder joints
- 13 5. Degenerative disc disease
- 14 6. Thoracic outlet syndrome
- 15 7. Disc desiccation
- 16 8. Annular tear effacing the thecal sac C3-C4
- 17 9. Annular tear indenting the thecal sac and spinal cord C4-C5

18 These findings are found in Exhibits A-11, page 226; A-13, page 297; A-1, page 7. They
19 are based on doctor opinion and MRI results.

20 The ALJ does not address the findings presented following the Functional Evaluation Test
21 (FCE) performed at Health Solutions Medical Group on February 10, 2014. (Respondents Ex. B-3.)
22 The FCE finds the Respondent is incapable of lifting more than 15 pounds and can only
23 infrequently bend or squat. This FCE was not undertaken by Dr. Stokes, and the issue of
24 understanding CalPERS criteria regarding disability is not material, as the sole purpose of the FCE
25 was to scientifically determine the patient's residual functional capacity.

26 A review of the Job Analysis (Respondents Ex. C-13) shows that the limitations described
27 in the FCE prevent the Applicant from substantially performing his job duties.

28 ///

1 This case is odd in that it mostly comes down to common sense rather application of the
2 case law we usually apply on a disability retirement case. There was an American folksinger named
3 Burl Ives whose simple tunes and stories often offered, in addition, free doses of wisdom. Ives
4 sang: "As you go through life make this your goal....mind the donut not the hole".

5 The proposed decision did not pay heed.

6 The fact that Dr Chun has the more impeccable credentials should not prevent The Board
7 from noting the simpler truths, the ones that encompass the thick part of the case:

8 1. Numerous physicians have diagnosed multiple orthopedic pathologies, many
9 significant.

10 2. The limitations described by these physicians, and those from the FCB, if accepted,
11 render the Respondent Harry Sagala disabled. The Job Analysis supports the conclusion.

12 3. When one examines the Illustrations showing the physical demands required in a
13 take-down, common sense demands that we ask: "Can an individual with Mr. Sagala's medical
14 impairments really perform these activities"?

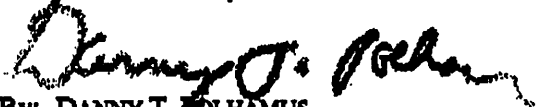
15 The answer seems apparent...No.

16 CONCLUSION

17 It is respectfully requested that the Board rescind the Decision and instead find that Respondent
18 Harry Sagala is entitled to CalPERS Industrial Disability Retirement.
19

20
21 Date: March 31, 2017

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22
23 
24 By: DANNY T. POLHAMUS
25 Attorney for Applicant
26
27
28

PROOF OF SERVICE BY MAIL AND FACSIMILE

Re: Harry R. Sagala – Application for CalPERS Industrial Disability Retirement

**Case No.: 2014-0399
OAH No.: 2015060988**

I am employed at CANTRELL, GREEN, 444 W. OCEAN BLVD., SUITE 1750, LONG BEACH, 90802. in the County of Los Angeles, California. I am over the age of 18 years and not a party to this cause. I am readily familiar with the law office's practice for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence would be deposited with the United States Postal Service this same day in the ordinary course of business.

The following documents are being served:

RECONSIDERATION

These documents are being served on:

**CALPERS CHIEF EXECUTIVE OFFICER
CALPERS EXECUTIVE OFFICE
P.O. BOX 942707
SACRAMENTO, CA 94229-2707**

**MATTHEW G. JACOBS, CALPERS GENERAL COUNSEL
FACSIMILE # (916) 795-3972**

The correspondence was placed for deposit in the United States Postal Service in a sealed envelope placed for collection and mailing this day following ordinary business practices at the above place of business. The documents will also be faxed to the facsimile number listed above.

I declare under penalty of perjury that the above is true and correct. Executed on March 31, 2017 at Long Beach, California.


ANDREW CANTRELL