

ATTACHMENT C

RESPONDENT'S ARGUMENT

May 26, 2025

Ref. No. 2023-0914

Boards Services Unit Coordinator
California Public Employees' Retirement System
Post Office Box 942701
Sacramento, CA 94229-2701

Subject: RESPONDENTS ARGUMENT - In the Matter of the Appeal of Accepting the Application for Industrial Disability Retirement of JOHN M. KILPATRICK, Respondent, and CITY OF CHULA VISTA, Respondent.

Dear Board of Administration (Board) of the California Public Employees Retirement System (CalPERS),

I am in receipt of the OAH Case No. 2024091063 Proposed Decision prepared by the Office of Administrative Hearings (OAH) , Senior Administrative Law Judge, Kimberly J. Belvedere dated April 16, 2025. This letter will serve as my formal written appeal to the order having been made by the Honorable Judge, Kimberly J. Belvedere, as it relates to my Service Connected Disability Retirement Applications filed on January 24, 2005 and April 08, 2013, as a local safety member of CalPERS, by way of my employment as a police officer with the City of Chula Vista. It is respectfully being requested that the CalPERS' Board declines to adopt the order having been made by the OAH for the following reasons:

- I. **At the OAH trial dated February 24, 2025 the Honorable Judge, Kimberly J. Belvedere violated the Applicant/Respondent due process rights.** Honorable Judge, Kimberly J. Belvedere denied the Applicant/Respondent, John Kilpatrick to submit relevant evidence for review and consideration, at the time of trial. The exhibits that were not reviewed and/or permitted to be entered into evidence at the time of trial were orders of the Workers Compensation Appeals Board (WCAB) Court, affirmatively declaring that the Applicant/Respondent, John Kilpatrick suffered from permanently disabling medical conditions, as a result of a work related injuries, and prior to my resigning from my employment with the City of Chula Vista. The permanently disabling industrially caused injuries were sustained prior to my having filed my CalPERS Industrial Disability Retirement Application dated January 24, 2005. The WCAB court order dated May 10, 2006 declared the Applicant/Respondent, John Kilpatrick to be totally disabled from his duties as a police officer with the City of Chula Vista for the date range of January 05, 2005 through June 22, 2005, and prior to the Applicant having resigned from his position as a Police Officer, with the City of Chula Vista, due to medical disability, on February 01, 2005. The Honorable Judge, Kimberly J. Belvedere failed to allow that court order into evidence. In addition, by failing to allow relevant evidence to be submitted into evidence at the time of trial, the Honorable, Kimberly J. Belvedere did not review relevant medical evidence that proves the Applicant left employment due to disabling hypertension and PTSD. As such, no medical evidence is

referenced throughout the OAH order dated April 16, 2025. The Applicant/Respondent, John Kilpatrick's evidence demonstrates he was and continues to be permanently disabled from work related medical disabilities, that were industrially caused from Applicant's employment, as a Police Officer with the City of Chula Vista. The Applicant has been deemed to be permanently disabled from his employment as a police officer from January 05, 2005 to present date. **The Applicant/Respondent was taken off work by his treating cardiologist, Dr. Johnson on January 05, 2005, after having treated the Applicant for emergent off schedule care due to uncontrollable hypertension, visual disturbances, dizziness, and giddiness. Dr. Johnson advised the Applicant that he could not clear the Applicant to return to work as a police officer and that was the basis for the Applicant's resignation from the Chula Vista Police Department on February 01, 2005. The Applicant's official separation paperwork with the City of Chula Vista reflects the Applicant left employment from the City of Chula Vista due to medical disability and the resignation separation was signed by the then Chief of Police Emerson. The relevant trial exhibits, to include medical evidence and my personnel file, that were not allowed to be submitted into evidence at the trial dated February 24, 2025 are as follows:**

- Applicant's Exhibits that were not allowed to be submitted into evidence at trial: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, T, U, V, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, NN, OO, PP, QQ, RR, TT, VV, XX, YY, & PPP.

II. At the trial dated February 24, 2025, the Honorable Kimberly J. Belvedere incorrectly cites that the City of Chula Vista, Captain Henry Martin is familiar with the Applicant's Case and the bad faith personnel actions the Applicant received while employed with the City of Chula Vista. Captain Henry was not a direct witness to Applicant's employment, did not witness any of the Applicant's alleged policy violations, did not work the same shift as the Applicant, and did not issue any of the alleged discipline to the Applicant/Respondent, John Kilpatrick. As such, Captain Henry Martin should have only been able to testify to the general internal affairs and disciplinary processes of the City of Chula Vista Police Department. At the time of trial, the Applicant was not allowed to ask the witness about specific violations committed by the City of Chula Vista Police Department, to include the City of Chula Vista having engaged in coercion and having secretly and illegally tape recording of the Applicant, violations of Miranda, and bad faith personnel actions that demonstrated the City of Chula Vista engaged in illegal and bad faith personnel actions; thereby, proving the Haywood Case does not apply to this matter. The City of Chula Vista engaged in illegal personnel practices, violated Miranda, and those violations are clearly outlined within the evidence that the Applicant/Respondent, John Kilpatrick attempted to admit into evidence but was denied by the Honorable Kimberly J. Belvedere.

III. The Applicant, John Kilpatrick's disabling medical conditions contributed to his inability to perform the duties of a police officer based upon the performance of duties as a police officer with the City of Chula Vista. Unfortunately, the Applicant was also exposed

to bad faith personnel actions, as such Haywood v. American River Fire Protection District (1998) 67 Cal. App.4th 1292 does not apply to the Applicant's Case that is presently before the Board. Based upon all of the relevant medical evidence that the Applicant attempted to and was not allowed to present at the time of trial, the medical records and opinions of Dr. Sobol, Dr. Procci, Dr. Johnson, Dr. Feldman, Dr. Kwiatkowski, and Dr. Link were not reviewed and or considered by the Honorable Kimberly J. Belvedere. All of the aforementioned physicians opined the Applicant suffers from disabling hypertension and a permanent psychiatric disability that is a direct result of the Applicant's usual and customary duties of employment, as a Police Officer with the City of Chula Vista, and that the Applicant was no longer capable of performing his duties as a police officer based upon his medical conditions. The hypertension and psychiatric disability contributed to the Applicant no longer being able to effectively perform the duties of a police officer, until the day the Applicant last physically worked for the City of Chula Vista Police Department on January 05, 2005. The Applicant resigned due to medical disability and upon the advise of his treating physician. The evidence demonstrates the Applicant was eligible to apply for a disability retirement, based upon permanently disabling medical conditions the Applicant suffers from, as a result of Applicant's employment with the City of Chula Vista Police Department. The Applicant's resignation separation paperwork dated February 01, 2005, signed by the City of Chula Vista Chief of Police Emerson, cites the Applicant vacated his position with the City of Chula Vista due to a "Medical Disability".

III. The Respondent, John Kilpatrick's CalPERS Disability Retirement Application was timely. Pursuant to California Government Code Section 21154 "The application shall be made only (a) while the member is in state service, or (b) while the member for whom contributions will be made under Section 20997, is absent on military service, or (c) within four months after the discontinuance of the state service of the member, or while on an approved leave of absence, or (d) **while the member is physically or mentally incapacitated to perform duties from the date of discontinuance of state service to the time of application or motion.** On receipt of an application for disability retirement of a member, other than a local safety member with the exception of a school safety member, the board shall, or of its own motion it may, order a medical examination of a member who is otherwise eligible to retire for disability to determine whether the member is incapacitated for the performance of duty. **On receipt of the application with respect to a local safety member other than a school safety member, the board shall request the governing body of the contracting agency employing the member to make the determination.**

and

Pursuant to California Government Code Section 21157, "The governing body of a contracting agency shall make its determination within six months of the date of the receipt by the contracting agency of the request by the board pursuant to Section 21154 for a determination with respect to a local safety member. (Bold and underline added.

A local safety member may waive the requirements of this section."

and

Pursuant to California Government Code Section 21166, "a member is entitled to a different disability retirement allowance according to whether the disability is industrial or nonindustrial and the member claims that the disability as found by the board, or in the case of a local safety member by the governing body of his or her employer, is industrial and the claim is disputed by the board, or in case of a local safety member by the governing body, the Workers' Compensation Appeals Board, using the same procedure as in workers' compensation hearings, shall determine whether the disability is industrial.

The jurisdiction of the Workers' Compensation Appeals Board shall be limited solely to the issue of industrial causation and this section shall not be construed to authorize the Workers' Compensation Appeals Board to award costs against this system pursuant to Section 4600, 5811, or any other provision of the Labor Code."

On January 05, 2005, after having received emergency medical care, due to uncontrollable hypertension, visual disturbances, dizziness, and giddiness, Scripps Hospital Cardiologist, Dr. Johnson advised the Applicant could not return to work as a police officer with the City of Chula Vista and that was the basis for the Applicant's resignation from the Chula Vista Police Department on February 01, 2005, and is reflected in the Applicant's resignation paperwork with the City of Chula Vista. The Applicant/Respondent filed a timely CalPERS Industrial Disability Retirement Application and is dated January 24, 2005. The medical evidence supporting that the Applicant received emergency care and could not return to work as a police officer due to permanently disabling hypertension is not referenced anywhere in the Judges decision. The WCAB has deemed the Applicant's permanently disabling injuries to be industrially caused.

STATEMENT OF FACTS

On April 07, 2000, I began employment with the City of Chula Vista as a Police Officer. On February 01, 2005, I vacated my position as a Police Officer with the City of Chula Vista as a result of the trauma I experienced on the job, uncontrolled hypertension, bad faith personnel actions, and have been diagnosed with work related, hypertension, depression and PTSD, as a result of the multiple work related injuries and traumatic events I endured as a police officer. I began seeking psychiatric care on January 10, 2003 due to the anxiety and depression I was experiencing as a result of the recurring traumatic events I encountered, while working as a patrol officer, a full two years before I vacated my position with the City of Chula Vista. I left my position with the City of Chula Vista upon the advise of my treating physician due to uncontrolled hypertension and continue to remain under psychiatric and cardiac care to present date. I have been deemed to be permanently incapacitated from my duties as a police officer, as a result of and since I vacated my position on February 01, 2005; however, the medical evidence that proves my case was not permitted to be entered into evidence, at the time of the OAH trial. As such my application is considered to be timely under Government Code Section 21154. The matter is still pending a final determination by way of the California Division of Workers'

Compensation. My resignation was on the advise of my treating physician and based upon permanently disabling medical conditions stemming from my employment with the City of Chula Vista, as a Police Officer. Unfortunately, CalPERS and the OAH has incorrectly determined that I left employment with the City of Chula Vista for reasons that were not the result of a disabling medical condition and is factually incorrect based upon the personnel file and medical evidence that was not considered or allowed to be submitted at the time of trial.

I currently have three open State of California, Department of Industrial Relations, Division of Workers' Compensation Cases with the San Diego District Office located at 7575 Metropolitan Drive, Suite 202, San Diego, CA 92108-4424. The California Worker's Compensation Cases are as follows:

- ADJ8349116 - Specific Injury on 07/25/2003 to the right wrist, upper extremities, sleep disorder, sexual disfunction, and psyche. Wrist is accepted by the City of Chula Vista; other aspects are in dispute.
- ADJ8339118 - Cumulative Trauma Injury 04/07/2000 - 02/25/2005 to the neck, low back, spine, both legs, both extremities, psych, sleep disorder, sexual dysfunction, and stomach. The neck and low back injuries are admitted injuries by the City of Chula Vista; all other aspects are in dispute
- ADJ8339114 - Cumulative Trauma Injury 04/07/2000 - 02/25/2005 to the low back, psych, neck, sleep disorder, both knees, both hips, both lower extremities, both upper extremities sexual dysfunction, and stomach. Industrial causation, apportionment, date of permanent disability, and any relevant discipline I may have received whether in good or bad faith is still under review and a final determination regarding the aforementioned issues have not been made by the Assigned Workers Compensation Judge, Andrew Shorenstein.

The Industrial Disability Retirement (IDR) Application Matter was previously set before the Board of Administration, California Public Employees' Retirement System, In the Matter of The Application for Industrial Disability Retirement of John Kilpatrick, Applicant/Respondent v. the City of Chula Vista, Employer, Agency, OAH NO: 2016040774. The matter was taken off calendar by way of a Joint Request To Take Hearing Off Calendar dated February 15, 2017. A request to close the case was made, as the City of Chula Vista and the Applicant had entered into a settlement agreement proposed by the City of Chula Vista; however, the settlement proposed by the City of Chula Vista was negotiated in bad faith. The settlement proposed by the City of Chula Vista included the already adjudicated California Worker's Compensation Case ADJ1328309. WCAB Case ADJ1328309 was never discussed or agreed upon to be included in the City's proposed compromise and release; nor presented by the City of Chula Vista to the attorneys that represented me on that case for their review, as required. Yet, the inclusion of the WCAB ADJ1328309 Case was undisclosed and slipped into the settlement agreement by the

City of Chula Vista. Unfortunately, the proposed settlement had to be declined by me for those reasons and the three aforementioned WCAB Cases have continued to present date within the California Workers Compensation Court. As a result of the failed negotiations to settle both the workers compensation and industrial disability retirement cases together in 2017, the City of Chula Vista deferred their determination on the IDR pending the outcome of the aforementioned open workers compensation cases, to which I was agreeable pursuant to California Government Code Section 21157. During the settlement negotiations the City of Chula Vista City Attorney's Office **advised they would grant a non-industrial CalPERS disability retirement based upon the bad faith and illegal personnel actions the City of Chula Vista engaged in. However, that was not taken into consideration by the OAH Honorable Judge, Kimberly J. Belvedere at the time of the OAH trial dated February 24, 2025 and the evidence of the illegal bad faith personnel actions and the existence of that settlement was not allowed to be entered into evidence at the time of trial.**

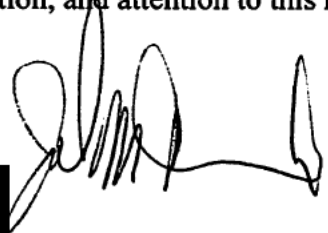
CONCLUSION

Based upon the fact that the aforementioned WCAB cases continue to be open and are being heard before the State of California, Department of Industrial Relations, Division of Workers' Compensation, to determine causation regarding additional injuries (industrial vs. non-industrial), continued incapacity to perform my usual and customary duties as a police officer as a result of the disabling injuries I sustained on duty to present date, my local safety member status by way of my employment with the City of Chula Vista, disciplinary personnel matters that are also under consideration before the Worker's Compensation Appeals Board (as to whether such personnel matters were made in good or bad faith), the City of Chula Vista having engaged in illegal and bad faith personnel actions, my having resigned from my position as a Police Officer based upon permanently disabling industrially caused medical conditions and upon the advise of my treating physician, and the fact that the Honorable Kimberly J. Belvedere denied me an opportunity to have a fair and impartial trial in her denial of my Due Process Rights to not allow the submission of relevant medical and legal evidence for review and consideration at the time of trial dated February 24, 2025, it is respectfully being recommended that the CalPERS Board decline to adopt the decision of the Office of Administrative Hearing's Order dated April 16, 2025.

Your time, consideration, and attention to this matter is greatly appreciated.

Sincerely,

John M. Kilpatrick



Email: [REDACTED]

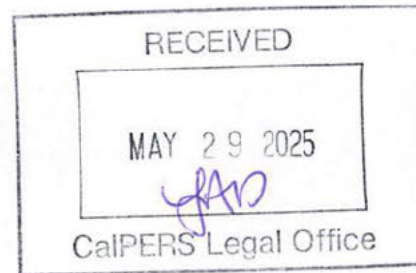
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