

ATTACHMENT C

RESPONDENT'S ARGUMENT

Dear CalPERS,

This letter is regarding the decision made by Judge Jessica Wall on October 19, 2023, regarding the re-evaluation for my industrial disability retirement. Reference number 2022-0415.

My name is Joy Jordan. I am 51 years old, and I have been retired from the state of California where I had been employed as a certified and registered/Licensed pharmacy technician with the California Department of Corrections and the Department of Mental Health. My job was at a psychiatric facility that imprisoned inmates that either have been deemed not fit to stand trial or have been found guilty by reason of insanity. My employment with the state began in 2003 until August 10 of 2017.

In 2005 I had an injury to my left upper extremity at which time I received a diagnosis and treatment from **Dr. Margaret Schlatter whom is a neurologist**. I know that Dr. Schlatter performed an EMG/Nerve conduction test & another type of test on my left arm. Dr. Schlatter diagnosed me with having dystonia with secondary repetitive movement. The treatment for dystonia is Botox injections every three months. The Botox is a lifesaver as it was the only thing that helped relieve the pain. Soon after the Workmen's Comp carrier, which is State Compensation, required me to pick from a list of **QME** doctors as I was permanent and stationary. I do remember picking a **Dr. Robert Bruckman** because his office was located closest to where I live.

Dr. Bruckman's DEU evaluation dated 4/01/09 of my left arm had an apportionment of 77%. In this evaluation report he stated that at an anatomic standpoint, I do not have an amputation at the elbow, but that from a functional standpoint my left arm is equivalent to an amputation at the elbow level and that my left arm is functionally no more than a helping arm. He stated that I can pick up paper, push things about on a table, I can touch things and feel things. In this report he also confirmed that he reviewed the EMG and x-rays (diagnostic tests) of my left arm. At the time I was given that rating, State compensation would make remarks/ blind threats like, "If you're too injured, we can't let you work for us." I did not let them persuade me from trying to keep my job as I love being a pharmacy technician at Napa State Hospital and I felt I could still do the job with very limited use of my left arm.

I continued getting Botox injections in my left arm every three months from my treating physician for my left arm injury, Dr. Jacqueline Weisbein.

Dr. Weisbein concurred with Dr. Schlatter's diagnoses. To this very day, Dr. Weisbein is still treating for dystonia with Botox injections and along with muscle relaxers and opioid pain medication. Over the years Dr. Weisbein has documented that my left arm has developed atrophy from not being used and it was getting more profound.

Exam notes from Dr. Weisbein dated October 13 of 2019, states I have severe left arm atrophy with spasticity and decreased grip strength. She stated that I could not perform any repetitive motions with my left arm and that my left arm affects my ability to use my freehand. She describes that I have right upper extremity compensatory pain and that the duration of my symptoms will be a lifetime and my left arm will not get better or improve.

As I stated earlier in this letter, I did not let State comp to pressure me into not keeping my job. I did work full time with occasional overtime. Unfortunately, on August 10 of 2017 I was sent home by my supervisor due to the severe, excruciating, throbbing, burning pain in my right hand/wrist was so bad and prevented me from working. This pain not only affected me at work, but after work too. I was still in so much pain when I would get home, each day that I couldn't

do anything. I'm a mom, a wife. I was not physically able to do the everyday basic stuff because I could not use my right hand anymore. I didn't feel like I was a part of my own family. Not using my right hand and icing it along with my current pain medications were my only relief. That was hard because at the time I had a young child and two young stepsons who were very active and needed me.

I never did get to return to the job I loved and was proud of.

I had testing for my right-hand pain and several different treatments such as physical therapy, which only aggravated it more. I was referred to my primary treating physician for my left arm, Dr. Weisbein who diagnosed it as overuse syndrome/Carpal tunnel. She referred me to a **hand specialist** by the name of **Dr. Birkbeck**. **Dr. Birkbeck** report dated **August 28, 2017**, states that my right hand has multiple performance deficits that severely impact my skills to perform my work duties. Dr. Birkbeck concurred that the overuse of my right arm and or possible carpal tunnel syndrome. In this report, he stated that individuals with mild carpal tunnel syndrome, the nerve conduction study maybe normal. I had a follow up appointment with Dr. Birkbeck after getting authorization for a Cortisone shot with lidocaine in my right wrist. This injection along with limiting my right-hand use gave me much needed relief. Around that time Covid hit and everybody was on lockdown. My appointments were now mostly over the phone and was instructed to maintain the current limitations/plan in place for my right extremity injury.

An **EMG** was requested on my **right** upper extremity. An in-person appointment was not easy to find at that time with the covid restrictions, but I found **Dr. Mitchell DO** and scheduled an appointment for **April 1, 2021**. Again, this was still during this huge epidemic of Covid and there were limited face-to-face appointments unless there it was an emergency and even then, the precautions were wearing a mask and keeping a distance between each other, etc. I remember this appointment very well because it was so weird. He stood clear across the exam room while asking me questions until it was time for him to do the actual EMG as he had to have contact with my right arm. It was very quick test. I remember asking him if he saw anything and he said everything looked normal but sometimes people who have mild carpal tunnel syndrome it doesn't show up on the EMG.

I received a copy of **Dr. Mitchell's report** dated **4/1/21** and it says that I was there in the office for a nerve conduction EMG study of her of my **right upper extremity**, my complaint is of chronic pain in **my right upper extremity**. He states that I previously had Cortisone injections done to the **right carpal tunnel** which seem to help. He stated there was no atrophy noted the sensation was intact in my fingertips, deep tendon reflexes were 1/4 at the bicep triceps brachialis and brachioradialis. Dr. Mitchell stated in this same report that there is mildly positive tunnel sign at the right carpal tunnel. **Everything in his Report is referring to my right upper extremity** as it clearly documented by other doctors including my current treating Doctor for my left arm, stating I have severe atrophy in the left arm with Swan fingers of my pinky finger and my ring finger, but because it says in this report that I have full strength in my armS and not arm, the IME Doctor (Dr. Khasigian) that Cal Pers sent me to have a re-evaluation on my **left arm**, had an issue with that statement.

Napa State Hospital could and would not accommodate my limitations and could no longer allow me to work there. At that time, I applied to medically retire from the state of California. CalPERS, we required additional documentation and ask that I go to an independent medical evaluation. (IME) I'm not 100% but I believe I got to pick from a list of **IME doctors**. I made an appointment with **Dr. Charles Xeller MD on June 8 of 2020**. In his report Page 2, Physical examination section, he stated there's obvious atrophy of the left arm with swan deformity of the fourth and the fifth digits. In this same report he states there is a positive tinels over the right carpal tunnel. Same report, Dr. Xeller states that Yes, the member has an actual and present impairment that rises to the level of substantial incapacity to perform their usual job duties and he believes I am permanently incapacitated due to no use of her left upper extremity. Dr. Xeller also agreed with my dystonia diagnosis and that my right upper extremity has impending carpal tunnel as well as cubital tunnel. He said I am developing cumulative industrial trauma to the median nerve and nerve which is precluding me from performing the activities of the pharmacy technician.

After CalPERS received that report from Dr. Xeller, my retirement was approved(2019).

My treating physician for my right arm injury felt I was permanent stationary so I would be required to be seen by a QME. I received a list of **QME** doctors, and I scheduled my appointment for September 17 of 2021 with **Dr. Lee D.O.**

Dr. Lee stated in his report dated **9/17/21**, that my right hand/wrist is 100% industrial and did not return me to work.

I received a letter dated 9/27/ 21, from CalPERS requesting my primary treating physician Dr. Weisbein for my left arm injury to complete a current disability. I was then sent another letter from CalPERS requesting me to go to an IME doctor **they** chose. I had an appointment on **February 2, 2022**, with **Dr. Khasigian**, orthopedic surgeon.

After that appointment that CalPERS had scheduled for me with their doctor Khasigian, I was told that he said I am now capable of returning to work. I had a memory of a bizarre question by Dr. Khasigian as I was about to leave. He asked me why a neurologist by the name of Dr. Mitchell, that I recently saw would say that both of my arms were equal in strength and the same? That is when I put 2 & 2 together and figured out the reason why this appointment was required & why Dr. Khasigian was talking to me rudely the entire time & was treating me like the appointment & strengthening exam part wasn't being taken seriously and was dismissed quickly. On my way Home from that appointment, I stopped at Doctor Mitchell's office to point out the error & show him the obvious atrophy & deformities in my left upper extremity but was sadly made aware by the current office staff at his prior location, Dr. Mitchell had retired, and his charts are gone. I know that my appointment with Dr. Mitchell did not include anything to do with my left arm besides us talking from across the room that I have dystonia in my left arm.

All I could do at this point was to wait for the report from Dr. Khasigian.

This is when it was also brought to my attention that State Compensation had surveillance on me, trying to catch me if you will, not being disabled anymore. I was shocked that any amount of money would be wasted like that on my case. Not to my surprise, State Comp found that I was absolutely doing nothing wrong.

I'm not sure why State Comp decided to send an accusation/tip to Cal Pers about me. Cal Pers did a surveillance on me. Seven days (44 hrs.) of footage yet only a total of 33 mins from all of those days combined could they present to Cal Pers. August 16, 2021, they said I was driving. I wasn't aware that I could not drive. If & when I need to drive it has been planned & my medication timing is adjusted.

August 20, 21 they said I was driving, and I extended my left arm on my steering wheel. **QME report dated 4/1/09** Dr. Bruckman where he states at my left arm is like a helping aid.

8/20/21 I was seen rotating my left arm to put my purse backpack on.

I must use a backpack purse style because I can't keep a regular shoulder strap type on my shoulder. and Statements in that surveillance reports indicated my purse was heavy, yet it weighs 3 pounds .

8/20/21 surveillance showed me shut my car door. Maybe some car doors are heavy, but the car I drive does not have heavy at all. Showed holding a cell phone for a brief time with my left hand and showed me holding a set of keys for a brief time. My cell phone has a gadget on the back that allows me to hook it with my fingers and that is how sometimes I can hold it with my left hand and that is how I hold keys sometimes I hook them on my fingers of my left hand. I cannot hold my cell phone in my left hand and put it up to my ear to use.

I have always been honest with any of the doctors I have. I tell them I try to use my left arm just try and prevent further atrophy and try to maintain what muscle I have left in my arm. If not used, I'm afraid it will deteriorate even more. **Dr. Weisbein(PTP)** TX & Exam report dated **12/23/2020**, states that I should continue conditioning program and home exercises and continue ice treatment. It is so difficult for me to try to find the words to explain my left arm. It's like trying to explain what air looks like. If you have not lived my life, it's impossible for anyone else to understand. Dystonia is not so black and white. I don't always have the same outcomes with the Botox injections. Sometimes I get too much Botox and my wrist drop and is painful and I must wear a brace, or it went into a different muscle, all of which could change the functioning I get Botox injections in several locations on my left arm every three months and that is because the Botox wears off in 90 days. Towards the end of the three months the spasms get worsen and the posturing and the guardian and the retracting of my left arm gets worse. In the beginning months of the Botox my arm in a sense has been paralyzed with the injections so I don't have a lot of strength or use with it and again I don't always have the same exact outcome after the injections except for I'm not in pain from the constant contractions/spasms. **Dr. Khasigian's Report on 2/2/22 section 20**, He says I that I do not have muscle spasms in my left arm. Yes, that is probably true because I get Botox injections and I've been getting Botox injections since 2004 or 2005. Sect 22 of this report, that my decreased muscle tone in my left arm is based on weight loss not Botox or atrophy and he also said both of my elbows are normal and even symmetrical when they are clearly not, and it doesn't take a medical professional to see that. Left arm is very distorted and is nothing like my right arm. **Section 24** Dr. Khasigian states that it

looks like I have no issues using my right upper extremity as I can manipulate my purse strap and close my car door and that I am not disabled. He also said in the same report that I have mild postural deformity that is voluntary. Section 25 he stated that that Dr. Mitchell D.O. is a neurologist which he is not and that in **Dr. Mitchell's report dated 4/1/21** on several occasions in it the report Dr. Mitchell says he examined me entirely, which is not in the report. Dr. Mitchell's report specifically says I am there in his office on 4/1/21 for my **right arm**. He refers to my right arm for the entire report. **Section 28** Dr. Khasign stated my swan neck deformities and my finger on my left hand are voluntary. **Section 29** he states that I have no conclusive diagnostic test showing dystonia. Dr. Bruckman (QME) swore under oath that he reviewed EMG & X-rays, along with other doctors. Unfortunately, records aren't kept after a certain time frame.

In **Dr. Khasign's own report** dated **2/2/22**, under the section where it says **Daily activities**, it says on there that I told him I do exercises with my left arm and that my fingers on my left hand are passively completely. (swan neck). I pick different tasks to do with my left arm like hold something, try to open a door, turn a knob, open a zip lock bag etc. I did drop a gallon of milk in Raley's trying this.

I received **Judge Jessica Wall's** findings dated **10/19/23** saying I didn't present medical evidence or medical expert to refute CalPERS claim. I don't have any Control over how long they keep my records, and I could not get the EMG report not because it didn't exist but was too old. I don't have the money to hire an expert witness. I'm not sure why I thought the CalPERS judge I was going to have my medical records from my previous physicians stating my disability. I'm asking CalPERS to try to understand my disability. If not working and trying to retire was the goal I would've done that in 2005 when Dr. Bruckman said I was 77% disabled. It's also hard to explain to somebody who is not disabled that disabled people find ways and try to do things that conceal their disability and that exactly what I do. I also don't think people realize that your hands and arms they match each other and it's just kind of second nature when you're reaching that they both go up that doesn't mean I'm using the muscles in my left arm. It's just for appearance.

I contacted the return-to-work coordinator by the name of Kerry Canales, and she states that because of many variables associated with my Workmen's Compensation claims that state fund will make the determination.

I also wanted to have it documented Napa State Hospital has in place administrative directives ADR is their abbreviation and ADR 376 on page 2 at states been under the influence of any drug or medication while on duty is prohibited & at no time should the use of prescribed medication hinder the employee's ability to perform the duties of her job. ADR Number 378 page 2 states all employees will comply with hospital policies and procedures.

Thank you for your time,

Joy D. Jordan

