

ATTACHMENT C

**RESPONDENT'S ARGUMENT REGARDING THE PETITION FOR
RECONSIDERATION**

December 23, 2023

Linda C George (aka Martinez)



RE: AUDIT REQUEST /CalPers RESPONDENT ARGUMENT CALPER ref # 2022-0704

Dear Assembly Addis & CalPERS Board

I was given less than 10 days to prep as once again my due process rights were trampled on. I was not informed on the original letter that all Respondent arguments were due by December 28, 2023 and during the Holiday's where I had to forfeit time with my 82 yr old father and family. Forgive the fast, short, ill prepared version of this argument. Originally this claim was filed for a review and reconsideration of all my Department of Rehabilitation claims from 2016 to now. Please note that I will be referring to Mr. Nick Abarca, who is your constituent also.

Once again, it brings me great disappointment to inform you that the CalPers Board mechanically rubber stamped ALL contested claims. There was no discussion of each claim, they clearly took the recommendations of the staff, rattled off our names, all voted AYE. This process took 5 minutes at best. NOW, if the reconsideration is approved this will be a reconsideration of the reconsideration? THEN, they will finally look at the exhibits, transcript? Isn't this the actions we were told would happen on the first Board Review? I also mentioned this last time. The appeal process is up to 2 years long. I am more convinced that CalPers uses its legal department to use case laws, and other sundry statutes as an unfair scheme to deny our claims and one can only imagine it is to keep their own solvency, or it is just that of an acceptable practice that needs to be laid to rest, until the legislator scuttles it.

Reminder: Here is how CalPers views the use of Haywood, . "We found our holding inherent in the structure of the statutes governing disability retirement, and the accord of the disciplinary powers of state agencies. If Haywood were indeed a judicial derelict on the waters of the law of disability retirement , the legislature had 5 years in which to scuttle it. The absence of legislative action supports our belief in the propriety of interpretation. (Smith, 12Cal. App 4th 194,204)

As a reminder of my first Respondent Argument,

- 1.) CalPers uses the Haywood Clause as a scheme to cheat applicants out of their paid retirement which was my original request for an audit.
- 2.) The lack of due process, especially to those with alleged psychological conditions and/are homeless. They should be required to call all numbers on the application and prove that the letters were returned by mail. My original appeal and letter at service retirement was riddled with wrong addresses, right name or right name and wrong address .

- 3.) This disability program robs applicants of their vested health benefits if the disability paperwork is not all complete and sent **WITHIN** 30 days. We should be able to COBRA our benefits until the appeal process is over.
- 4.) Bad Faith settlements was mentioned and now expanded upon with Mr. Nick Abarca's claim. Respondent Argument, Ref **2022-0742**

Moving forward These six pages will be served as a dual response and update and for the CalPers Board

Today I will bring forth to you,

- 1.) Recusal of Yvonne Walker on my vote
- 2.) What is an Unfair Labor Practice?
- 3.) Abuse of Consultative Examinations
- 4.) Firefighters/Police exemption of paying into Social Security
- 5.) Body parts are eliminated per application.

Recusal of Yvonne Walker. *Yvonne Walker*, while she was President of SEIU Local 1000 was the very person who ferried me all over the state to testify at Congressional Hearings, and hearings at the Capitol. She was also the one who approved the CDSS /DDSD Campaign (California Department of Social Services-Disability Determination Services) in which I was the main target for CDSS, albeit 12 of us all suffered from Adverse actions in some fashion. My case was the only one they did not win. She is now a board member and should have recused herself. I watched the hearing and she voted as well. Rewind, had she and her General Counsel, York Chang, been swift enough they would have filed a whole new Unfair Labor Practice within 6 months. Instead they charged ahead on a Haywood Clause not knowing that Austa Wakily already had her case in the proverbial "bag."

In the last written argument I outlined the baleful behavior of Austa Wakily, from admitting to writing the initial settlement in 2014 which allowed her to directly deny my application. She stated this in the hearing with a haughty, arrogant attitude. Not to mention her antithetical behavior for canceling my DOR (Department of Rehabilitation) application to deny it. There is no other explanation. In the hearing she indicated to me that she would have loved to have her doctor testify there is "nothing wrong with me." Essentially an a pejorative tactic to secure her career and pending case law.

Funny, the Judge and Ms. Wakily both stated at my hearing that CDSS is a totally separate case from this application of DOR. Yet in the transcript you will find that Ms. Wakily trying to get her "only case law" acknowledged in this hearing. Their pre trial write up starts with CDSS. When she tried to get Martinez SEIU Local 1000 vs CalPers acknowledged, I objected because of prejudice. She is. prejudiced and has a clear conflict of interest by this application. My objection was sustained. Judge Heller indicated he cannot acknowledge something she did not put in her evidence binder. It shows how desperate to keep her "only case law." To date, I still contend that Ms. Wakily terminated me as a representative of CalPers. I also contend that CalPers is not a hiring or firing entity and they have no authority to terminate me alone. She is still guilty of an Unfair Labor Practice and should be held liable. In the hearing Judge Heller

MC (Medical Consultant) believed if you walked in the door? You can work. Then we had some MC's that were bleeding hearts. Regardless of the findings in a one time, 15 minute examination, these types of examinations should never be given controlling weight if there is other evidence in file. Especially, from a doctor that the claimant has been seeing for over a year. Which brings me to my other point that there is nowhere to complain about our examinations should we be mistreated. The following list are common problems with CE's on the SSA level and it can be reasoned are the same pitfalls that CalPers should follow.

Social Security views the use of CE's in this fashion (from Preventing Wasteful Consultative Examinations in Social Security Disability Program PDF)

- 1.) The MC's often get the cases wrong and misdiagnose due to limited information
- 2.) MC's fail to document or adequately document findings.
- 3.) CE's should be a backstop in cases where evidence is missing.
- 4.) State agencies over rely on CE's because it's easier than collecting all the medical evidence.
- 5.) State agencies over reliance on CE's are used by State depts to deny claims.
- 6.) MC's at CE's often feel the internal pressure to produce the results of the Agency
- 7.) Bad Preparation & Rushed Examinations.
- 8.) The consequences of these denials are severe. Claimants too frequently abandon their claims after denials

*** Should be noted: CE doctors are all the same throughout the state. Our Dept DDS more than likely has the same volume vendors as CalPers. There are not many vendors in California that want to perform these examinations for such a low price.**

I can stand to reason if this is the information collected by SSA about its own process then with an audit of CalPers we are more than likely to find that #5 is more than likely not. The reason for the CE's is to determine Medical Opinions. In the SSA program we had certain guidelines before utilizing the CE's doctors Medical Source Statement. (aka function despite impairments). Medical Opinions <https://secure.ssa.gov/poms.nsf/lnx/0424503035>

For the sake of space Please refer to Ref. No. 2022-0742 - 12/19/2023. Mr Nick Abarca gives an incredible example of Controlling Weight for making a disability determination. It should be mentioned now that **That makes 2 of your constituents that were denied utilizing CalPers CE/MD/Doctor appointments.**

If Wakily's plan was to go to the hearing with her own MC, on the first appeal in 2016 I would have without a doubt been denied. She stated to me at the hearing, this doctor would say there is nothing wrong with me. If that is true her doctor would have been up against one of the leading Chronic Pain Doctors in California, Dr. Brendan Morley who is often tasked to testify at the Capitol. [Brendan Morley | Pain & Rehabilitative Consultants Medical Group](#) Without a doubt, she would have denied my claim using her doctor who told me I was a monkey. He asked me how many surgeries I had? I replied 5. His response was "That's all?" It is infuriating to learn how abusive the CE/Medical Examination process is utilized by CalPers.

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Keep in mind these examinations also should be a last ditch effort as they are expensive. An examination cost the state an avg of \$150. If it's Psychological Testing, those appointments cost the state up to \$218. I learned during my hearing , the "expert witness" was the manager that oversees the Medical exams. I was able to question her until she asked someone to object on her behalf. I believe it would be prudent to see how many Medical appointments, doctors are used solely for the purpose of denying our claims.

Question to auditors: How many disability claims are denied due to CalPers utilizing doctors who provide them with a "no findings" decision.

As a Disability Adjudicator, for 14 years, I just learned on Mr. Nick Abarca's claim that FireFighters are exempt from paying into SSA, and they rely on their pension only. I could not imagine if I did not pay into SSA. I was an SSA Disability Adjudicator and knew I was eligible. I was approved with the Date of Injury as the last day worked in 2014. This exemption rule is per CalPers & SSA Websites.

CalPers website states, If you're eligible to receive a pension from an employer(s) who didn't withhold Social Security taxes from your earnings, the [Windfall Elimination Provision \(WEP\)](#) and [Government Pension Offset \(GPO\)](#) may reduce your Social Security benefit.

Yet Mr. Abarca's attorney used the abusive practice of having one of their MC's testify to say there is nothing wrong with him and he was able to go back to work as a Firefighter. CalPers doctor and Judge said he can carry a dragon head, (WHICH they found on his social media account) then he could surely be a firefighter again.

What is terrible is that the Haywood Clause is primarily for our emergency responders and meant for IDL disability. It was not intended for myself as an admin worker [Agenda Item 10: Designation of Precedential Decison - Robert Vandergoot Attachment D](#) . For further details relative to this topic of exemption see this link. [Police Officers and Firefighters](#)

Since I just learned of CalPers using our SM pages, I contend they should not be able to use our SM accounts unless a fraud alert has been placed on our case.

Please note that there is an entirely different attorney. It is now obvious that CalPers absolutely misuses its system, penalizing hard working applicants. We pay into this system with our own money. They cannot be able to take away our vested health benefits. I worked for 30 years for my life vested Health Benefits and if needed disability retirement. I left with nothing. My car was repossessed. I had to move into my parents house and was homeless with my then husband. (see respondent's argument 1.) attached also.

Finally, It seems CalPers has a great legal scheme to dupe rank and file/Applicants. They participate in bad faith settlements, abusive Medical Examination tactics, and any tactic

that will deny us. Instead of being the watchdog of our money? They have become an adversary instead.

To Recap: Whether it is from a group of Citizens or sponsored request for an audit, I believe it is imperative to put a stop to this process and CalPers should cease and desist from writing any settlements that utilize the Haywood Clause and willfully using their doctors to deny our claims. It would be prudent for the legislature to review these points. I AGAIN request that CalPers cease and desist from all their bad faith dealings until they can be audited. They should immediately start providing special assistance to those who are suffering from a psychological condition or are homeless or both. Applicants should be able to COBRA our benefits at the same rate we paid out of our paychecks. Stop the abuse of Medical Examinations to directly deny our claims. ***It would be important to change the law that allows CalPers to behave in this manner. Such as, only allowing examinations when there is insufficient information in file. Also, if an applicant has a problem with the MC at a Medical Examinations CalPers should have somewhere we can complain about the appointment.***

Most of all, CalPers should not be an adversarial program when we have actively worked and paid into the system. If they cannot make better guidelines of what is disabling? Then they should not be denying claims. I am sure an audit would reveal how many of us were denied in mass numbers. I would love to see the many applicants they have harmed with their acceptable, legal behavior. I call it antithetical to being whole. Although that is impossible for the last 3 decades, we should at least effectuate these potential new rules for all future applicants. It should be mentioned that Mr. Abarca submitted his argument on the 19th of December, it was rejected because CalPers did not receive it until 12/22/2023. According to legal, all arguments are due on 12/28/2023. He once again has faced a CalPers lack of due process. I know that this write up is very technical. Please feel free to contact me for further explanation.

Sincerely,

Linda Christine George (aka Martinez)

CC:

Assembly Josh Hoover

Assembly Joe Patterson

Paul Harris General Counsel SEIU Local 1000

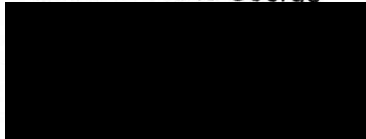
Randy Cheek, Legislative Director RPEA

Felix Delatorre General Counsel PERB

Kerianne Steele, Counsel to SEIU Local 1000

Katy Grimes, Editor in Chief California Globe

Linda Christine George



Dear CalPERS BOARD

RESPONDENT'S ARGUMENT



It brings me great disappointment to be writing yet another and final appeal to a process that has been occurring to my person since 2014 and to our members since 1998. I would like to have considered my situation an aberration but it is not true. I have known that for over a decade SEIU Local 1000 had my disability claim as well as many others with the abusive tactic State Depts and CalPers Legal uses to systematically deny our disability pensions, which in essence would take our vested health benefits permanently. Some of us worked for 10, 20 years for the State of California. In my case, I worked for the State of California from 1985 to 2014 the date in which my settlement was crafted a total of 30 years. I was on my way to retiring disabled at the age of 50, until I joined the union in 2009 as a union steward and elected official SEIU Local 1000.

After an aggressive DDSD campaign created by Yvonne Walker, then President of SEIU Local 1000, I became a Union Steward and later an Elected Officer. I represented staff in ROP, Skelly hearings, and other state wide activities. I lobbied for SB1234 and the Fast Food Wage Campaign. Some actions included congressional hearings, testimony at the capital with Yvonne Walker, Randy Cheek, Paul Harris, and Nancy Farias Womack. I was then targeted by CDSS and then subsequently fired 3 times not just once. We settled at PERB which was CDSS conceding and not willing to take the charge of violating my Weingarten Rights. So the settlement was written at the PERB Hearing. During this current appeal Ms Austa Wakily revealed via the telephone helped craft language for this settlement that later became her only case law Martinez SEIU Local 1000 vs CalPers. She laughed at the attempts of the union to quash this law, wanting me to be the face for all the other members who were also unfairly denied their benefits.

I hope before you rubber stamp the proposed decision of Judge Heller please stop and consider the true facts in this particular case.

My case is much more sinister. When I went back to work for a new department, Dept of Rehabilitation, a real good faith effort to go back to work. I left approximately 3 months later and applied for disability again.

The same attorney who canceled my CDSS application, Austa Wakily took it upon herself to represent the appeal for CDSS and DOR appeals simultaneously and self appointed herself to represent the appeal for DOR in which I have been In Pro Se. She has been the solo attorney who represented CalPers against Martinez/George/SEIU Local 1000. She frankly has self assigned herself to my claims including this appeal. I asked her to recuse herself because she had a conflict of interest, I requested her many times to recuse herself but she refused. Wakily cited that " I know your case the best.." Well that is true because she established Martinez SEIU Local 1000 vs CalPers law that is under her name. A case law in which she has built her career on. It is easy to build your career when you know the language to win and set up the members and the Union. Her ONLY case law she states to me. She was more interested in

what made her career on this appeal than whether I received a fair hearing.

However she still does not understand that she is and has been the one violating my Weingarten rights since 2014. My settlement was written at the PERB board, not a traditional SPB Process. She stated to me that she was the one who has upheld this as a termination, not the first appeals decision, not anyone but her.

When I filed for disability again, legal was contacted and she immediately canceled my application with DOR while she still had CDSS on appeal. She indicated my records were not good enough and sent me to one of their doctors who said there was NOTHING wrong with me. To be clear? I have been on SSDI since the age of 48, Date last worked date of the settlement. I adjudicated SSI/SSDI for CDSS for 14 yrs. It is the most difficult program to be eligible for yet this disability program is based upon case laws. There are other significant issues that CalPers operates in, such as lack of due process during the disability process, no special assistance for the unhoused et al. CalPers essentially functions against the employee. At times approving my application over the phone and email but then rescinding approval of benefits mostly via Ms. Wakily.

In this settlement type case the R&F member loses their vested health benefits. This leaves zero liability for CalPers to dispense any benefits many worked decades for. This is the punitive result. If you are not determined disabled within 30 days? You lose your health benefits. This is their normal process for all disability applications. This lessens CalPers again liability working rank and file and less pay outs of disability pension but moreover, not having to pay out health benefits to those of us who have worked for them for life. This has been an effective tool to our overloaded pensions in Ca. maybe a tactic that keeps CalPers solvent.

CalPers Legal has no proof due process during the disability process. Just because a letter was sent does not prove that the member received the letter.

In the latest Judge decision of 2023, Judge Heller minimizes the importance of due process, special assistance and other disability processes that would help empower a member to be approved or denied.

It is imperative just like the Federal Program T16 & T2 that a member alleging a disability that is physical, or mental or more specifically, if a member has a mental disability then special assistance should be required. For instance It is Calpers burden to prove that they made all attempts to contact the member before denying the claim. That includes notations that mail was returned, all phone numbers on the application were contacted and notated on the case that legal can refer to instead a binder of letters sent with no reply.

At a time California has the highest unhouse population in the nation, no claim should be denied without CalPers unit and legal has exhausted every attempt to locate the member. That includes the correct name and address. Sending a letter in the wrong name, to the wrong person and address is not due process.



I service retired in July of 2017. Apparently a letter was sent to me that I was eligible for disability retirement a year after I was already married. This letter came to Linda Martinez. I had already been legally George since July of 2016. In all legal processes this does not count as an attempt of contact. This does not represent an entity that is protecting our retirements we worked for.

Calpers appeal process is too long. It is set up in the hopes that the member will just give up. I did not and will not give up even a decade later as Austa Wakily set me up for a denial of benefits and has single handedly ensured I do not receive them since 2014. She repeats that it is not personal, it's business. I still ask, whose business is she conducting? .You CalPers board has an opportunity to stop this practice now and forever.

I have outlined the 2 major concerns. The proposed decision will be reviewed and is scheduled for November 15, 2023. Please remember upholding this determination at a PERB hearing settlement? I contend CalPers has been violating my Weingarten rights since 2014 and should be held liable. You cannot terminate an employee for engaging in the union steward activities. This is commonly known as union busting. In a time that our President to union labor, show State Depts that you will not be part of violating my rights.

I am deeply concerned about the personal unconscionable involvement and investment of the denial to all my disability applications by Austa Wakily as she again, crafted her way to a perfect case law and career on my name. It is not everyday that the employee walks back and in says that her case law is built on lies and violations to me by management not a disciplinary action that requires the use of a Haywood clause that should not be used anyway

Linda C George (Martinez)



CC:
Assembly Dawn Addis
Randall Cheek RPEA
Felix Delatorre PERB
Katy Grimes California Globe
Anne Geise, SEIU Local 1000
Kerianne Steele, Counsel to SEIU Local 1000

Linda Christine George



DEAR ASSEMBLYMEMBER DAWN ADDIS:

RE: CalPers legal abuse of haywood case law, Vandergoot case law since 1998.

Requesting: An audit of all members who have lost their disability pension and vested life health benefits due to Haywood case law.

It brings me great excitement to be able to bring this systemic CalPers problem to your attention.

After our success with GSMOL.org as a Legislative Contact, we lobbied a great deal, including meetings for AB 318. So happy that Governor Gavin Newsom signed last week. As a Tiny Trailer owner in the heart of North County, Paso Robles, Ca. I am excited to feel protected from the shenanigans of Park Owners for at least 3 more years. Please consider me your contact person for all GSMOL matters in Paso Robles City, You have 2 Linda's.

Moving forward, I am concerned about the fact that CalPers, CalHr and State Departments have utilized the Haywood Case Law as a systematic method of walking Rank & File State Workers and others whose retirement is handled by CalPers into bad faith settlements. Moreover, a loss of their disability pension and vested Health Benefits. Furthermore, the appeal process can take up to 2 years. TWO YEARS. I am hoping we can work together by stopping this abusive, acceptable process.

My settlement was crafted in 2014 at a PERB Matter.(Public Employment Relations Board.) On 9/2014, I helped craft my own settlement. It was the intent of CDSS,(California Department of Social Services) to help me obtain my disability pension as they did not want to proceed with the hearing and be responsible for violating my Weingarten Rights. A clause was placed in my settlement, I was against it. I was waved off as it's a standard clause in all settlements. Except we were not in a traditional disciplinary proceeding. We were in a proceeding in which the employer was guilty of violating my Weingarten Rights.

Clause: I would not seek re employment at CDSS and if found working for CDSS I will be terminated.

Except this clause meets CalPers Legal Case Law Haywood , Vandergoot and now Martinez. **You cannot resign in lieu of termination and apply for disability.**

What has CalPers done with this Case Law? Since 1998 It uses this Haywood clause to systematically deny members disability pensions, which means losing their health benefits some of us like myself worked 30 years for. I am still fighting for 10 years later.

CalPers Legal is still active in crafting these settlements with California State Depts. When a case law such as this is so punitive ? It should be the exception and not the rule and every effort should be made to avoid such bad faith settlements.

Since 1998 State departments and Calpers Legal and CalHR have actively participated in this outlandish way of taking our life's work. In this appeal, I have learned why they continue to do so. Simply because the State Legislature never stopped them. (see attached marked bate stamp A67). After a decade of fighting my claim, it is time to seek a legislator that can help change this abusive process. There should be an immediate cease and desist from the standard use of this case law. In essence, banning employees from returning to the same department is the language that implies "termination" as there is no place, employer to return for a health examination to see if an employee is fit to return to work.

Instead, Haywood has become a manual of sorts on how to take R&F pensions, vested health benefits, appeal rights. It leaves each of us subjected to a 2 yr (TWO year's) appeal process. Their system is not one that is easily navigable by a lay person, In Pro Se, nor does CalPers Legal take the time to help the member through the process, in my case I was completely ignored for each appeal. CalPers through evidence has **no concern of due process. It should go without saying that every R&F deserves a FAIR hearing and due process.**

The effect of this practice is that members lose everything. Their homes, their cars, their families, and become unhoused. We leave with the loss of our jobs and our appeal rights are stripped. Essentially, the state takes the job and leaves the employee with nothing despite the fact they promise to cooperate in these processes. . I contend this is an outdated fashion to look at as this banning of employees terminology is done unfairly when we are employees of the State of California not solely the department worked, Banning an employee from the entire department is draconian also.

After we become unhoused, CalPers legal through the appeal process has no burden to prove they did everything they could to contact us. California has one of the nations highest unhoused population. CalPers has no system to document their attempts at reaching members. Simply sending a letter, wrong name right address or right address wrong name is not due process. It should be CalPers burden of proof that they notified the member. I was subjected to this action and further subjected to letters being misdelivered or never received.

I understand the Haywood, Vandergoot law is righteous and true but should not be used by any State dept. as **the state is not entering R&F members into settlements in good faith.** Some people have had their case stop there and probably never returned to work. Some of us did return to work and in my case one attorney ensured that I never received my disability pension. If I went back to work and could not do it? I would be eligible again.

Here is how CalPers view the use of Haywood, . "We found our holding inherent in the structure of the statutes governing disability retirement, and the accord of the disciplinary powers of state agencies. If Haywood were indeed a judicial derelict on the waters of the law of disability retirement , the legislature had 5 years in which to scuttle it. The absence of legislative action supports our belief in the propriety of interpretation. (Smith, 12Cal. App 4th 194,204) " See attached.

I am requesting assistance in starting with an Audit. How many CalPers members have lost their disability pension and vested Health Benefits with this dishonest practice of CalHR, SPB, CalPers Legal. This audit should ask the hard questions on how CalPers believes this practice is fair, if not illegal, or at the very least antithetical despite there has been no state legislator stopping this process. I know that SEIU Local 1000 took my case to the First Appeals court as they had problems with a significant number of members who were in the same

position as I was. They wanted me to be the face case and they lost in about 2019. Ms Wakily thought it was humorous in the last hearing. Well it is easy to be sure when you craft the settlement you know you can win. I am sure that they would have the data needed to present how many R&F employees have been harmed by CalPers.

I think it is time for the legislature to put this practice to bed and make this Haywood law obsolete. Stop CalPers, CalHr, and state departments for using this case law as a systematic way to deny benefits.

I have given you the quick scenario but as you can imagine this is 10 years worth of documentation, two different departments and 3 appeals. I believe it is time to stop this practice. I am encouraged that SEIU Local 1000 and RPEA can sponsor to stop this ruination of hard working government workers in California, I am 7 yrs disabled retired and I will continue to fight for this law to be obsolete and force CalPers to keep its commitment of being the protector of our pensions not the entity to willingly take it away to keep its solvency.

Sincerely,

Linda Christine George, In Pro Se

CC:

CalPers Board

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Kerianne Steele, Counsel to SEIU Local 1000

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