

ATTACHMENT C

RESPONDENT'S ARGUMENT

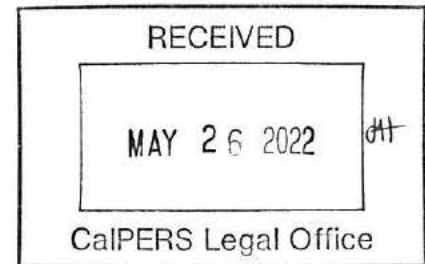
Ronny Cespedes



CalPERS

PO Box 942701

Sacramento, Ca.94229



Subject: Accepting Application for Industrial Disability Retirement.

Board of Administration:

This written argument is to argue on my behalf my application for Industrial Disability Retirement that has been denied. I want to provide the facts for this case, as it has been in a legal arena for over the last 7 years.

I was employed with the City of Montclair for over 20 years, when I became involved with the bargaining group of the Police Officers Association. During this time I, along with 3 other employees from the Police Department, were investigated for several accusations.

I was placed on Administrative leave on April 3, 2013. I then spent the next 14 months on Administrative leave as the City investigated several allegations going as far back as 5 years prior to the initial allegation.

During the time I was on leave, I began seeking medical diagnosis for my back, right knee, high blood pressure and acid reflux. These were medical conditions that have been affecting my overall health. During this time I agreed to see a Qualified Medical Evaluator (QMEs) that the city provided to examine my claims.

Prior to having the final report from Dr. Wood (city's QME Doctor assigned to my case) which was submitted on June 4, 2014 I was terminated on June 3, 2014. I then began the appeal process for the termination.

The City received reports from Doctor Clayton and Doctor Wood the agreed Medical Evaluators. They submitted their reports on June 2, 2014 and June 4, 2014. The reports indicated that my medical condition had reached a permanent and stationary status. One of the reports was received prior to my termination and the second was a day after being terminated. My final doctor visit with Dr. Wood was scheduled in advance prior to being terminated.

The city agreed on the findings from both reports that were submitted to them from the QME's that they had chosen to evaluate my injuries.

File Number 13-116792, from AdminSure, who administers benefits for the City states that I was eligible for a disability retirement. It indicated that:

“The report indicates you do require continuing medical care due to your industrial injury”.

It also states:

“Your employer is unable to accommodate your permanent work restrictions, as specified in the report”.

The doctors reports were received one day prior to the termination and one day after the termination, but the medical evaluations had been ongoing for over a year.

Since the day I was terminated, I have undergone back surgery and knee surgery for injuries sustained during my 20 plus years working for the City. I filed several Workman Compensation claims for my back during my career and have had several times where I was placed on light duty status because of the injury.

The city wants to claim that I filed for an Industrial Disability Retirement after being terminated, but the city has several workman comp claims showing my injuries have been ongoing for years. They also failed to provide me the benefit after receiving the first report from the Agreed Medical Evaluators.

I pray that the Board can see that I was denied this benefit when the fact is I should be granted this benefit for the years of service and past documentations of the injuries.

Sincerely,

Ronny Cespedes



October 6, 2014

Ronny Cespedes
[REDACTED]

Re: Employer – City of Montclair
Date of Injury – 04/03/2013
Our File Number - 13-116792

Dear Mr. Cespedes:

We administer benefits for your employer's self-insured Workers' Compensation Program. The following is our simplified benefit notice. An "X" will indicate the current status of your claim.

Drs. Cayton and Dr. Wood, the Agreed Medical Evaluators, has issued reports dated 6/2/14 and 6/4/14 indicating that your medical condition has reached a permanent and stationary status also known as maximum medical improvement. Based on the findings, you are eligible for permanent disability benefits at \$270.00 per week. Payments will be issued every two weeks on Monday until we have advanced our reasonable estimate of your permanent disability.

The report indicates you do require continuing medical care due to your industrial injury.

Your employer is unable to accommodate your permanent work restrictions, as specified in the report.

We reserve the right to depose Dr. Cayton and/or Dr. Wood to clarify any necessary issues.

Pursuant to Labor Code 5405, the period within which proceedings may be commenced for the collection of the benefits provided by Article 2 (commencing with Section 4600) or Article 3 (commencing with Section 4650), or both, of Chapter 2 of Part 2 is one year from any of the following:

- (a) The date of injury.
- (b) The expiration of any period covered by payment under Article 3 (commencing with Section 4650) of Chapter 2 of Part 2.
- (c) The last date on which any benefits provided for in Article 2 (commencing with Section 4600) of Chapter 2 of Part 2 were furnished.

Pursuant to Labor Code 5410, nothing in this chapter shall bar the right of any injured worker to institute proceedings for the collection of compensation, including vocational rehabilitation services, within five years after the date of the injury upon the ground that the original injury has caused new and further disability or that the provision of vocational rehabilitation services has become feasible because the employee's medical condition has improved or because of other factors not capable of determination at the time the employer's liability for vocational rehabilitation services otherwise terminated. The jurisdiction of the appeals board in these cases shall be a continuing jurisdiction within this period. This section does not extend the limitation provided in Section 5407.

Date of Report: June 4, 2014

RE: Cespedes, Ronny
EMP: City of Montclair
OCC: Police Sergeant
DOI: 10/07/91 - 04/03/13 CT
DOB: [REDACTED]
WCAB NO: ADJ9081759
CLAIM NO: 13-116892

Gentlepersons:

Mr. Ronny Cespedes was seen on June 4, 2014 for initial orthopedic Agreed Medical Examination.

CURRENT COMPLAINTS:

The patient complains of constant, aching and sometimes sharp pain in the **low back**. The pain radiates into both **legs**. On a scale of 1-10, the patient rates the pain at 3.

HISTORY OF INJURY/MEDICAL TREATMENT AS RELATED BY THE PATIENT:

The patient stated that he began employment as a police sergeant in October 1991. In that job, he was in charge of traffic enforcement and apprehended suspects. He worked 10-12 hours a day, 3-4 days a week with overtime.

The patient states that he developed pain in the low back starting in 1997 or 1998. He relates this to the way he works. He states that he twisted his back while sitting at work and felt a little pop in his back. When he got out of the car, he had trouble walking. He reported the symptoms to his employer and his employer sent him for treatment through workers'

Signed By: D.W. Cespedes, Ronny DOB: [REDACTED] Chart #: [REDACTED] DOS:
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compensation. The doctor sent him for physical therapy and the patient later paid out of pocket for chiropractic treatment. He found the treatment helpful.

While working for the same employer, his right knee developed symptoms. He received a cortisone injection. He remains symptomatic. He is not sure if he has filed a claim.

The patient states that he kept working but took some time off work because of the pain. He followed up with the industrial doctor and the doctor treated him with ice and physical therapy.

The patient states that the back pain worsened in the late 1990s, related to twisting, chasing suspects and getting in and out of the car at work. He went for treatment and the doctor gave him a morphine injection with some relief of symptoms. He states that he has twisted his back many times while working, causing him to follow up with the industrial doctor and receive treatment. The doctor sent him for MRI scan of the lumbar spine. He states that the doctor told him that he does not need to have surgery.

Over the last few years, Dr. Ali, his primary doctor, saw him and provided care. He prescribed medication. The patient paid out of pocket for continuing chiropractic treatment.

The patient's attorney referred him to Dr. Sobol for treatment starting eight months ago. Dr. Sobol referred him for more chiropractic treatment and discussed possibly sending the patient for MRI of the right knee. The doctor prescribed medication. The patient states that he was placed on administrative leave on April 3, 2013.

JOB DESCRIPTION:

The patient described his work as a Police Sergeant for City of Montclair. He states he was hired in October of 1991 and his position began in February 1992. His work hours varied and would work ten hour shifts four days a week or 12 hour shifts three days a week. The patient states he would enforce city and state laws as well as traffic. He stood eight hours, sat eight hours and walked eight hours per shift. The patient described occasionally lifting weights up to 100 pounds. He described occasionally carrying weights up to 100 pounds. The heaviest object lifted was a suspect weighing 200+ pounds. The patient used both hands repetitively for fine manipulation, simple grasping and pushing/pulling. He used both feet repetitively. The patient described frequently bending, squatting,

kneeling, walking on uneven ground, working above ground, reaching above shoulder height, reaching at shoulder height and reaching below shoulder height and occasionally crawling and climbing.

EMPLOYMENT HISTORY:

1991 - Present: City of Montclair; Police Officer.

PAST MEDICAL HISTORY:

Prior Low Back and Right Knee Injuries/Symptomatology:
None.

Other Industrial Injuries:
He reported internal system problems and is receiving treatment.

Other Orthopedic Injuries/Symptoms/Treatment:
1986 - Playing soccer, he tore his meniscus in his right knee and required surgery. He reported a recovery.

Automobile/Motorcycle Accidents:
None.

Surgeries:
Age 15- Appendectomy
1986 - Right knee surgery for torn meniscus.

Fractures:
None.

Major Illnesses:
Hypertension
Acid reflux

Allergies:
None.

Current Medications:
Norco (as needed)
Over the counter Ibuprofen
Hydrochlorothiazide and two hypertension medications
Medication for Acid reflux

SOCIAL HISTORY:

HABITS:

Tobacco: The patient denies smoking or chewing tobacco.

Alcohol: The patient drinking alcohol occasionally.

FAMILY HISTORY:

A review of the patient's family history was carried out. The family has no history of liver, lung, gastrointestinal, or genitourinary problems. There is a family history of pancreatic and breast cancer, mother.

SOCIAL HISTORY:

The patient is widowed with one child.

REVIEW OF SUBMITTED MEDICAL RECORDS:

Multiple records from Mohamad Ali, MD, were reviewed. Many of these records were regarding orthopedic conditions and they can be found summarized below. Those regarding non-orthopedic conditions will not be summarized further as they lie outside my area of expertise. Dr. Ali referred the patient for workup and testing for multiple conditions, mainly non-orthopedic in nature. This was attached and reviewed, but will not be summarized further as it lies outside my area of expertise.

Multiple cardiac records from Bipin Patadia, MD, cardiology with attached workup records were reviewed.

A file of subpoenaed records from San Antonio Community Hospital was provided for review. Many of these were regarding cardiac conditions and they will not be summarized further as they lie outside my area of expertise. Those regarding orthopedic conditions can be found summarized further below.

05/13/08: Record from San Antonio Community Hospital indicated the patient presented with subcutaneous hand laceration. Hit right hand with others playing soccer. Accidental injury. He had a removal of benign skin lesion on the right hand one week ago and had sutures removed. Had blunt trauma, causing the wound to open again. Treatment provided.

11/06/12: Record from Dr. Ali regarding stomach pain. The problem list included knee pain. Treated for hypertension and GERD.

11/15/12: Health Questionnaire Record from Dr. Ali indicated the patient had a history of right knee surgery. He worked as a police officer.

06/25/13: Records from San Antonio Community Hospital indicated the patient had presented with precordial pain and chest pain. Multiple diagnoses. These included anxiety and also back ache, unspecified.

11/05/13: Report from Dr. Sobol discussed complaints of back pain, right knee pain, cardiovascular, high blood pressure, upper and lower gastrointestinal symptoms. Worked as a Montclair Police Officer. Dr. Sobol diagnosed lumbosacral musculoligamentous strain/sprain with bilateral lower extremity radiculitis and sacroiliac joint strain/sprain, right knee sprain with patellofemoral arthralgia and multiple internal medicine conditions. The patient began developing back pain attributed to usual and customary duties getting in and out of vehicle, twisting and bending, having to chase suspects and running up and down hills and jumping, climbing over fencing, wrestling and crawling on the ground restraining suspects. He developed back pain in the mid 1990's, progressively worsening over the years and he had flare-ups. He went to his family doctor, to the employer for awhile and in 2009, he went to a chiropractor. Records point out that he had injuries on 01/07/03, 08/04/02, 02/05/09, 09/16/11, 08/16/12. He did not exactly recall those, but recalled that he injured his lower back in multiple work injuries in the past. He paid out of pocket mainly and did not treat through workers' compensation.

01/27/14: PR-2 from Dr. Sobol requested something for the right knee. Hard to read. History of worsening symptoms, internal derangement noted. Modified work recommended. Requested chiropractic treatment.

03/11/14: PR-2 from Dr. Sobol recommended multiple consults. Pending a Depo. Modified work recommended. Medication dispensed.

03/24/14: Deposition Testimony of Ronny Cespedes was reviewed in its entirety (62 pages). He discussed receiving chiropractic treatment from Dr. Hornbaker starting maybe four years ago, he was not too sure. He treated his lower back. He usually went three or four times a year, separated by months. He discussed seeing Dr. Sobol. Dr. Sobol recommended pain management. He stated that about 18 or 20 years ago, all of a sudden he threw his back out without doing anything basically just turning in his chair or bending over. He knew that he had thrown it out, but he never had problems with it before. He believed it was related to work. He went into the clinic and told them that he hurt himself and the doctor said that it was caused by what he wore and the extra weight and having to climb fences,

etc. He stated that he wrenched his back pretty easily. He had done it at home on the weekend. He had never filed a formal claim for those previous incidents. He was told that his claim had been rejected and that he needed to wait and see what happened. He felt discomfort in the right knee. Dr. Sobol saw him for that. He talked to Dr. Hohl in Chino about it and also Dr. Goldman in Upland. Dr. Hohl gave him cortisone injections, maybe six or seven years ago. Dr. Hohl examined his knee and played with it and stated he wanted to do x-rays, but because the patient was not insured, he had to get x-rays and he did not do that. He was a friend of his father's. He injured his knee in high school playing soccer and had arthroscopic outpatient surgery on it. He had torn his meniscus when he was maybe 19 or 20. He was still on his father's insurance and going to school and working part-time at that time. It started acting up again after being great for a long time. It acted up maybe 14 or 15 years ago just from getting in and out of the car. He decided to go to see Dr. Hohl after eight years of having pain in the knee. He took ibuprofen. He stated that there were things at his job that he did not think that he could do. He could not lift someone or carry someone or jump over walls or fences like he used to; that was a young man's job. He was not able to fight people the way he used to ten years ago. He needed to use the tools that he had to do his job. He felt that adrenaline could kick in and he might be able to do the job, but when it was gone, how bad was he going to be injured. He never filed a claim because he loved his job, but he did not think that he could be on the streets because he could not handle it. He discussed treatment from Dr. Sobol. He limited the amount of weight that he lifted, less than 100 pounds. He had an MRI scan of the lumbar spine done. He did a little weight training with ten pound barbells. He discussed the medication for blood pressure. He also took Nexium. He stated that he had a cigar here or there, but he did not smoke a pack a day or anything like that. He drank alcohol and had cocktails here or there, but he was not drinking for lent.

PHYSICAL EXAMINATION:

The patient is a 48-year-old male who stands 5' 10" in height and weighs 215 pounds. The patient is right hand dominant.

Examination was performed in the presence of Maria Ramirez.

Blood pressure: 139/91 mmHg

Pulse: 63 bpm

Temp: 97.2°

EXAMINATION OF THE LUMBAR SPINE:

Prior to the measurement of the lumbar spine range of motion, the patient performed "warm up" motion, as described on page 399 of the AMA Guides to the Evaluation of Permanent Impairment.

Inspection: No gross deformity
Assistive Devices: None.
Palpable tenderness: Right lower lumbar and right buttock.
Muscle spasm: Right buttock and lower lumbar spasm with rigidity.
Lower lumbar midline scars: None.

Active range of motion of the thoracic spine (First attempt) revealed:

		Normal
Flexion:	50 degrees	50+ degrees
Rotation:	30 degrees, bilaterally	30+ degrees

Active range of motion of the thoracic spine (Second attempt) revealed:

		Normal
Flexion:	50 degrees	50+ degrees
Rotation:	30 degrees, bilaterally	30+ degrees

Active range of motion of the thoracic spine (Third attempt) revealed:

		Normal
Flexion:	50 degrees	50+ degrees
Rotation:	30 degrees, bilaterally	30+ degrees

Active range of motion of the lumbar spine (First attempt) revealed:

		Normal
Flexion:	55 degrees	60 degrees
Extension:	20 degrees	25 degrees
Lateral Bending:	20 degrees, bilaterally.	25 degrees

Active range of motion of the lumbar spine (Second attempt) revealed:

		Normal
Flexion:	54 degrees	60 degrees
Extension:	20 degrees	25 degrees
Lateral Bending:	20 degrees, bilaterally.	25 degrees

Active range of motion of the lumbar spine (Third attempt) revealed:

Flexion:	54 degrees	Normal 60 degrees
Extension:	20 degrees	25 degrees
Lateral Bending:	20 degrees, bilaterally.	25 degrees

Straight leg raising:

Seated:	Right:	Positive at 50 degrees
	Left:	Negative at 50 degrees
Supine:	Right:	Negative at 50 degrees
	Left:	Negative at 50 degrees

Lasegue's test: Positive - Right.
Fabere Maneuver: Negative - Bilaterally.

Sit up from exam table: Without difficulty

Sensory exam (light touch): Grade IV decreased sensation in S1 distribution, right lower extremity.

Muscle Strength: Normal muscle strength.

EXAMINATION OF THE KNEES:

Inspection:	No gross deformity.
Assistive Devices:	None.
Palpable effusion:	None.
Soft tissue fullness:	None.
Scars:	None.
Tenderness:	Medial joint line of the right knee.

Pain on patellar pressure: None.

Crepitus:	Right: Negative Left: Negative
Passive extension:	Right: Negative Left: Negative

McMurray's maneuver:	Positive - Right
Drawer sign:	Negative - Bilaterally.
Pivot shift:	Negative - Bilaterally.
Lachman's test:	Negative - Bilaterally.
Rotary instability:	Negative - Bilaterally.

Heel walking: Satisfactory - bilaterally
Toe walking: Satisfactory - bilaterally

Squat: Full
Gait: Non-Antalgic

Knee reflexes: 2+ right patellar reflex and 2+ left patellar reflex
Ankle reflexes: 2+ right Achilles reflex and 2+ left Achilles reflex

Sensory examination: No areas of hypoesthesia.

Active range of motion of the knees revealed:

	Right	Left	Normal
Flexion:	130 degrees	140 degrees	150 degrees
Extension:	0 degrees	0 degrees	0 degrees

Circumferential measurements of the lower extremities revealed:

	Right (cm)	Left (cm)
Thighs (10 cm above the patellae):	42	42
Midpatellae:	36	36
Midcalves:	38	38

Muscle strength: Normal muscle strength.
Leg lengths: Equal.

X-RAY STUDIES:

In-house x-rays were taken by Carolyn Caruana, XT.

X-ray examination of the thoracic spine revealed mild changes at the thoracolumbar junction, but no acute fracture or dislocation otherwise noted.

X-ray examination of the lumbar spine, AP and lateral with obliques revealed slight narrowing L5-S1. No acute fracture or dislocation otherwise noted.

X-ray examination of the AP pelvis revealed that the overall osseous density was within normal limits. There were no abnormalities of the

sacroiliac joints. The hips appeared to be normal. There was no sign of fractures or dislocations.

DIAGNOSES:

1. Herniated nucleus pulposus of the lumbar spine with radiculopathy - 722.10; 729.2.
2. Status post prior right knee meniscus surgery - V54.89.
3. Right knee pain, rule out internal derangement - 719.46.

DISCUSSION:

The patient gives a history of injuring the lumbar spine on multiple occasions in the past while working as a police officer for the City of Montclair. I do not know whether he actually filed claims for those multiple injuries, but to me, it seems that they are reasonably part and parcel of a cumulative trauma injury. He has the presumption for lumbar spine injury, having worked as a police officer for well over five years wearing a Sam Browne belt and that covers everything. I do not have any diagnostic testing results and I referred the patient for MRI scan of the lumbar spine and also for EMG/nerve conduction studies to help with rating for this condition. He presents with clinical signs consistent with radiculopathy. I will issue a supplemental report once the diagnostic study results returned.

I also note that the patient suffers from knee pain, started several years ago, it is hard to say exactly when, but it was either in the 1990s or 2000s. The patient has tried to deal with it, but it remains painful and somewhat limiting. He has findings consistent with possible meniscus injury and I referred him for MRI scan of the right knee as well, since I believe that the lower extremities are part of this claim. I do not see any indication of left knee condition or symptoms at this time.

Once the diagnostic testing results return, I will issue a supplemental report outlining my findings. The patient is off on administrative leave at this time, I believe this is as a result of the work injury in question. He reasonably is **PERMANENT AND STATIONARY** but requires permanent work restrictions. I will outline those once the results of the diagnostic studies return.

I anticipate that the patient requires access to future medical care including re-evaluations with an orthopedic surgeon and additional, short courses of

conservative care during periods of documented flare-up or exacerbation including physical therapy, oral medication and injections. Should the lumbar spine condition significantly worsen, he may consider surgery but it is not required at this time. I will make further comment if necessary after reviewing the results of testing.

CAUSALITY/WORK RELATEDNESS/APPORTIONMENT per Labor Code Sections 4663 and 4664:

I do not have a lot of medical records regarding his orthopedic complaints at this time. With the limited information available, I find that the patient has the presumption of lumbar spine injury from wearing a Sam Browne belt in his work as a police officer - as outlined in the Labor Code. I believe that it is more than reasonable that he suffered a cumulative trauma injury not just for the lumbar spine but also for the right knee. The patient has a history of previous right knee surgery and some mild apportionment may be indicated to that previous injury, however he reports doing very well with it and not having ongoing problems in the right knee for many years.

Again, final determination regarding apportionment will be made once the diagnostic testing results return.

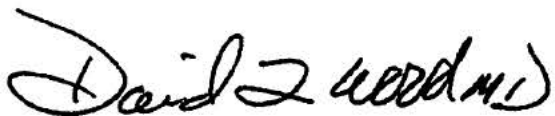
DECLARATION:

I declare under penalty of perjury that the information contained in this report and its attachments, if any, is true and correct to the best of my knowledge and belief, except as to information that I have indicated I received from others. As to that information, I declare under penalty of perjury that the information accurately describes the information provided to me and, except as noted herein, that I believe it to be true.

I further declare under penalty of perjury that I personally performed the evaluation of the patient, and that, except as otherwise stated herein, the evaluation was performed and the time spent performing the evaluation was in compliance with the guidelines, if any, established by the Industrial Medical Council or the administrative director pursuant to paragraph (5) of subdivision (j) of Section 139.2, Section 5307.6 or Rule 49.2 or 49.9 of the California Labor Code.

I further declare under penalty of perjury that I have not violated the provision of California Labor Code Section 139.3 with regard to the evaluation of this patient or the preparation of this report.

Pursuant to the Code of Civil Procedure 1010.6, this report is being electronically signed and dated in San Bernardino County.



Electronically signed by: David L. Wood, MD on June 23, 2014 at 9:19 am