

Jesus Maciel, et al. v Bethany Ann Jennings 15CVP0135

Re: Pitchess Motion

Date: July 11, 2017

Defendant has filed a “Pitchess” motion for disclosure of information from the Plaintiff’s personnel file in connection with Plaintiff’s claim for injuries sustained in a motor vehicle accident.

Since 2002, Plaintiff Jesus Maciel has been employed as a correctional officer with the Department of Corrections and Rehabilitation. He was not on duty when he was involved in a rear end motor vehicle accident on May 10, 2013. Plaintiff claims personal injury, loss of income and loss of earning capacity as a result of the accident. His interrogatory answers reflect ongoing pain from the neck to the mid back with tingling in the arms and fingers. In addition there is an indication of possible future surgery because of a herniated disc. The form interrogatories also reflect lost income in the amount of \$3,547.00 and a prior workers compensation claim pre-dating the accident that is related to a heart condition.

The Defendant has filed this motion requesting the following categories of documents that may be maintained by the CDCR in Plaintiff’s personnel file.

1. All documents related to all worker's compensation files and claims regarding Plaintiff;
2. All documents related to any physical injuries Plaintiff suffered while employed by the Department of Corrections, regardless of whether the injury was suffered at work;
3. All documents related to days and hours actually worked by Plaintiff;
4. All documents related to any requests for time off work by Plaintiff;
5. All documents related to any modifications or accommodations for limited or restricted duty for Plaintiff;
6. All correspondences, memos, or documents reflecting any communications between Plaintiff and the Department of Corrections regarding Plaintiff's ability to perform any specific job duties.

Defendant has properly served the motion that includes a declaration of good cause asserting that medical records are discoverable because Plaintiff has tendered his physical condition into the litigation.

CDCR’s opposition suggests that the motion is unnecessary because Plaintiff Maciel has not filed opposition. Plaintiff’s failure to respond in any fashion leads to an uncertainty of whether he has no opposition to the production of requested documents or whether his failure to respond is based upon the expectation that CDCR will assert Plaintiff’s interests.

CDCR also contends that the requested documents should have been sought directly from the Plaintiff before resort to the instant motion. There is no authority cited that requires taking this

initial step before seeking personnel records. As pointed out in moving party's reply brief, this motion is the only means of securing production from Plaintiff's personnel files.

CDCR finally argues that the showing of good cause and materiality is inadequate. Defendant contends that good cause for the production exists because Plaintiff has tendered his medical information into the litigation as well as wage loss and potential future wage loss.

Evidence Code §1043(b)(3) requires a motion to include an affidavit showing good cause for the discovery, setting forth the materiality thereof to the subject matter involved in the pending litigation.

This good cause requirement creates a “ ‘relatively low threshold for discovery.’ ” (*Warrick, supra*, 35 Cal.4th at p. 1019, 29 Cal.Rptr.3d 2, 112 P.3d 2; accord, *Gaines, supra*, 46 Cal.4th at p. 179, 92 Cal.Rptr.3d 627, 205 P.3d 1074 [“[a] showing of good cause [under Evidence Code section 1043] is measured by ‘relatively relaxed standards’ that serve to ‘insure the production’ for trial court review of ‘all potentially relevant documents’ ”].) If this threshold showing of good cause is met, the trial court must then review the pertinent documents in chambers in conformity with Evidence Code section 915 and disclose only that information falling within the statutorily defined standards of relevance. *Riske v. Superior Court* (2016) 6 Cal.App.5th 647, 655–56; See also Weil & Brown, *Civil Procedure Before Trial* (TRG 2017) §8:127.4

CDCR argues that the time frame of the requests is overbroad and that the breadth of the request for information of other injuries, time off and the ability to perform duties may include issues that have not have been tendered into the litigation. This has an impact on materiality of the information as well as plaintiff's privacy interests.

At this juncture the Court concludes that there is good cause for production as to most of the categories requested. However, the Court has some reservation as to the materiality of some of the categories because the scope of the requests and time frames are quite broad. For example, the request for all workers' compensation claims and all injuries suffered may include reference to medical conditions that have not been tendered into the litigation and are not relevant or material. Similarly, requests for all documents reflecting time off in Plaintiff's career appears overbroad and the majority of the information lacks materiality. On the other hand, the Court recognizes that such requests are typically broad in an effort to provide the fullest response for *in camera review*.

The Plaintiff and Defendant, in consultation with counsel for the CDCR, shall meet and confer to address whether more narrowly described categories for the document requests are warranted. In addition they shall consider whether any production can be made without additional court intervention.

Finally the parties shall meet and confer to address an appropriate protective order for the documents that will actually be produced. The parties should report to the court on their ability to address these issues and the court will determine a date for the *in camera review* of the file.