

ATTACHMENT C
RESPONDENT'S ARGUMENT

Richard E. Elder

Mark D. Berg

ELDER and BERG

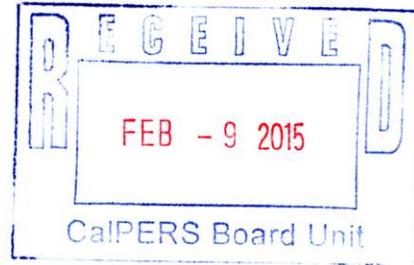
Association of Attorneys
3107 Clayton Road
Concord, CA 94519

(925) 676-7991
(800) 242-COMP
FAX (925) 676-3680
elderandberg@gmail.com

VIA FAX TO 916 795 3972

February 4, 2015

Cheree Swedensky, Assistant to the Board
CalPERS Executive Office
P.O. Box 942701
Sacramento, Ca. 94229-2701



Re: In the Matter of the Reinstatement from Industrial Disability Retirement of EUGENE M. HENRICH, Respondent, and the CALIFORNIA CORRECTIONAL CENTER, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, Respondent

Dear Ms. Swedensky:

Enclosed please find RESPONDENT'S ARGUMENT of Eugene Henrich which is on the Board Calendar for February 19.

Respondent argues that this case does NOT HAVE precedential value.

Respondent argues that the Board SHOULD ADOPT the proposed decision of ALJ Wong.

I am NOT serving this letter or Respondent's Argument on the parties as I understand proper procedure is for such Argument to be served "simultaneously" by your office to the Board and to the parties.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Richard E. Elder, Jr.", written over a blue line.

RICHARD E. ELDER, JR.

REE:ree

Enclosure Respondent's Argument

1 RICHARD E. ELDER, JR., 46685
Elder and Berg
2 3107 Clayton Road
Concord, CA 94519
3 (925) 676-7991

4 Attorneys for Respondent Eugene Henrich

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6 **BEFORE THE BOARD OF ADMINISTRATION**
7 **CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**
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10 IN THE MATTER OF THE)
11 REINSTATEMENT FROM INDUSTRIAL) RESPONDENT'S ARGUMENT
12 DISABILITY RETIREMENT OF EUGENE)
13 HENRICH,) February 19, 2015 Calendar
14 Respondent, and the)
15 CALIFORNIA CORRECTIONAL CENTER,)
16 CALIFORNIA DEPARTMENT OF)
17 CORRECTIONS AND REHABILITATION,
18 Respondent)

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22 COMES NOW RESPONDENT, EUGENE HENRICH, Real Party in Interest herein and submits
23 this "Respondent's Argument".

24 Respondent was granted Industrial Disability Retirement in 2006 from his work as
25 Corrections Officer. The current litigation involves Accusation by CalPERS as Petitioner to
26 withdraw Mr. Henrich's disability retirement.

27 After required notices, hearing was held before Administrative Law Judge, Coren D. Wong
28 who, on November 10, 2014 issued his Proposed Decision, Summary and Proposed Order:

1 "Respondent Eugene M. Henrich's appeal from CalPERS's determination that he is no
2 longer permanently substantially incapacitated for the performance of the usual duties of a
3 Correctional Officer and should be reinstated to his former position is GRANTED. The Accusation
4 is therefore DISMISSED."

5 Judge Wong found CalPERS had not carried its burden.

6 Respondent, Eugene Henrich, of course, agrees with Judge Wong and asks that CalPERS
7 accusation be DISMISSED and that the Proposed Decision be adopted.

8 Respondent, Eugene Henrich, argues that this case does NOT have value as precedent. This
9 is merely a case where CalPERS felt there may be some evidence of recovery, but, at least by trial,
10 it became clear that the preponderance of evidence does not prove Mr. Henrich is no longer
11 permanently and substantially incapacitated for the performance of his usual duties.

12 Respondent expects CalPERS counsel to agree that the Board should adopt Judge Wong's
13 Proposed Decision, thus allowing Mr. Henrich to continue on industrial disability retirement.

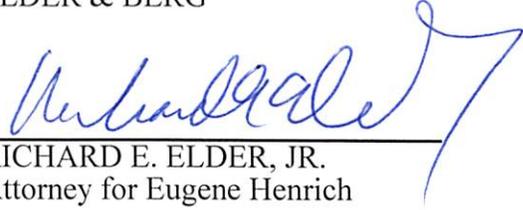
14 There is no substantial question that Petitioner, CalPERS, has NOT carried its burden to
15 prove that Mr. Henrich is no longer permanently substantially incapacitated for the performance of
16 his usual duties.

17 CONCLUSION: Respondent Eugene Henrich asserts the Board of Administration of
18 CalPERS should follow Government Code 11517 and "Adopt the proposed decision (of ALJ Wong,
19 dated November 10, 2014, filed Nov. 14, 2014) in its entirety."

20 DATED: February 4, 2015

21 ELDER & BERG

22
23 By:


24 RICHARD E. ELDER, JR.
25 Attorney for Eugene Henrich
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