

ATTACHMENT C
RESPONDENT'S ARGUMENT

Attachment C

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9 **BOARD OF ADMINISTRATION**
 10 **CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

11 In the Matter of the Application for Industrial
12 Disability Retirement,

13 **Case No.: 2014-0095**
14 **OAH No.: 2014-070071**

15 CAROL A. GONZALES,
 16 Respondent,
 17 and

18 **RESPONDENT, CAROL A GONZALES'**
19 **ARGUMENT**

20 PLEASANT VALLEY STATE PRISON,
 21 CALIFORNIA DEPARTMENT OF
 22 CORRECTIONS AND
 23 REHABILITATION,
 24 Respondent.

25 **I. INTRODUCTION**

26 Respondent, CAROL GONZALES (hereinafter "**Ms. Gonzales**"), is a Licensed
 27 Vocational Nurse and has been employed with Pleasant Valley State Prison since 2006. Ms.
 28 Gonzales performed her duties as a LV Nurse until she began to feel numbness and tingling in
 her fingertips, all affecting her work abilities, in 2011. At that point in time, Ms. Gonzales
 began receiving treatment for carpal tunnel syndrome in her right hand, including her first
 surgery performed by Dr. Johnson in November 2011.

Following her first surgery, Ms. Gonzales returned to work in March of 2012, however
 she continued to have the same issues, and also new conditions in her left hand and right elbow.
 Ms. Gonzales went back on leave with her employer as of July 2012, and has not returned to
 work based on her continued orthopedic condition.

Since 2011, Ms. Gonzales has had four surgeries, all addressing the carpal tunnel in her
 right hand, including the right trigger finger, right elbow and left hand, all to no avail.

1 Symptoms regarding these conditions, as first recognized beginning in 2011 and 2012, are still
2 in place today and continue to be an issue for Ms. Gonzales in her day-to-day life.

3 The Administrative Law Judge incorrectly ignored facts and evidence regarding Ms.
4 Gonzales' condition, and as such, we disagree with the Proposed Decision. Ms. Gonzales was
5 incapable at the time of her application, and still remains substantially incapable, of performing
6 her duties as a LV Nurse, and therefore is disabled under the CalPERS definition of "disabled"
7 (Gov. Code § 20026), and is entitled to the disability retirement benefits as requested.

8
9 **II. STATEMENT OF FACTS**

10 The following is a timeline of Ms. Gonzales' relevant conditions, treatments and
11 evaluations:

- 12 • August 15, 2011- First went on leave from work for injury
- 13 • November 14, 2011- First surgery, performed by Dr. Johnson, for right carpal tunnel syndrome
- 14 • March 9, 2012- Returned to work
- 15 • July 18, 2012- Went back out on leave from work for continued issues with right hand, as well as new issues with left hand and right elbow
- 16 • November 15, 2012- Second surgery, performed by Dr. Johnson, for left carpal tunnel release and right cubital tunnel release on elbow
- 17 • April 9, 2013- Application for Disability Retirement completed, a process initiated by Ms. Gonzales' employer, Pleasant Valley State Prison
- 18 • April 15, 2013- Third Surgery, performed by Dr. Johnson, right carpal tunnel surgery redone
- 19 • August 12, 2013- IME conducted by Dr. Serra
- 20 • February 24, 2014- QME conducted by Dr. Mandell
- 21 • August 19, 2014- Fourth Surgery, performed by Dr. Galli, on right thumb

22 In August 2011, Ms. Gonzales went on leave from work due to an injury to her right
23 hand. She has seen a number of doctors and undergone numerous evaluations, tests, and
24 surgeries to date to address conditions in both hands, as well as her right elbow. Ms. Gonzales
25 initially tried conservative treatments, but eventually it was determined that her condition
26 required surgery. The first surgery was performed in November 2011, after which time, Ms.
27 Gonzales was placed on modified work, including no forceful pushing, pulling, gripping or
28 twisting with the right arm.

Ms. Gonzales attempted to go back to work following the first surgery, but went on

1 leave from work again in July 2012, due to continued injuries in her right hand, as well as
2 injuries to her left hand and right elbow, and has not been able to return to work.

3 Ms. Gonzales' second surgery was performed in November 2012. Following the
4 second surgery, she continued to have pain, including numbness in the fingertips. By
5 December 2012, her symptoms had increased and were worse than before the surgery and she
6 continued to have numbness in the fingers.

7 The third surgery was performed in April 2013. In May 2013, additional nerve studies
8 were conducted and in June 2013, an MRI of her spine was performed, as her condition had not
9 improved. By July 2013, she was being treated for a triggering thumb. In August 2013 and
10 October 2013, Ms. Gonzales received three injections in the right hand.

11 A QME was conducted in February 2014 in regard to Ms. Gonzales' Worker's
12 Compensation matter by Dr. Peter J. Mandell, and it was noted that tenderness in the right
13 elbow and both palms remained. She had a slight triggering in the right thumb and weakness of
14 her bilateral ulnar nerve. During the QME, Dr. Mandell determined that she could not return to
15 work and was eligible for supplemental job displacement benefits. It was further determined
16 that 100% of the causation of her impairment was a direct result of cumulative trauma on the
17 job and her condition had become permanent, stationary and ratable.

18 Ms. Gonzales' fourth surgery on her right trigger thumb was performed in August 2014.

19 An exam was conducted in May 2015, wherein Ms. Gonzales continued to have
20 occasional pain in the left elbow. Pushing, pulling, lifting, and carrying was difficult and
21 caused pain, and to date she does not lift more than 5 pounds, and continues to have numbness
22 in her hand.

23 **III. ARGUMENT**

24 **A. ALJ's Misinterpretation of *In the Matter of the Application for Disability***
25 ***Retirement of Ruth A. Keck, Respondent, and LA Co. Schools, Respondent,***
26 ***dated May 16, 2000 Caused Relevant Evidence to be Wrongly Excluded***
from the Record

27 As stated in the ALJ's Proposed Decision, "The worker's compensation reports were
28 not admitted; the reports offer conclusions based on the legal standard for worker's

1 compensation determinations and not the CalPERS disability standard”, citing *Los Angeles*
 2 *County School District (Keck)* (2000) CalPERS Dec. No. 00-05, Factual Findings 21. The
 3 Proposed Decision goes on to state, “as such, the reports are not relevant or helpful to resolve
 4 the disability claim at issue”, also citing *Keck* as the authority for the finding.

5 In *Keck*, the doctor who applied the CalPERS’ disability standard was found to be
 6 “more credible, reliable and persuasive” when compared to the other doctors, however,
 7 nowhere in the decision is it stated that all medical records in which doctors apply a different
 8 standard, including the worker’s compensation disability standard, were to be ignored in their
 9 entirety.

10 Not only were Ms. Gonzales’ medical records that were offered as evidence analyzed
 11 by Dr. Serra and relied upon in his IME Report, but they were considered in the Board’s initial
 12 decision. The standards between Worker’s Compensation claims and CalPERS claims may be
 13 different, and we do not contend this, however, the medical records that were not included in
 14 the record are documents that outline Ms. Gonzales’ condition and are **very relevant** to these
 15 proceedings, as they are the basis for the denial. The difference in standard goes to the weight
 16 of the evidence, not its admissibility, and therefore these records were improperly excluded.
 17 Without consideration of the records, a full analysis of Ms. Gonzales’ condition was not
 18 conducted by the ALJ in her Proposed Decision, and therefore does not capture the true nature
 19 of Ms. Gonzales’ case.

20 **B. Dr. Serra’s Exam and Report Fail to Properly Represent Ms. Gonzales’**
 21 **Actual Condition**

22 Dr. Serra, as indicated above, conducted an IME on Ms. Gonzales on August 12, 2013.
 23 The report prepared by Dr. Serra, as well as the testimony provided by him at the appeal
 24 hearing, reveal multiple elements that were overlooked in coming to his conclusions regarding
 25 Ms. Gonzales’ condition.

26 Dr. Serra’s report states that he spent “Approximately 1 hr 25 min” face to face with
 27 Ms. Gonzales regarding her history and physical examination. According to Dr. Serra’s
 28 testimony at the appeal hearing, this is an average time IME exams last, not necessarily the

1 actual time spent with Ms. Gonzales. Ms. Gonzales recalls the appointment being much shorter
 2 in time. Even though, Dr. Serra reviewed most, if not all, of Ms. Gonzales' medical records
 3 through June 2013, he found his short physical examination of her to hold greater weight in his
 4 evaluation- practically ignoring any other doctor's evaluation of Ms. Gonzales' condition.

5 Dr. Serra's report states there are "no specific job duties" that Ms. Gonzales could not
 6 perform, however his report gives no details regarding his conclusions. This conclusion, as
 7 well as his statement that there are "significant exaggeration of complaints", ignores both
 8 statements made by Ms. Gonzales' treating physicians, as well as statements made by Dr. Serra
 9 based on his examination. For example, Dr. Serra's report states "Neurological examination of
 10 upper extremities reveals thumb/index pinch to be weak bilaterally." This directly correlates
 11 with Ms. Gonzales' inability to give proper injections and difficulty in handling medications,
 12 which are both specific job duties affected by this symptom.

13 The IME report makes note of Dr. Johnson's March 27, 2013 record which stated that
 14 Ms. Gonzales has recurrent carpal tunnel and that he was concerned as to why the symptoms
 15 had occurred. Also, the report notes Dr. Sorenson's April 3, 2013 report that Ms. Gonzales was
 16 substantially incapacitated and that he felt it to be permanent. Neither of these notes were
 17 addressed within Dr. Serra's conclusion, and they should not be ignored.

18 Finally, as previously stated, Ms. Gonzales had a QME conducted by Dr. Mandell on
 19 February 24, 2014. Although Dr. Mandell may have applied a different standard to come to his
 20 final conclusion regarding Ms. Gonzales' condition, he found a thirty percent (30%) upper
 21 extremity impairment on her right side and a ten percent (10%) impairment on her left. By
 22 ignoring these records, neither Dr. Serra's conclusions nor the Proposed Decision encompass
 23 the full parameters of Ms. Gonzales' condition, and therefore should be considered in the final
 24 determination as to her disability status.

25 **C. Ms. Gonzales is Disabled Under Government Code Section 20026's**
 26 **Definition and Therefore Should be Granted Disability Retirement Benefits**

27 As a LV Nurse, Ms. Gonzales is expected to conduct normal duties of patient care. As
 28 a LV Nurse working in a prison, there are certain job duties that involve greater physical

1 requirements, including opening heavy prison doors or lifting the medical bag to transport from
2 one area to another. Both of these categories of duties are not only difficult, but are at times,
3 impossible for Ms. Gonzales based on her condition.

4 While still at work, Ms. Gonzales' dropped syringes and medications due to the
5 numbness in her hands and her inability to grip these small objects. Also, following her first
6 surgery, Ms. Gonzales failed a CPR test because her condition made it impossible to give
7 compressions on the dummy. An LV Nurse that is unable to give injections or give proper
8 CPR is direct evidence of an individual that is substantially incapable of doing the required
9 work duties.

10 Everyday tasks are also a struggle for Ms. Gonzales, including doing dishes and
11 housework. Ms. Gonzales cannot even go to the grocery store alone, because of the strain
12 merely pushing the cart puts on her body.

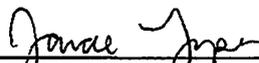
13 Ms. Gonzales has been coping with the conditions and symptoms, as represented in her
14 Application, for over four years. There is no evidence that her bilateral wrists and hands and
15 right elbow will improve, and she continues to have issues that do not allow her to complete her
16 required work tasks. Ms. Gonzales is disabled under the definition presented in the
17 Government Code, and is substantially incapable for performing her duties as a LV Nurse at
18 Pleasant Valley State Prison, and therefore her application for industrial disability benefits
19 should be approved.

20
21 **IV. CONCLUSION**

22 It is respectfully requested that the Proposed Decision be rejected and that Ms. Gonzales
23 be granted her Disability Retirement as requested.

24 Dated: November 5, 2015

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In the Matter of the Application for Industrial Disability Retirement of CAROL A. GONZALES, Respondent, and PLEASANT VALLEY STATE PRISON, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, Respondent

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