

**ATTACHMENT C**  
**RESPONDENT(S) ARGUMENT(S)**

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CalPERS Board Unit

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FROM: Thomas J. Wicke

RE: In the Matter of the Cancellation of the Application for Industrial Disability Retirement of Kevin Davey, Respondent, and California Department of Corrections Correctional Institute and Rehabilitation, CA, Respondent - Respondent, Kevin Davey's Argument

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MESSAGE:

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Re: In the Matter of the Cancellation of the Application for Industrial Disability Retirement of **KEVIN DAVEY**, Respondent, and **CALIFORNIA DEPARTMENT OF CORRECTIONS CORRECTIONAL INSTITUTE AND REHABILITATION, CA**, Respondent.  
**RESPONDENT, KEVIN DAVEY'S ARGUMENT**  
Case No. 2013-0987  
OAH No. 2014120371

Dear Ms. Swedensky:

Respondent, Kevin Davey, hereby submits his written argument in opposition to Coren D. Wong, Administrative Law Judge's Decision dated December 28, 2015.

The Decision, cancels Mr. Davey's Application for an Industrial Disability Retirement pursuant to Haywood v. American River Fire Protection District (1998) 67 Cal.App.4<sup>th</sup> 1292.

While Respondent does not concur with the legal analysis of the Decision, nevertheless, a separate and distinct argument addressed by the Decision requires the matter to be remanded to the Administrative Law Judge.

Besides the legal arguments that were analyzed by the Administrative Law Judge, independently, Respondent Davey argued that the basis for his conduct leading to his inappropriate actions, subsequent termination, and later resignation were in part related to an industrial injury.

Ms. Cheree Swedensky, Assistant to the Board

Re: In the Matter of the Cancellation of the Application for Industrial Disability Retirement of KEVIN DAVEY, Respondent, and CALIFORNIA DEPARTMENT OF CORRECTIONS CORRECTIONAL INSTITUTE AND REHABILITATION, CA, Respondent.

February 1, 2016

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Respondent Davey experienced an industrial injury while working as a Supervising Registered Nurse II for the California Department of Corrections and Rehabilitation (CDCR) and specifically at the California Corrections Institute in Tehachapi (CCI). The industrial injury which is not disputed required treatment with medication.

In August of 2008, Respondent Davey took an industrial leave of absence as a result of his internal and psychological disabilities. At the time he was under the care of Dr. Susan Cribbs. Dr. Cribbs was listed as a witness for the hearing, but was unavailable at the time the hearing was conducted on October 13, 2015.

As an offer of proof, Respondent Davey presented that Dr. Cribbs would provide testimony concerning her care and treatment of Mr. Davey during his industrial leave of absence. The industrial medical condition treated with medication combined with alcohol caused Davey's inappropriate actions.

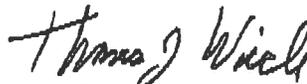
Pursuant to Government Code Section 21154, an Application for Disability Retirement may be made while in state service, ... within four months after discontinuance of state service, or "while the member is physically and mentally incapacitated to perform duties from the date of discontinuance of state service to the time of application or motion."

If in fact there was a medical basis for Respondent Davey's errant behavior, he should have the right to present evidence on that subject. Otherwise, Government Code Section 21154 has no meaning.

Respondent Davey respectfully requests the Board not decide this matter and remand it to the Administrative Law Judge for further proceedings so that Respondent Davey's due process rights of establishing continuing disability can be made.

Respectfully submitted,

LEWIS, MARENSTEIN, WICKE, SHERWIN &  
LEE, LLP

  
THOMAS J. WICKE

TJW:tah

cc: Kevin Davey