

ATTACHMENT C
RESPONDENT'S ARGUMENT

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9 Representative for Respondent,
10 KERRI A. HAWKINS

11 BEFORE THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM

12 STATE OF CALIFORNIA

13 KERRI A. HAWKINS,
14 Respondent,

15 And

16 DEPARTMENT OF HIGHWAY PATROL,
17 Respondent,

Case No. 9109

OAH No. 2010020578

OPPOSITION TO PETITION FOR
RECONSIDERATION FILED BY
RESPONDENT DEPARTMENT OF
HIGHWAY PATROL BY KERRI A.
HAWKINS

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20 I.
21 INTRODUCTION

22 The Honorable Matthew Goldsby heard this matter concerning the Application for Reinstatement
23 from Industrial Disability Retirement and rendered his proposed decision that Kerri Hawkins is
24 capable of performing the usual duties of a CHP sergeant and denied the CHP appeal.

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II.

PETITIONER'S ARGUMENT

The Department of Highway Patrol has always based the argument against reinstatement on conditioning the reinstatement upon compliance with the criteria found in Government Code §1031. (Further statutory references are to the Government Code unless otherwise noted.) A review of its Points and Authority dated March 14, 2011, reveal that it is cited *in passim*. Upon remand the Department of Highway Patrol was forced to abandoned that position and change the theory of case based on the decision in, *California Department of Justice v. Board of Administration of California Public Employees' Retirement System, Angelita Resendez, and the State Personnel Board*, (2015) 242 Cal. App. 4th 133, 194 Cal. Rptr. 3d 619, 81 Cal. Comp. Cases 1. That case held that a reinstatement determination by the Board of Administration of the California Public Employees' Retirement System under §§ 21191, 21192, was properly based on the condition for which a state peace officer had received disability retirement under §§ 20026, 20046, 21151, subd. (a), **without further determining whether the peace officer met the § 1031, minimum standards**; the employing agency had a mandatory duty under § 21193, to reinstate the peace officer after the determination that the officer was no longer incapacitated; and the agency **did not have authority to condition reinstatement on medical and psychological evaluations.**

The Department of Highway Patrol now challenges the decision based on a hearsay argument as it deals with the report of Dr. Lawrence Albers. What that argument lacks is the acknowledging that the Albers' report supports the findings of Dr. Goldsmith, who testified at the hearing before the matter was remanded. Because of that fact, the report is admissible because it is supplementing or explaining other evidence as permitted under §11513 (d); also see *Berg v. Davi* (2005) 130 Cal.

1 App. 4th 223, 29 Cal. Rptr. 3d 803; and *Komizu v. Gourley* (2002) 103 Cal. App. 4th 1001, 127 Cal.
2 Rptr. 2d 229.

3
4 CalPERS selected psychiatrist Dr. Albers who conducted a face to face evaluation of Hawkins
5 using the CalPERS established guidelines. He authored a report dated March 12, 2012. Dr. Albers
6 reviewed all medical pertinent reports and opined that there was no indication that Hawkins is
7 unable to perform any specific job duties due to a physical or mental condition; she was not
8 substantially incapacitated for the performance of her duties; further qualifying that he did
9 not believe she was incapacitated for performing her job.
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12 **III.**
13 **CONCLUSION**

14 All of the experts agree that Hawkins is asymptomatic. This lends support to the argument of being
15 reinstated. The Department of Highway Patrol is only left to speculate as to what might occur, if
16 anything, in the future. Hawkins has met the CalPERS criteria for reinstatement.

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18 The Department of Highway Patrol's argument that Dr. Albers' report is not properly before the
19 Board is without merit.

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21 DATE: April 18, 2016

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23 Respectfully submitted,

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26 Anthony M. Santana
27 CALIFORNIA ASSOCIATION OF HIGHWAY PATROLMEN
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DECLARATION OF SERVICE

RE: IN THE MATTER OF KERRI HAWKINS – Case No.: 2010020578

I declare that I am employed in the County of Sacramento, California. I am over the age of 18 years and not a party to the within entitled cause; my business address is 2030 V Street, Sacramento, CA 95818.

On April 18, 2016, I served the attached:

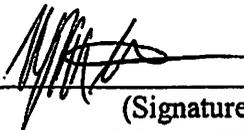
**OPPOSITION TO PETITION FOR RECONSIDERATION FILED BY RESPONDENT
DEPARTMENT OF HIGHWAY PATROL BY KERRI A. HAWKINS**

By placing for posting via the U.S. mail as follows:

Stephen Mesi
Deputy Attorney General
Department of Justice
300 South Spring Street, Ste. 1720
Los Angeles, CA 90013

Rory J. Coffey
Senior Staff Counsel
CALPERS
PO Box 942707
Sacramento, CA 94229-3659

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at Sacramento, California, on April 18, 2016.



(Signature)
Megan White