

**ATTACHMENT D**  
**PROPOSED DECISION**

BEFORE THE  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
STATE OF CALIFORNIA

In the Matter of the Application for  
Reinstatement from Industrial Disability  
Retirement of:

Case No. 9109

OAH No. 2010020578

KERRI A. HAWKINS,

Respondent,

and

DEPARTMENT OF CALIFORNIA  
HIGHWAY PATROL,

Respondent.

**PROPOSED DECISION**

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearings (OAH), heard this matter on May 12, 2015, in Los Angeles, California (Remand Hearing).

Rory J. Coffey, Senior Staff Attorney, represented petitioner Mary Lynn Fisher, Chief, Benefit Services Division, California Public Employees' Retirement System (CalPERS).

Sierdip Khangura, Deputy Attorney General, represented respondent Department of California Highway Patrol (CHP).

Anthony M. Santana, Staff Attorney with the California Association of Highway Patrolmen, represented respondent Kerri A. Hawkins (respondent Hawkins), who was present throughout the hearing.

This matter was originally heard by Administrative Law Judge Amy C. Lahr who issued a Proposed Decision on April 14, 2011. The Board of Administration (Board) decided not to adopt the Proposed Decision and to remand the case to the administrative law judge for the taking of additional evidence. (See Factual Finding 2.) Oral and documentary evidence was received at the Remand Hearing.

CALIFORNIA PUBLIC EMPLOYEES'  
RETIREMENT SYSTEM  
FILED Feb. 10 20 16

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REPUBLIC OF CALIFORNIA  
BOARD OF ADMINISTRATION  
CALIFORNIA RETIREMENT SYSTEM

MEMORANDUM FOR THE BOARD OF ADMINISTRATION  
SUBJECT: [Illegible]

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MEMORANDUM FOR THE BOARD OF ADMINISTRATION

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The record was held open to June 26, 2015, to allow the parties to file any factual stipulations by May 22, 2015, and to file closing briefs.

All parties timely filed stipulations to certain facts; the stipulations were collectively marked for identification as Exhibit 57.

All parties timely filed closing briefs. CalPERS's brief was marked for identification as Exhibit 58. Respondent Hawkins's brief was marked for identification as Exhibit 59. Respondent CHP's brief was marked for identification as Exhibit 60.

The matter was submitted for decision on June 26, 2015. The administrative law judge makes the following factual findings based on the stipulations of the parties, all documents admitted into evidence,<sup>1</sup> testimony from the Remand Hearing, and the transcripts of proceedings held July 30, 2010, and January 4, 5, and 26, 2011 (see Factual Finding 2).

### FACTUAL FINDINGS

1. Petitioner filed the Statement of Issues in her official capacity. The statement of issues defines the primary issue in the case as follows: "This appeal is limited to the issue of whether respondent Hawkins is presently capable of performing the usual job duties of a CHP sergeant." (Ex. 1.)

2. This matter was initially heard and submitted for decision on March 15, 2011, and Administrative Law Judge Amy C. Lahr issued a Proposed Decision on April 14, 2011. On June 15, 2011, the Board decided not to adopt the Proposed Decision and to remand the matter to the administrative law judge for the taking of additional evidence. On November 6, 2013, the Board remanded the matter to OAH. On March 10, 2014, OAH issued a Notice of Remand and Order Thereon.

3. Respondent Hawkins was employed by CHP since 1987. She began as a state traffic officer, and was promoted to sergeant in March 1997. She worked as a sergeant until May 28, 2003. By virtue of her employment, respondent Hawkins is a state safety patrol member of CalPERS.

4. The State Personnel Board (SPB) defined the position of sergeant in a document entitled "Sergeant, California Highway Patrol" (Job Description). Pursuant to the Job Description, respondent Hawkins was responsible for the following duties, among others, as a CHP sergeant: conducting accident investigations, including fatalities; monitoring and

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<sup>1</sup> Original documents for Exhibits 1-50 were unavailable at the Remand Hearing. Counsel for CHP furnished a binder and the parties stipulated that the binder contained a true and complete set of unmarked copies of all exhibits offered by all parties in the prior hearing, including all documents that were admitted into evidence. The copies of exhibits were re-marked for identification purposes, in accordance with the exhibit list furnished by counsel.

supervising subordinates in the field; directing and evaluating officer-involved shootings; engaging in law enforcement; and acting as incident commander and dispute mediator.

5. Exercising sound judgment in carrying out the duties of a sergeant is critical to the position because the safety of the motoring public and the officer could be in jeopardy at any time. It is important that a CHP sergeant be mentally and emotionally fit for the job because of the danger involved, in part because they carry firearms. In addition, a CHP sergeant's daily tasks involve driving a vehicle during law enforcement and being mentally sharp enough to assess dangerous situations.

6. Respondent Hawkins most recently worked with the Multidisciplinary Accident Investigation Team (MAIT). Respondent Hawkins was selected as a MAIT Supervisor in 1998. In that capacity, she supervised a team that was required to respond to all significant fatal accidents, accidents involving shootings by officers, and spills of hazardous materials. The MAIT team received about 80 to 100 calls per year, although not every call required their response to an accident scene. There were approximately four to five accidents per month that required the MAIT team's response, and in addition, respondent Hawkins had an active caseload of approximately 20 to 30 open matters per month. Respondent Hawkins was required to respond personally to all of the significant fatal accidents, shootings, and hazardous material spills. At the scene, she assigned team members to different tasks, and she also personally conducted investigation work. In the course of this work, respondent Hawkins witnessed many traumatic scenes of death and major injury, and it was sometimes necessary for her to work extended hours without proper rest or meals. In short, the high intensity, massive caseload, combined with the disturbing content of the work, was stressful.

7. Beginning shortly after her assignment to MAIT, respondent Hawkins began to suffer generalized anxiety, sleep disorders, and stress. In 1998, the year she was assigned, she began seeing a licensed clinical therapist for the treatment of the initial stages of depression. She consulted with her regular physician and was prescribed antidepressants and sleep medications. In April 2000, she was involved in a work-related automobile accident in which her vehicle was damaged beyond repair and her passenger suffered a back injury. Respondent Hawkins suffered only minor physical injury, but the incident aggravated her symptoms of depression and anxiety. In December 2000, respondent Hawkins fainted due to internal bleeding and was hospitalized. She was diagnosed with gastritis and an upper gastrointestinal bleed.

8. On March 9, 2001, respondent Hawkins filed a Claim for Workers Compensation Benefits based on injuries caused by the "cumulative trauma from repeated exposure to critical incident scenes." (Ex. 32.) Respondent Hawkins claimed that her injuries included Post-Traumatic Stress Disorder (PTSD), gastrointestinal bleeding, gastritis, anxiety, sleeplessness, and nausea. Respondent Hawkins was off work for several months.

9. On January 6, 2003, respondent Hawkins was evaluated by psychiatrist, Thomas Curtis, M.D. (Dr. Curtis). After interviewing respondent Hawkins, reviewing historical data, conducting a mental status examination, and considering psychological test results, Dr. Curtis

diagnosed respondent Hawkins with PTSD with anxiety. He concluded that respondent Hawkins was “temporarily partially disabled on an emotional basis while continuing to work in her regular job” and that she was “in need of emotional treatment.” (Ex. 49.)

10. Thereafter, respondent Hawkins sought treatment from psychologist Lawrence Blum, Ph.D. (Dr. Blum). Dr. Blum diagnosed respondent Hawkins with PTSD. He certified that respondent Hawkins was temporarily totally disabled and CHP removed respondent Hawkins from active duty on May 28, 2003.

11. On October 16, 2003, respondent Hawkins filed an application for industrial disability retirement. She stated in her application that her disability was attributed to gastrointestinal bleeding, headaches, PTSD, and depression.

12. On April 27, 2004, respondent Hawkins was examined by Katalin Bassett, M.D. (Dr. Bassett). After conducting psychological and cognitive testing, interviewing respondent Hawkins, reviewing historical data, and conducting a mental status examination, Dr. Bassett diagnosed respondent Hawkins with PTSD and gastrointestinal disorders. Dr. Bassett concurred with Dr. Blum’s assessment that respondent Hawkins was temporarily totally disabled on May 28, 2003. Dr. Bassett reported to CalPERS: “Because all the work as a peace officer inherently involves dealing with scenes that would evoke post-traumatic memories, it is not possible for [respondent Hawkins] to return to modified work as a peace officer, without serious risk of an exacerbation of her current mental and physical disorders.” (Ex. 47.)

13. On August 11, 2004, CalPERS approved respondent Hawkins’s application for industrial disability retirement benefits and she was removed from active duty.

14. On October 14, 2004, respondent Hawkins was examined again by Dr. Bassett. Dr. Bassett reported to CalPERS that respondent Hawkins was “unable to work around accidents and witness bloody crime scenes. She probably would develop significant gastrointestinal symptoms and an exacerbation of her [PTSD] if she was to return to her original job as a [CHP sergeant].” (Ex. 54.)

15. From approximately 2004 through 2007, respondent Hawkins lived in Kauai, Hawaii. In 2005, she began work for the Kauai Police Department performing background checks. During this period, her gastrointestinal bleeding and migraine headaches decreased.

16. Respondent Hawkins moved back to Los Angeles in 2007. By April 2007, respondent Hawkins was asymptomatic of PTSD.

17. On April 5, 2007, respondent Hawkins applied to CalPERS for reinstatement from her industrial disability retirement (Application). (Ex. 5.) Respondent Hawkins testified

that she felt capable of performing duties regarding investigating fatalities, officer shootings, and all other duties associated with the CHP sergeant position.<sup>2</sup>

18. The CHP has established written procedures for reinstatement, set forth in Chapter 3 of its Highway Patrol Manual 10.3. The policy mandates that "an employee who applies for reinstatement and is no longer incapacitated for duty in the position held when retired for disability, or in a position in the same classification, shall be reinstated, at his/her option." (Ex. 25.) An applicant must successfully complete a psychological evaluation prior to reinstatement.

19. CalPERS retained William Goldsmith, M.D. (Dr. Goldsmith), to perform a psychiatric evaluation of respondent Hawkins. Dr. Goldsmith examined and interviewed respondent Hawkins on November 26, 2007. He reviewed historical data and medical records, and conducted a mental status examination. In his Independent Medical Evaluation Report (IME Report), Dr. Goldsmith reported to CalPERS that, in his opinion, respondent Hawkins was "motivated and competent to return to her former position for the California Highway Patrol." (Ex. 13.)

20. CalPERS approved respondent Hawkins for reinstatement from retirement as a sergeant with CHP. On January 25, 2008, CalPERS notified CHP and respondent Hawkins of its determination. (Ex. 7.)

21. On February 8, 2008, CHP delivered to CalPERS a memorandum entitled "INFORMAL APPEAL OF REINSTATEMENT," notifying CalPERS that "the testing process and background investigation may not be completed within 30 days. We will advise you of our position regarding [respondent Hawkins's] reinstatement after the testing and background review process has been completed." (Ex. 8.)

22. On June 10, 2008, at the request of SPB, respondent Hawkins was evaluated by David Steinberger, Ph.D. (Dr. Steinberger). Dr. Steinberger reported: "Although [respondent Hawkins] presents favorably, her level of former incapacitation is sufficiently severe so as to demand a longer period of stability than is currently the case. There are concerns that re-exposure to traumatic stimuli might well trigger recurrence of her former issues. Adequate assurance that [respondent Hawkins] will rebound to a level of productive, premorbid functioning cannot be ascertained at this point." (Ex. 39.) Dr. Steinberger noted: "[Respondent Hawkins] grew 'sick' over a several-year period wherein she felt '(like) I had the stomach flu and was tired all the time.' By December 2000, [respondent Hawkins] 'collapsed' and was diagnosed with a GI bleed." (Ex. 39.) Dr. Steinberger found that respondent Hawkins did not

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<sup>2</sup> The Application gave rise to the issue as to whether respondent Hawkins was presently capable of performing the duties of a CHP sergeant. The following findings are based on direct evidence relevant to the issue and administrative hearsay that explains or supplements respondent Hawkins's testimony that she was presently able to work. (Gov. Code, § 11513, subd. (d).)

meet the psychological qualifications required by Government Code section 1031, subdivision (f).<sup>3</sup>

23. Based on Dr. Steinberger's report, SPB determined that respondent Hawkins had not passed the psychological screening for reinstatement. SPB informed CHP and respondent Hawkins that the reason for its decision was that respondent Hawkins had "insufficient stress tolerance for the position sought." (Ex. 40.) CHP notified respondent Hawkins that she could not be appointed to her former peace officer position according to Government Code section 1031, subdivision (f).

24. On June 27, 2008, respondent Hawkins appealed SPB's decision. She asserted her opinion and belief that the action was "unjustified and not reflective of my ability and suitability to perform my previous employment." (Ex. 42.)

25. On January 12, 2009, SPB held a hearing on respondent Hawkins's appeal. On April 17, 2009, SPB denied respondent Hawkins's appeal, based on the high potential for reoccurrence of PTSD, and the relatively short time that she had been medication-free.

26. On July 7, 2009, Dr. Goldsmith supplemented his IME Report after reviewing additional reports and records. Dr. Goldsmith ratified the conclusions and recommendations made in his IME Report.

27. CalPERS designated Dr. Goldsmith as an expert witness. He is a board-certified psychiatrist who has been practicing for approximately 45 years. In the past 10 years, Dr. Goldsmith has performed approximately 20 to 30 disability retirement examinations for CalPERS. In February 2010, Dr. Goldsmith was terminated from Kaiser Permanente because he "recycled" medication, i.e., if one patient did not use a sample, Dr. Goldsmith would give the unused sample to another patient. Although Kaiser Permanente warned him to stop this practice, he continued to do so, which led to the termination of his employment. As of January 2011, Dr. Goldsmith had never been disciplined by the California Medical Board. Dr. Goldsmith's testimony ratified the findings and conclusions in his reports. In his opinion, respondent Hawkins did not meet the diagnostic criteria for PTSD, she was competent to return to her former position with CHP, her condition has improved since 2003, and cognitive behavioral therapy is very effective to control the effects of traumatic stimuli.

28. CHP designated Dr. Steinberger as an expert witness. Dr. Steinberger is a psychologist licensed in California since 1979 and employed by SPB since 1998. As a psychologist for SPB, Dr. Steinberger is involved in screening applicants for law enforcement positions with the state. To date, he has performed approximately 5,000 interviews and reports in that capacity.

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<sup>3</sup> Each class of public officers or employees declared by law to be peace officers shall be found to be free from any physical, emotional, or mental condition that might adversely affect the exercise of the powers of a peace officer. (Gov. Code, § 1031, subd. (f).)

29. Dr. Steinberger explained that Government Code section 1031 is critical to his psychological evaluations because it offers guidelines as to how to perform the evaluations; it forms the basis of his work to determine whether the candidate possesses a psychological condition or problem that could interfere with their work as a law enforcement officer. Dr. Steinberger also relies upon the Peace Officer Psychological Screening Dimensions, which provides direct guidance for candidate evaluations and also form the basis for disqualification. Unlike Dr. Goldsmith, Dr. Steinberger used the aforementioned dimensions when he evaluated respondent Hawkins. He applied the same components that are used for new candidates. Based on the evaluation process, Dr. Steinberger recommended against reinstating Respondent Hawkins. He opined that Respondent Hawkins has chronic PTSD, which means that the PTSD can go into periods of remission or latency, but it is not cured and the individual is vulnerable to recurrences. He reasoned that respondent Hawkins does not currently have any symptoms because she is not in the situation that caused the PTSD. Dr. Steinberger was concerned that the tasks required by the position she applied for will re-trigger PTSD. He opined that to put respondent Hawkins back into the same situation seems risky, and he recommended against it. His concerns are not time-limited; i.e., more time will not necessarily cure these problems. When asked after what time period respondent Hawkins could return to work, Dr. Steinberger did not know, because there is no research to show whether a person can go back to the circumstances that caused the trauma, and react appropriately.

30. Respondent Hawkins is currently employed as a private investigator by Steve Lawson Investigations, doing car theft investigations. Her job duties include investigative work, interviewing people, and completing and submitting reports. In addition, respondent Hawkins is enrolled in two educational programs: a crime analysis certification program at California State University, Fullerton, and an online program for Informatics (data mining), through Foothill College in Silicon Valley.

31. , After the Board chose not to adopt the Proposed Decision dated April 14, 2011 and before OAH issued the Notice of Remand and Order thereon, Lawrence Albers, M.D. (Dr. Albers) examined respondent Hawkins at the request of CalPERS. On March 12, 2012, Dr. Albers issued an Independent Medical Evaluation, which supplemented Dr. Goldsmith's opinion in certain respects. Dr. Albers examined respondent Hawkins, reviewed historical data, conducted a mental status examination, and reviewed medical records. Dr. Albers diagnosed respondent Hawkins with PTSD with "no symptoms present at the time." He concluded that respondent Hawkins was not substantially incapacitated for the performance of her duties and that there was no indication that she was unable to perform any specific job duties.

32. CHP designated Matthew Carroll, M.D. (Dr. Carroll) as an expert witness. Dr. Carroll is a Board Certified Forensic Psychiatrist with specialized knowledge in civil and criminal cases involving psychiatric issues. He reviewed respondent Hawkins's medical records, the statement of job duties, and the various reports made by other medical professionals who examined respondent Hawkins. Dr. Carroll testified about his specialized knowledge of PTSD. In Dr. Carroll's opinion, PTSD cannot be cured, but can become asymptomatic with treatment and the avoidance of the stressful conditions that caused the trauma in the first place. Dr. Carroll did not perform an examination of respondent Hawkins

because he expected that she would make a favorable presentation in her current condition. Dr. Carroll agreed with Dr. Steinberger that a period of stability does not indicate a cure of PTSD. Dr. Carroll believes that respondent Hawkins was substantially unable to perform her duties as a CHP sergeant because she would likely experience a recurrence of PTSD symptoms.

## LEGAL CONCLUSIONS

1. If the Board rejects a proposed decision and refers the case to an administrative law judge for the taking of additional evidence, the administrative law judge shall prepare a revised proposed decision based upon the additional evidence and the transcript and other papers that are part of the record of the prior hearing. (Gov. Code, § 11517, subd. (c)(2)(D); Cal. Code Regs., tit. 1, § 1050.)
2. Government Code section 11504 places the burden upon respondents in a hearing initiated by a filing of a statement of issues. Because the statement of issues defines the primary issue as whether respondent Hawkins is presently capable of performing the usual job duties of a CHP sergeant, the burden of producing evidence is on respondent Hawkins because she is the party against whom a finding would be required in the absence of further evidence. (Evid. Code, § 550, subd. (a).) Accordingly, the burden of proof is on respondent Hawkins and the standard of proof is a preponderance of the evidence. (Evid. Code, § 115.)
3. "Disability" and "incapacity for performance of duty" as a basis of retirement, mean disability of permanent or extended and uncertain duration, as determined by the Board, on the basis of competent medical opinion. (Gov. Code, § 20026.) "Incapacitated for the performance of duty" has been interpreted to mean "the substantial inability of the applicant to perform his usual duties." (*Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876.)
4. CalPERS is required to determine, on the basis of a medical examination, whether an applicant for reinstatement is still incapacitated. (Gov. Code, § 21192.) If CalPERS determines that an applicant is no longer incapacitated and the employer offers to reinstate the applicant, the applicant's disability retirement allowance shall be canceled immediately, and the applicant shall become a member of this system. (Gov. Code, § 21193.) If the applicant is determined to be no longer incapacitated for duty in the position held when retired for disability or in a position in the same class, the applicant shall be reinstated, at the applicant's option, to that position. (*Id.*)
5. In this case, CalPERS determined that respondent Hawkins was no longer incapacitated, physically or mentally, for duty as a CHP sergeant at the time of the Application. The determination was made after a medical examination by Dr. Goldsmith and on the basis of his medical opinion. The report of Dr. Albers, received as additional evidence at the Remand Hearing, supplements the direct testimony of Dr. Goldsmith that

respondent Hawkins is presently capable of performing the usual job duties of a CHP sergeant.

6. CHP designated two expert witnesses, Dr. Steinberger and Dr. Carroll, who testified that respondent Hawkins remained incapacitated for duty as a CHP sergeant. Dr. Steinberger and Dr. Carroll both advised against reinstatement based on concerns that a recurrence of PTSD symptoms is likely upon the re-exposure to traumatic stimuli.

7. Although the opinions of the CHP experts conflict with the opinion of Dr. Goldsmith, there was no conflict in the facts that supported all expert opinions. Respondent Hawkins is presently asymptomatic of PTSD; she is no longer suffering from the physical manifestations attributed to PTSD; and there is no evidence that respondent Hawkins is physically impaired from gastrointestinal bleeding, sleeplessness, or migraine headaches. The law does not accord to the expert's opinion the same degree of credence or integrity that it does the data underlying the opinion. (*County of Sacramento v. Workers' Comp. Appeals Bd.* (2013) 215 Cal. App. 4th 785.)

8. Dr. Carroll acknowledged that respondent Hawkins is currently asymptomatic of PTSD and he chose not to examine respondent Hawkins. His stated concern about her reinstatement was that re-exposure to the traumatic stimuli that caused the original diagnosis was likely to cause a recurrence of PTSD symptoms. A disability must prevent respondent Hawkins from performing her customary duties in the present, not at some unspecified future time. (*Hosford v. Board of Administration* (1978) 77 Cal.App.3d 854, 863). Neither Dr. Carroll nor Dr. Steinberger testified as to when and to what extent respondent Hawkins would become disabled in the event of a recurrence.

9. Moreover, the usual duties of a job are not measured by the applicant's last job assignment; instead, the duties are measured in terms of the job classification the applicant held. (*Beckley v. Bd. of Admin. of California Pub. Employees' Ret. Sys.* (2003) 222 Cal. App. 4th 691, 699.) Accordingly, her present capabilities must be measured in terms of the usual duties of a CHP sergeant, which will include investigating fatalities and officer shootings. Reinstatement will not necessarily re-expose respondent Hawkins to the significant fatal accidents, shootings, and hazardous material spills that she was required to handle with her assignment to MAIT.

10. Dr. Steinberger examined respondent Hawkins, but assessed her fitness under the wrong standard by considering Government Code section 1031, subdivision (f). On January 22, 2000, the Board made and adopted a resolution designating as Precedential Decision 99-03 its final decision in *In the Matter of the Application for Reinstatement from Industrial Disability Retirement of Willie Starnes*, Case No. 2530; Office of Administrative Hearings No. L-1999060537. In that precedential decision, the Board delineated the standards to be applied in reinstatement cases at Legal Conclusion 4 as follows:

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The Public Employees' Retirement Law (Retirement Law) governs disability retirement and reinstatements and grants sole jurisdiction to CalPERS to make such determinations. Government Code sections 20026, 20125, 21150, 21154, 21156, 21190, 21192, and 21193.

CalPERS is required to utilize only the test forth in the Retirement Law to determine eligibility for disability retirement or for reinstatements from such retirement. Government Code section 1031(f) is not found within the Retirement Law, but in the general provisions of the Government Code governing public officers or employees who perform peace officer duties. Government Code section 1031(f) is an employment statute. It is inconsistent with the Retirement Law and cases interpreting it. The proper standard to be applied is the test set forth in *Mansperger v. Public Employees' Retirement System* (citation omitted) and *Hosford v. Board of Administration* (citation omitted), not the standard set forth in Government Code section 1031(f).

11. CHP adopted a written policy that mandates reinstatement at the retiree's option if the retiree is no longer incapacitated for duty. CalPERS made its determination of eligibility based on a competent medical opinion. Government Code section 20026 does not require that its determination be based on a medical certainty that respondent Hawkins will remain asymptomatic of PTSD. Dr. Goldsmith is qualified to render a competent medical opinion because he is a board-certified psychologist with 45 years of practical experience. The differing expert opinions are insufficient to discredit Dr. Goldsmith's conclusions. The termination of Dr. Goldsmith's employment at Kaiser Permanente was based on facts that reflect an unwillingness to follow instructions, but have no bearing on his competence as an independent medical examiner. The opinions of Dr. Blum and Dr. Bassett were based on evaluations made in 2003 and 2004 and are unreliable to prove respondent Hawkins's present ability to perform the usual duties of a sergeant or her fitness at the time of the Application in April 2007.

12. Accordingly, the preponderance of the evidence proves that respondent Hawkins is presently capable of performing the usual duties of a CHP sergeant. Under the circumstances, reinstatement is mandatory, in spite of medical evidence that a recurrence of PTSD symptoms may be likely if she is exposed to the stressful conditions she experienced as a MAIT supervisor. If respondent Hawkins experiences a recurrence of debilitating conditions, she can either elect to apply for disability retirement as she did before, or CHP can initiate "appropriate personnel action with appropriate remedies and procedures afforded by personnel rules." (*Starnes, supra*, at Legal Conclusion 4, citing *Cansdale v. Board of Administration, Public Employees Retirement System* (1976) 59 Cal.App.3d 656.)

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ORDER

The determination of CalPERS that respondent Hawkins is presently capable of performing the job duties of a CHP sergeant is affirmed. The appeal of CHP is denied.

DATED: July 23, 2015

A handwritten signature in black ink, appearing to read "Matthew Goldsby", is written over a horizontal line.

MATTHEW GOLDSBY  
Administrative Law Judge  
Office of Administrative Hearings