

**ATTACHMENT C**  
**RESPONDENT'S ARGUMENT**

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OCT 17 2016

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October 17, 2016

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Cheree Swedensky, Assistant to the Board CalPERS Executive Office		(916) 795- 3972

FROM: Thomas J. Wicke, Esq., / Terry Hernandez

RE: In the Matter of the Application for Industrial Disability Retirement of NELLIE  
E. RODRIGUEZ, Respondent and DEPARTMENT OF HEALTH CARE  
SERVICES, Respondent

FILE NO.: XPP-9006

PAGES: 4 (including cover page)

MESSAGE: Attached, please find Respondent Nellie Rodriguez's ARGUMENT

If You Do Not Receive All Pages, Please Call Terry A. Hernandez at (818) 703-6000

## CONFIDENTIALITY NOTICE

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9 NELLIE E. RODRIGUEZ

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**BOARD OF ADMINISTRATION**  
**CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION**

In the Matter of the Application for Industrial  
Disability Retirement of

NELLIE E. RODRIGUEZ,  
Respondent,

and

DEPARTMENT OF HEALTH CARE  
SERVICES,

Respondent.

OAH Case No.: 2015110142  
Agency Case No.: 2015-0292

**RESPONDENT NELLIE E.  
RODRIGUEZ'S ARGUMENT**

ALJ: Honorable Irina Tentser  
Hearing Date: July 13, 2016  
Hearing Location: Los Angeles, California

**I.**

**INTRODUCTION**

This matter was presented to the Administrative Law Judge, Irina Tentser, on July 13,  
2016.

Judge Tentser reviewed thirteen exhibits as submitted by CalPERS and twenty-six exhibits  
as submitted by Respondent, Nellie Rodriguez. Judge Tentser also heard testimony from the  
Respondent, Nellie Rodriguez, as well as a medical expert, Dr. Robert Fenton produced by  
CalPERS.

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1 After reviewing the entirety of the evidence and the credibility of the witnesses, Judge  
2 Tentser recommends that Ms. Rodriguez's appeal be granted.

3 II.

4 SUMMARY OF ARGUMENT

5 Respondent Nellie Rodriguez began employment with the State of California in 1976 as a  
6 clerk for the Medical Board of California. In 1999, she was promoted to an Investigator and  
7 underwent Police Officer Standard Training Certification or POST Certification. As a result of  
8 her training, she received field instruction, training with a firearm, arrest and control training,  
9 handling evidence and interviewing witnesses.

10 By 2003, Respondent Nellie Rodriguez transferred to the Department of Health Care  
11 Services.

12 As a result of industrial injuries, Respondent Nellie Rodriguez was restricted from field  
13 work and placed in a temporary modified position on or about May 2, 2013. By November, 2013  
14 her Department was unable to continue to accommodate her work restrictions.

15 Subsequently, on or about June 26, 2014, Nellie Rodriguez filed for an Industrial  
16 Disability Retirement with CalPERS.

17 In her decision, Judge Tentser summarizes the evidence when at page 10 of her Proposed  
18 Decision, Point Number 9 under Legal Conclusions, she states:

19 "Here, the evidence showed the Respondent was physically  
20 incapable of performing all of the usual duties associated with her  
21 position as an Investigator, as established through her credible  
22 testimony and her medical records, based on factual findings 9  
23 through 38." (Emphasis added)  
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1 Judge Tentser provided the Board a complete and thorough analysis of the testimonial and  
2 documentary evidence in this matter. Respondent Nellie Rodriguez requests the Board adopt the  
3 Proposed Decision.

4  
5 DATED: October 17, 2016

Respectfully submitted,

6 LEWIS, MARENSTEIN, WICKE, SHERWIN & LEE, LLP

7  
8 By: 

9 THOMAS J. WICKE  
10 Attorneys for Respondent  
11 NELLIE E. RODRIGUEZ  
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1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 At the time of service, I was over 18 years of age and not a party to this action. I am  
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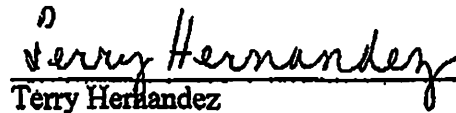
6 **RESPONDENT NELLIE E. RODRIGUEZ'S ARGUMENT** on the interested parties in  
this action as follows:

7 Cheree Swedensky, Assistant to the Board  
8 CalPERS Executive Office  
9 P.O. Box 942701  
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14 sending fax machine.

15 I declare under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct.

16 Executed on October 17, 2016, at Woodland Hills, California.

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18 Terry Hernandez  
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