

**ATTACHMENT B**  
**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Respondent Sonia Garvin (Respondent Garvin) worked as a Correctional Officer for Respondent California Department of Corrections and Rehabilitation (CDCR) at the California Institution for Women. By virtue of her employment, Respondent Garvin is a state safety member of CalPERS subject to Government Code section 21151.

Respondent Garvin applied for Industrial Disability Retirement on the basis of her orthopedic (bilateral knee) condition, on August 6, 2013. CalPERS approved the application and Respondent Garvin was retired for disability effective May 27, 2014.

CalPERS requested an Independent Medical Evaluation (IME) from Michael Einbund, M.D., a board-certified orthopedic surgeon, to evaluate the extent of Respondent Garvin's ongoing orthopedic impairment, if any.

Dr. Einbund performed an IME of Respondent Garvin on February 12, 2015. Dr. Einbund reviewed medical records, interviewed respondent, conducted a physical examination, and authored a report summarizing his findings. He concluded that Respondent Garvin was no longer substantially incapacitated.

Based on Dr. Einbund's reports, CalPERS determined that Respondent Garvin was capable of performing the usual duties of a Correctional Officer and eligible for reinstatement pursuant to Government Code section 21192. CalPERS informed Respondent Garvin and CDCR of its determination on March 10, 2015. Respondent Garvin appealed, and an Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH) conducted a hearing on September 1, 2016.

Prior to the hearing, CalPERS explained the hearing process to Respondent Garvin and the need to support her case with witnesses and documents. CalPERS provided Respondent Garvin with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent Garvin's questions and clarified how to obtain further information on the process.


At the hearing, Dr. Einbund provided testimony about his evaluation and the reasons for his conclusion that Respondent Garvin was no longer incapacitated from the performance of her duties as a Correctional Officer for CDCR. Respondent Garvin presented her own testimony and past medical records from her workers' compensation case.

The ALJ found that the only competent medical evidence presented concerning Respondent Garvin's current condition was provided by CalPERS. It established that Respondent Garvin is not substantially incapacitated from performing the usual and customary duties of a Correctional Officer with Respondent CDCR.

For this reason, the ALJ concluded that Respondent Garvin's appeal should be denied. The law and the facts support the Proposed Decision. Staff argues that the Board adopt the Proposed Decision.

Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. The member may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

November 16, 2016

  
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AUSTA WAKILY  
Senior Staff Attorney