

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

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FROM: Dawn Brooks

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RE: WRITTEN ARGUMENT in response to Proposed Decision of Administrative Law Judge

Dear Board, let me first begin by thanking you for this opportunity for me to voice the truth of this unfortunate situation. It is my hope that you gain a clearer understanding of the facts this case. I will explain in detail, after repeated evaluations by competent physicians over the last 15 years, I have constantly been advised and evaluated as "still incapacitated" for the performance of my previous job as a correctional officer, other than by the recent evaluation by Dr. Ha'Eri, which I believe was not reflective of my current condition as accurately reported and evaluated over the previous decade plus.

Again, I appreciate The Board's consideration of this matter.

#### PRE-INCIDENT HISTORY

I began pursuing my career as a Correctional Peace Officer for the state of California in 1994, soon after I had declined an offer with the California Highway Patrol. My grandfather, a retired CHP, convinced me that I would be safer working in a place where I always knew where the bad guys were. In 1995 I successfully completed the pre-employment physicals for the department of corrections despite the previous two arthroscopic surgeries, one to my shoulder in 1984, another to my right knee in 1990 and major reconstructive surgeries to both feet, in 1990, 1994 & 1995. Soon thereafter, I was offered a position as a Correctional Peace Officer at the California Correctional Institution-Tehachapi, CA. In June of 1995 I had been recently separated from my husband of 9 years, making me a single mother responsible for raising two young children. I eagerly accepted the position, knowing it would give me the financial stability I needed as a single parent.

As a Permanent Intermittent employee, I worked many different positions, on all five yards of the institution including Level I-Minimum Security, Level II, Level III-Reception Yard, and Level IV-Maximum yards. On those yards, I worked as an officer in the kitchen, industries, receptions, search and escort, towers, housing units, control booths, visiting, gyms, chapels, infirmaries, transportations, Administrative Segregation(AD-Seg) and offsite supervising hospitalized inmates. I had many great mentor's supervisors and peers, who were always supportive in educating me

in the vast positions at the institution. Being that I had no formal college education, I knew I would have to promote through the ranks to move my career forward, which I was eager to do.

I acknowledged when I had accepted my position as a correctional officer that there would likely be physical altercations with inmates. One could always hope and pray that it wouldn't happen, but inevitably it did. I had been nominally injured in many altercations, but as always, I sucked it up knowing that it was part of the job and I needed this job now more than ever, being that I was soon to be divorced mother of two children. While working as an officer on the Level II yard there were 3 significant incidents.

First: In early 1998 while working as a first watch 11:30pm-07:30am search and escort officer, Sgt. C. Palmer and I had been dealing with an irate inmate in the Level II infirmary, while Sgt. Palmer attempted to hand cuff the inmate, the inmate resisted and became combative. I received injury to my right arm and was sent to a physician, treated for a sprain. I returned to my position a week later, with no obvious permanent injuries.

Second: In September 1998, while working as a first watch search and escort officer 11:30pm-7:30am on the Level II yard, while responding to an Alarm in Housing unit 2, both of my feet slipped out from under me, as I exited the doorway of the Chow Hall. My body slammed face forward into the ground, striking my knees first, then my hands. I immediately rose and continued my pursuit. By the time I arrived to the housing unit, the situation was secured. I stepped into the housing Officers office, where I then spoke Sgt J. Culpepper. I told him I needed to get passed him to go to the restroom so I could vomit. He asked what happened; I raised my pant legs and showed him my already black, blue and swollen knee's. He stated that I needed medical attention and called to the infirmary, via his radio for a wheelchair to be brought over for me. Once again, being prideful and not wanting to lose any respect with my officers or appear weak, I insisted on walking to the infirmary on my own. It was the most painful and extremely difficult 120 yards I had ever walked. When arrived at the infirmary there was a wheelchair waiting and I was quickly whisked out a back door placed in a state vehicle and taken to a Bakersfield hospital for treatment. At the hospital I was examined, and instructed to follow up with a Worker's Compensation doctor. My right knee had suffered a ruptured bursa sac that would soon heal on its own. However, I also had left knee damage occurring to my Meniscus, a Medial Collateral ligament, and a tear to the Anterior Crucial Ligament. I feared that this would be a career ending injury and thoughts of how would I provide for my family began to worry me. Not only that, all the physical activities that I enjoyed in my off time away from work. I enjoyed many activates with my children, such as water skiing, snow skiing, camping, fishing, horseback riding, motorcycles, rock climb and most of all softball. I feared that all those activities would cease as well.

State Fund Worker's Compensation, as always, gave me the feeling that the truly cared about my health and well-being. I was sent to an extremely competent orthopedic surgeon, Dr. Chris Hamilton. It was his goal to return me to pre-injury state. During the surgery, he was successful in repairing the tears. After several months of Physical Rehabilitation, I was allowed to return to my previous position as a correctional officer with no restrictions. After a year, I was also able to return to those off duty activities, I enjoyed as well.

Third: In March 2001 while working as a second watch kitchen officer and performing a search, Inmate Davis failed to comply with orders, turned from his prone position against the wall, forcefully swung his left arm, striking me in my chest. I was taken to the infirmary where I was evaluated for injury, and followed up later with a physician. I returned to my position on my next shift, with a bruised sternum, other random bruises and muscle strains, but received no permanent damage.

I tested for the Position of Correctional Sergeant in which I scored high placing me high on the list to promote. Over the next year, I filled in here and there working as an Acting Sergeant when requested. I continued to work as a Level II kitchen officer until the summer of 2001, where I received a job change to Level IVB Housing Unit 1 third watch 2:00pm-10:00pm. This housing unit had been converted from a regular program Level IV, to a Youth Offenders Program (YOP) and AD-SEG overflow housing unit. Since most of the inmates in this housing unit, could not be moved without being in handcuff restraints and being escorted by two officers, it created an environment of non-stop activity.

#### CAREER ENDING INCIDENT

On November 15, 2001, I was working an overtime shift, first watch 10:00pm-6:00am, as a floor officer in Housing Unit 4 at Level IV-B. I was called to the report to housing unit 8, where the Watch Lt. Cloyd, was supervising a situation with inmate Crawford. Inmate Crawford was an AD-SEG inmate, housed in Housing Unit 1, B-Section. He had not been taking his diabetic medications, as instructed, and had been acting erratically the past day or so. It was Lt. Cloyd's hope that I could speak to inmate Crawford, since I was his regular officer in his housing unit, and he would be more responsive to a familiar person. I did speak with inmate Crawford, and he was receptive to my instructions. He agreed to return to his cell in Housing Unit-1. He was handcuffed, removed from the holding cell at housing unit 8. Search and Escort Officer Vietti and myself escorted inmate Crawford, back to Housing Unit-1: B section. As we approached his cell, which had been occupied solely by him, we motioned for the control officer to open the cell door. Per procedure, inmate Crawford stepped in, remained standing with his back to us, and we signaled for the door to be closed. Still in his handcuff restraints, arms secured behind his back, inmate Crawford laid down on the floor and appeared to fall asleep. Lt. Cloyd, who had followed us from housing unit 8, instructed us to keep talking to Crawford, and see if we could convince him, to surrender his handcuffs. After approximately, 30 minutes, I convinced inmate Crawford to surrender his handcuffs. He appeared compliant, as he stood up and walked backwards to the door. I unlocked the Food port, located in the midsection of the door and ordered inmate Crawford to place his hands through the port, so I could remove his handcuffs. Search and escort officer Vietti handed me her cuff key that was connected to her lanyard, which was attached securely to the duty belt. Per procedure, I began to unlock the left handcuff from Inmate Crawford's weak hand, left wrist, when suddenly he jolted forward. Inmate Crawford yanked my arms through the food port until my body slammed completely against the door. I did everything possible to maintain control of the loose cuff, and key. Officer Vietti and I were able to pull and secure inmate Crawford's, cuffed right hand, back through the food port, secure it and remove the right handcuff. Inmate Crawford, dropped to the floor, leaving his right arm outside the food port ("taking it hostage"). Lt. Cloyd ordered him to remove his arm from the food port so the door could be secured. Inmate Crawford did not

comply and Lt. Cloyd pepper sprayed inmate Crawford, where he then complied and the food port was secured. I was taken into the housing unit 1 office, where the MTA had arrived. All my fingers on my right hand were swollen and unbendable, the right wrist was extremely swollen with this large protruding lump, the size half of a baseball. After inspecting my injuries and the fact I was pregnant, the MTA insisted I been seen by a physician.

I was taken to Tehachapi hospital where I received medical treatment. They were reluctant to perform x-rays, since I was 4 ½ months pregnant. My right hand and wrist was placed in a splint, and I was ordered to follow up with a doctor the following day.

Little did I know that this injury would end my career as a Correctional Officer, as a future Sergeant, a Lieutenant or possibly a Captain. At that moment I did not realize the career path and financial security I had worked for would be destroyed. Over the following months, I complied with all the doctors' orders, restrictions, extensive therapy, and requirements. As before, I trusted the State Fund Worker's Compensation physicians, and knew they would look after my best interests and do what was best for me. I was determined to recuperate and return to the career that I loved and that provided for my family. I even invested in a hot wax pot and grip strengthening tools, so I could do my own physical therapy at home.

I continued to suffer constant aches, bouts of extreme sharp pain that would radiate up my right arm, when trying to use my right hand, constant swelling of hand and wrist and an intermittent complete loss of use. One minute I could be holding jar of jelly with my hand and out of now where it would just drop, without warning. In April of 2002 (approximately 5 months after my injury), Dr. Larsen-Orthopedic M.D. ordered multiple tests to be completed. It was his diagnosis in May of 2002, that the injury I received the night of November 15, 2001 had caused permanent damage to my right wrist. I was devastated by this news. How could this be, how could this happen, what would I do now? I asked if he could operate on it. He informed me that operating would just create more damage and scar tissue to the already damaged nerves. I reluctantly accepted my fate, and agreed to be receiving Vocational Rehabilitation training 2003. I knew I needed to stay employed, to provide for myself and now 3 children.

#### DISABILITY HISTORY AND STATUS

I applied for Disability retirement in December 2002. Seventeen months, post-accident in April 2003, I was ordered by CalPERS to receive an Independent medical evaluation by Orthopedic Surgeon, Dr. M. Nystrom. Dr. Nystrom reviewed all my medical history with me and he himself completed a full examination of my right wrist and left wrist, comparing differences. He completed a number of grip and push and pull tests, as did all the prior physicians. In his report dated April 2003, it was his diagnosis, that I was still in fact permanently disabled. Soon thereafter my CalPERS disability was approved.

Nine (9) years after my injury I was ordered by CalPERS in 2010 to report for an IME with Dr. Nijjar. I complied with the request. As had been my experience with other physicians and medical providers, Dr. Nijjar conducted a reviewed of my history, personally performed a physical examination of my right wrist, arm, and shoulder, and completed many tests, consistent with my previous IME evaluation in 2003. In March 2012, I received letter from

CalPers notifying me of Dr. Nijjar's findings *"In connection with our reevaluation of your disabling condition, we find that you continue to be substantially incapacitated for the position of a Correctional Officer with the Department of Corrections Correctional Institution-Tehachapi."*  
—Joe Klockgether (Retirement Program Specialist II, Disability Retirement Section)

Accordingly, from the date of the incident and for a decade thereafter, I was determined to be permanently disabled from my prior position. Despite my physical challenges, which remained the same, I was able to seek lesser financially secure administrative positions and with the CalPERS benefits received, have been able to provide for my family

In 2014 I was again ordered by Cal Pers to appear for an IME with Dr. Ha'Eri. This visit was quite different from all the previous evaluations. I was seen by an assistant of Dr. Ha'Eri in an examination room, who requested to perform a grip test, which I later learned was a hand dyno-meter, and was advised that the doctor would be with me shortly and left the room. A while later, he returned, then escorted me from the examination room and took me into an office where I was then introduced to a waiting Dr. Ha'Eri. The Dr. kindly asked me to be seated in a chair directly across the desk from him, where he began interviewing me, discussing my medical history, job history, and current symptoms. Dr. Ha'Eri expressed to me that he knew of Dr. M. Nystrom very well, that Nystrom was an excellent physician and that Nystrom had trained under Ha'Eri when becoming a doctor years ago. At the conclusion of the interview, Dr. Ha'Eri began reading out loud several questions that he stated he was required to ask by CalPERS. One of them I recall was something to the fact 'Do you feel that this person remains incapacitated to perform the position of a Correctional Officer', he looked right into my eyes and said "Yes". I assumed that he obtained all the information that he needed to know from my medical records, the verbal interview with me, and the dyno-meter test results which accurately showed that my non-dominant left hand strength was twice as strong as the injured right dominant hand. I perceived that Dr. Ha'Eri had reached the same conclusion as that of the previous physicians, who had I had either treated or evaluated my injury over the years and that it was consistent with my ongoing symptoms.

After 14 years and three months' post injury, January 27th of 2015, I was received a letter from CalPERS, I was in state of complete shock and disbelief, when I read that I was being reinstated to my position as a correctional officer. There is no indication that my condition somehow dramatically changed from 2011 (10 years after my incident) when I was evaluated by Dr. Nijjar, at CalPERS request, and when CalPERS requested I be evaluated by Dr. Ha'Eri in 2014.

During the administrative hearing, Dr. Ha'Eri again affirmed that he personally knew of and thought very highly of Dr. Nystrom, yet totally disregarded his medical opinions. Dr. Ha'Eri couldn't say that my injury had miraculously cured itself, or that I had gotten stronger over the years, only that the findings of every physician I had seen for more than a decade, were incorrect. I am troubled that Dr. Ha'Eri, could conclude that I could return to my prior position, being that his evaluation methods had differed entirely from those prior. All objective testing reflects my disability.

I consider it an injustice, due to the fact my whole life has been changed by this disability. I am no longer able to ride motorcycles; can't maintain grip of the handlebars, water ski; not strong enough to pull myself out of the water, rock climb; can't bear my own weight. I am no longer

able to pitch a softball at 65mph, which I had done for years. Due to the weakness and intermittent complete loss of grip strength, so many day to day functions that one never considers became a challenge or just impossible. Carrying my then infant son in a baby carrier, pouring milk from a gallon jug, carrying heavy bags of groceries, lifting a skillet from the stove, removing a jar of pickles or jelly from the refrigerator door, opening a bottle of Gatorade, blow drying my hair, and even pumping fuel at the gas station are no longer doable for me.

These things still to this day remain a challenge or totally impossible to do.

Besides the physical limitations, this injury had cast me into a financial hardship. I could not sustain a household, nor support my children based solely on my disability retirement of \$30,000 per year. I was unable to obtain a position as a Microsoft Certified Engineer which I had been retrained to do, due to lack of experience. In 2004 I began applying at temporary agencies, to find a job to supplement my retirement income. With no education or degree, I have had to work extremely hard to maintain employment that would accommodate my disability and allow financial stability. None of these positions have provided with the income, vacation leave, holiday benefits or sick time, that I would have now if I had remained gainfully employed for the California Department of Corrections.

I felt fortunate that my unborn baby had not been injured during this altercation, however I was very resentful when this not only ended by career, but destroyed all my hopes and dreams goals of promoting through the correctional system, which would have resulted in complete financial security and to one day retire comfortably. This was something I neither asked for nor wished for. I am very familiar with the duties required to be performed by a correctional officer and wish I could perform those duties. Nevertheless, I remain unable to perform the duties of a correctional officer, as supported by all physicians and medical providers that have seen me for the last 15 years and by what Dr. Ha'Eri, represented at least to me in our interview 2014.

Currently, my disability retirement provides insurance for myself and my son for whom I have been the Custodial Parent for the past 14 ½ years. The financial benefit, covers my monthly mortgage and automobile loan. Without my disability from CalPERS, I will lose health insurance for my child and myself, our home, my only auto and will ultimately cause an emotional hardship for us both.

I would ask for your re-consideration and rejection of the Proposed Decision. In the alternative, have me evaluated by another independent fair and impartial physician that will truly examine me and evaluate my condition.

Thank you for your thorough evaluation.

Respectfully,



Dawn M. Brooks

# RESPONDENT'S ARGUMENT

