

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

## **STAFF'S ARGUMENT TO DENY PETITION FOR RECONSIDERATION**

Respondent Dawn M. Brooks (Respondent Brooks) is a state safety member of CalPERS previously employed by Respondent California Correctional Institution, California Department of Corrections and Rehabilitation (CDCR) as a Correctional Officer. Respondent Brooks was approved for CalPERS Industrial Disability Retirement (IDR) on April 17, 2003, on the basis of an orthopedic (right wrist) condition. Respondent Brooks was 36 years old at the time and has remained on IDR since. CalPERS reevaluated Respondent Brooks' disabling condition and on January 27, 2015, notified her of a determination that she is no longer disabled or incapacitated from performance of her duties as a Correctional Officer. Respondent Brooks appealed that determination and after a hearing on the merits was conducted, a Proposed Decision denying the appeal was issued on November 9, 2016. The Board adopted the Proposed Decision as its own on December 21, 2016. Respondent Brooks submitted a Petition for Reconsideration on January 26, 2017.

Respondent Brooks' Petition for Reconsideration argues that because she has the right to future medical care (under the Workers' Compensation System), and because previous doctors found her incapacitated in 2003 and 2011, that the Independent Medical Examination (IME) performed in late 2014 should not carry any weight.

The issue at the hearing was whether Respondent Brooks remains incapacitated from the performance of her usual and customary duties as a Correctional Officer. Two witnesses presented evidence at the hearing: Dr. G.B. Ha'eri, a board-certified orthopedic surgeon that performed the IME; and, Respondent Brooks.

Dr. Ha'eri testified that after his examination of Respondent Brooks, he found that she was not substantially incapacitated for the performance of her job duties as a Correctional Officer. He explained that Respondent Brooks suffered a contusion to the back of her right hand and wrist after an altercation with an inmate and that such type of injury generally resolves itself within a couple of months. Dr. Ha'eri further testified regarding a medical report authored by Dr. Nijjar that contained a diagnosis of carpal tunnel syndrome. Dr. Ha'eri explained that there was no objective evidence to support that diagnosis and that it was inconsistent with the mechanics of how Respondent Brooks' injury occurred.

Respondent Brooks testified and introduced documentary evidence. The first document was correspondence from her treating physician in 2003. The second document was the IME report that CalPERS relied on when it initially approved Respondent Brooks for IDR in 2003. The third document was a functional capacity evaluation performed by Thomas Traut. Mr. Traut has a Master's Degree in Exercise Science and Kinesiotherapy.

After considering all of the evidence, the Administrative Law Judge (ALJ) found that Dr. Ha'eri's testimony and report were persuasive and that Respondent Brooks no longer meets the eligibility requirements for IDR.

Respondent Brooks' assertion in the Petition for Reconsideration that she has the right to future medical care under the Workers' Compensation System does not establish that she remains incapacitated from the performance of her duties as a Correctional Officer. The Workers' Compensation System utilizes different standards than CalPERS for benefit eligibility and has a different objective than IDR.

Respondent Brooks' new argument for reconsideration purposes does not offer material evidence that would change the analysis of CalPERS staff or persuade the ALJ to reach a different outcome.

For all the reasons stated above, staff argues that the Board deny the Petition for Reconsideration and uphold its Decision.

Because the Decision applies the law to the salient facts of this case, the risks of denying the Petition for Reconsideration are minimal. Respondent Brooks may file a writ petition in superior court seeking to overturn the decision of the Board.

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