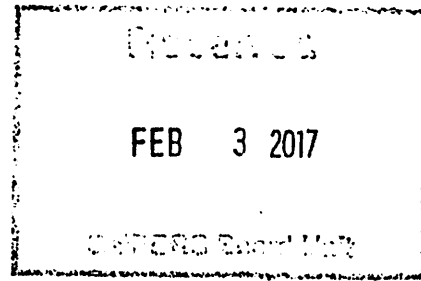


ATTACHMENT C

**RESPONDENT'S ARGUMENT REGARDING THE
PETITION FOR RECONSIDERATION**

TO: CHERRE SWEDENSKY
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FROM: Dawn Brooks

DATED: December 7, 2016

RE: "RESPONDENT'S ARGUMENT" in response to Stay of Execution

Dear Board, let me first begin by thanking you for this opportunity to ask for you to please reconsider your decision. It has been my continued hope that you gain a clearer understanding of the facts this case. After many evaluations by competent physicians over the last 15 years, I have constantly been advised and evaluated as "substantially incapacitated" for the performance of my previous job as a correctional officer, other than the interview done by Dr. Ha'Eri, which I believe was not reflective of my condition then, since or now.

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

DISABILITY HISTORY AND STATUS

November 15, 2001 (Approximate Date of Injury) While working as a Correctional Peace Officer for the California Department of Corrections, I had been assigned an overtime shift, first watch 10:00pm-6:00am, as a floor officer in Housing Unit 4 at Level IV-B. I was ordered to assist the watch commander with an unruly inmate, that was housed in Housing Unit-1, B Section, California Correctional Institution Tehachapi, Yard 4b. While attempting to remove handcuffs from an administrative segregated inmate, the inmate became combative and I sustained a career ending injury to my right wrist and hand.

July 2002 (8 Months Post Injury): Dr. Larson M.D. (Diplomate American Board of Orthopedic Surgery/Fellows, American Academy of orthopedic Surgeons) *describes wrist carpal tenderness and declares permanent and stationary*

December 2002. (12 months Post Injury): I applied for Disability retirement.

April 2003 (17 Months Post Injury): Dr. John M. Larson *provided a report saying that, the patient is substantially incapacitated and is unable to do the work of a correctional officer. He thinks the incapacity is permanent and that future medical care should be made available to her.*

April 7, 2003 (17 Months Post Injury): Dr. Mark Nystrom, MD Orthopedic Surgery (Diplomate American Board of Orthopedic Surgery) performed and Independent Medical Examination.

Diagnosis- that the patient suffered from wrist pain and grip weakness.

Recommendation- It is my impression that this patient has reached the maximum level of benefit from supervised medical treatment and has reached a level that I would consider to be permanent and stationary for rating purposes.

Disability Status-Based on I would consider this patient substantially incapacitated for performing the duties of a correctional officer. I think her disabilities are permanent in nature and spring from her documented decreased grip strength.

May 30, 2003 (18 Months Post Injury): CalPers approves disability retirement.

December 2011 (10 years post injury): Dr. Mohinder Nijjar M.D. (Diplomate, American Board of Orthopedic Surgery State Appointed Qualified Medical Examiner American Academy of Orthopedic Surgeons) performed a thorough medical evaluation and review of prior records which were reviewed with me. After his evaluation, he stated that I was still substantially incapacitated. However, I was NEVER given a formal copy of his report, despite several requests. The only documentation is a letter I received in March 2012, 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)

(I on several occasions I have requested copies of Dr. Nijjar's report, the last request was made at the administrative hearing on October 25, 2016 to the CalPers attorney. I still have not been given a report.)

December 16, 2014 (13 Years Post Injury) Dr. Ghol B Ha'Eri, M.D (Diplomate American Board of Orthopedic Surgery) claims to have performed a thorough Independent Medical Examination. It is my testimony that yes a verbal interview was conducted by Dr. Ha'Eri. Yes, an assistant prior to the interview performed a grip test utilizing a hand dynamometer device, testing my right and left hand. The assistant also took measurements of my forearm circumference and bicep. I will also testify under oath that Dr. Ghol B Ha'Eri never at any point physically touched me, during our brief meeting. Keep in mind Dr. Ha'Eri performed no x-rays, no MRI, or ultrasounds. Upon completion of the interview he stated that I remained disabled, but then obviously contradicted his statement in the report submitted to CalPers. I requested a copy of the report and one was sent to me. In the report, I discovered many discrepancies which validates that the report did and does not reflect and accurate diagnosis of my condition then, since or currently. Dr. Ha'Eri states in his report that I was 294lbs at the time of the IME. I have never in my life weighed anywhere near 294lbs and I provided proof of my weight which were documented near the time of the December 2014, recorded by licensed Physicians.

Diagnosis-Old contusion of right wrist (dorsum). Residual subjective mild complaints of right wrist pain and right hand grip weakness.

Dr. Ghol B Ha'Eri then states, *"It is my professional opinion that the member is not presently substantially incapacitated for the performance of her usual duties as a correctional officer."*

After the career ending and life altering injury November 15, 2001 that left me substantially incapacitated to perform the duties of a correctional officer, I had to learn to adapt to my physical limitations. I had been advised in 2002 by Dr. Larson that surgery would only worsen the damage to the nerves and it was something I would have to live with permanently. I was then again reminded by Dr. Nystrom that my condition had not changed, and he gave me education materials to learn how to deal with my disability. I have had several management positions for different companies. Each of these employers were notified prior to employment of my disability, a couple even had me physically evaluated, and they accommodated my physical limitations.

Yes, there are many things I cannot do, but I have adjusted to the point that it has become a way of life. I remain right hand dominant, but when it comes to strenuous tasks like holding a cup of coffee, blow-drying my hair, opening a bottle of Gatorade, lifting a skillet and an extensive list of other tasks, I must utilize my left hand. Yes, I have pain, some days can be a minor ache, and others can be excruciating sharp that leave me in tears. Somedays there is swelling that affects my enter right hand. I have not sought medical treatment, because it's something I have learned to live with. I feel fortunate that I still have a hand.

Prior to the hearing I had documentation for prior visits from Larson, Nystrom who have since retired. As stated previously, I was never given documentation for my visit with Dr. Nijjar in 2011. Being that I had no current treating physician and did not have the financial means to retain an attorney, nor secure an Orthopedic Surgeon to accompany me at the hearing in October 2016, I contacted Thomas Traut, M.Ed., RKT, CWCE, President/Owner, is recognized as an expert on workers' functional abilities and has testified as an expert witness in local, state and federal cases. On 10/20/2016 he performed extensive testing to evaluate my capacity to perform the duties as a correctional Peace Officer. Per his report, "Specifically she did not demonstrate the ability to perform Very Heavy work as required, maximal lifting was 40lbs at waist height and 20lbs above waist height. Very heavy work requires occasional capacity of greater than 100lbs at waist height. Additionally, there are significant residual deficits in right hand strength on right hand side compared to left hand side affecting her ability to perform restraints, pushing, pulling and lifting. Grip strength was considered below normal on the right side per age and sex referenced norms. Average peak force was 81lbs on the left and 42lbs on the right. A deficit of 48% was present on the right side compared to the left side. A full copy of the report was submitted at the hearing.

October 25, 2016 Administrative Hearing, Fresno California. I appeared for my hearing without representation because I did not have the financial means to retain one. During the hearing I was clearly outnumbered by individuals that were clearly seasoned by the processes of hearings. However, one does not have to be certified a Dr., a Lawyer, a Judge, or a court reporter, to carefully listen and take excellent notes. During the very long and tedious hearing I paid very close attention to Dr. Ha'erbin's testimony and his repetitive recollections of his certifications. You may refer to the records of the Administrative hearing. It was Dr. Ha'Eri's testimony something to the effect, that my injury was nothing more than a bruise. He then stated that it was he Something would have healed in a couple of months. A "bruise"? Yet, documentation provided by Dr. Larson 8 months and 17 months' post injury confirms that I remained substantially incapacitated. Dr. Nystrom M.D., whom Dr. Ha'Eri during testimony spoke highly of saying something like "Yes he is an Excellent Doctor", documented in his April 2003(17 Months post injury) report that I remained substantially incapacitated. Dr. Nijjar in 2011(10

Years post injury), I have not been allowed documentation, however I had copy of the letter from CalPERS March 2012 reflects that Dr. Nijjar M.D reported that I remained substantially incapacitated and unable to perform the duties of a correctional officer.

I believe that CalPers are just as much victims of Dr. Ha'Eri's negligent practices and inaccuracies. CalPers staff have shared their frustrations in regards to Dr. Ha'Eri's behavior. I understand that CalPers has invested a substantial amount of money in hiring Dr. Ha'Eri for Independent Medical Examinations, for many CalPers disabled retirees.

I do not stand alone in regards to feeling victimized of Dr. Ha'Eri. There are many individuals I have conferred with, and much of the recalled of facts echo the same experience. There are many CalPers disabled employees who were seen by Dr. Ha'Eri that have stated from the time they met with Ha'Eri and then later submitted in legal documents, stating that Dr. G Ha'Eri never actually physically examined them. Here are a couple of examples.

11/29/16 CalPers RE: Ryann Mullen, Petition for reconsideration. *"This evaluation consisted of a onetime visit consisting of a 45-minute face to face encounter and a medical review of 2 hours and 45 minutes."* (no physical evaluation was completed)

2016 CalPers Re: Gustavo L Miranda Case:2015-0745 *"21. Respondents assertion that Dr. Ha'Eri was late for the IME was irrelevant, and his assertion that Dr. Ha'Eri did not perform and examination.* (no physical evaluation was completed)

I believe in God, and I know in my heart if CalPERS had been given a legitimate IME report performed by a practicing Orthopedic Specialist with integrity, they would have never reached the decision to reinstate me to a position of a Correctional Officer. I also feel that the Executive board would not want to reinstate me to a position, post the legal retirement age and while I remain substantially incapacitated despite Dr. Ha'Eri's report, until all methods of confirmation have been exhausted. I can't help but wonder why would CalPers risk my life, by reinstating me to a position, where my 15-year disability would not be accommodated. In a previous argument, I asked for the Board to have me re-evaluated, however I received no communication and assume my request is denied.

I have chosen to seek a second opinion on my own accord, being that I retain the right to future medical, as approved by my worker's compensation carrier State Compensation Insurance Fund and the California Correctional Institution Tehachapi in 2004. Even though seeing a physician will not improve my physical disability, nor will I ever be able to perform the duties of a Correctional Officer, I have requested to be evaluated, showing that I remain incapacitated. Currently I am waiting for my appointment with an Orthopedic Specialist. I have no doubt, upon their thorough examination and advanced testing, that they will come to the same conclusion of Dr. Larson M.D, Dr. Nystrom M.D, Dr. Nijjar M.D, and Mr. Traut M.Ed., RKT, CWCE.

I again sincerely ask that the board reconsider and plead that they reject their original Proposed Decision to reinstate me to the position of Correctional Peace Officer.

Thank you for your thorough evaluation.

Respectfully,



Dawn M. Brooks