ATTACHMENT C

RESPONDENT(S) ARGUMENT(S)
This letter is in response to the Proposed Decision of the Administrative Law Judge in the matter of the application for Industrial Disability Retirement. In August 2016, I was notified by workers compensation that I was placed on permanent and stationary status by the AME, Dr. Gravina. Not only did Dr. Gravina’s opinion state in his report that my injuries were permanent and stationary, which means that my injuries will not improve, therefore they are permanent. Dr. Gravina (2016) also noted in his report “work preclusions should consist of no prolonged forward flexion of the neck, no left arm work above 90 degrees, no lifting greater than 20 pounds, and a preclusion from very forceful strength activities and fine manipulation (bilaterally).” (Gravina, R. F., 2016). Gravina (2016) also contemplates that the individual (Regina Earl) has lost approximately 25% of pre-injury capacity for lifting, pushing, pulling, grasping, pinching, holding, torqueing, performing other activities of comparable physical effort, and from activities requiring finger dexterity (Gravina, R. F., 2016).

As a safety member, I must perform activities that require physical effort to restrain combative inmates and patients. As a psychiatric technician assistant, I must have the physical strength to perform takedowns on individuals whose weight may vary from 170 pounds to 300
pounds. I am also required to use physical strength to separate individuals who are fighting one another, who may be assaulting staff, or when I am being assaulted.

According to Dr. Gravina’s reports, and the evidence that supports his opinions are considered hearsay, because he was not present at the appeal hearing on June 20, 2018. Based on financial instability, unlike CalPers, I could not afford to pay for Dr. Gravina’s appearance. According to CalPers paid IME professional, he claims that I am physically capable of performing a takedown on an inmate that weighs 280 pounds; these opinions are based on a ten minute doctors visit, and if I were 100% whole, I would not be able to perform a takedown on an individual of that weight capacity.

Based on my permanent injuries, my employer has not offered me a modified duty position, and I was also denied an accommodation. The CalPers assigned IME doctor claims that I can perform my regular job duties, but according to my permanent restrictions stated in Dr. Gravina’s report, my employer refuses to provide me with any position based on my permanent injury status.

At my appeals hearing on June 20, 2018, a prior hearing considered precedential was applied in comparison to my own case; Keck vs Glendora Unified School District, May 16, 2000. The findings of fact that were made in the Keck case are not even similar to my case in regards to job duties. As a psychiatric technician assistant, I am required to attain the physical strength to carry out my job functions each day; Keck’s daily job functions are not in comparison to my daily job duties. On a daily basis, as a psychiatric technician assistant, I must lift ten or more pounds, have the physical agility to separate individuals who weigh more than 170 pounds, and have the ability to grasp and grip on a consistent basis. Keck’s job status and requirements does not constitute a safety position. The reports of Dr. Gravina dated 2016 and 2018 were submitted
to the CalPers Executive Officer, including x-rays, EMG’s, and MRI’s, but the bias opinions of Dr. Harry Khasigian were taken into consideration versus Dr. Gravina, who is not being paid by CalPers. Dr. Khasigian, who barely examined me and saw me for ten minutes should not have precedent over the opinions of the treating physicians named in the reports, or the AME Dr. Gravina, who saw me for an hour. According to the CalPers paid physician, he says that I can perform my full job duties, but based on the AME report from Dr. Gravina and my treating physicians restrictions, Napa State Hospital is not offering me a position because of my permanent restrictions. I disagree with the findings and hope that you take this letter into consideration before making your final decisions.

Sincerely,

Regina Yvette Earl