

ATTACHMENT C
RESPONDENT'S ARGUMENT

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OCT 17 2016

FACSIMILE TRANSMISSION

October 17, 2016

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Cheree Swedensky, Assistant to the Board CalPERS Executive Office		(916) 795-3972

FROM: Thomas J. Wicke, Esq., / Terry Hernandez
 RE: In the Matter of the Application for Industrial Disability Retirement of NELLIE E. RODRIGUEZ, Respondent and DEPARTMENT OF HEALTH CARE SERVICES, Respondent
 FILE NO.: XPP-9006
 PAGES: 4 (including cover page)
 MESSAGE: Attached, please find Respondent Nellie Rodriguez's ARGUMENT

If You Do Not Receive All Pages, Please Call Terry A. Hernandez at (818) 703-6000

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BOARD OF ADMINISTRATION

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CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION

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11 In the Matter of the Application for Industrial
Disability Retirement of

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NELLIE E. RODRIGUEZ,

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Respondent,

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and

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16 DEPARTMENT OF HEALTH CARE
SERVICES,

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Respondent.

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I.

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INTRODUCTION

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This matter was presented to the Administrative Law Judge, Irina Tentser, on July 13,

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2016.

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Judge Tentser reviewed thirteen exhibits as submitted by CalPERS and twenty-six exhibits

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as submitted by Respondent, Nellie Rodriguez. Judge Tentser also heard testimony from the

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Respondent, Nellie Rodriguez, as well as a medical expert, Dr. Robert Fenton produced by

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CalPERS.

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RESPONDENT NELLIE E. RODRIGUEZ'S ARGUMENT

1 After reviewing the entirety of the evidence and the credibility of the witnesses, Judge
2 Tentser recommends that Ms. Rodriguez's appeal be granted.

3 II.

4 SUMMARY OF ARGUMENT

5 Respondent Nellie Rodriguez began employment with the State of California in 1976 as a
6 clerk for the Medical Board of California. In 1999, she was promoted to an Investigator and
7 underwent Police Officer Standard Training Certification or POST Certification. As a result of
8 her training, she received field instruction, training with a firearm, arrest and control training,
9 handling evidence and interviewing witnesses.

10 By 2003, Respondent Nellie Rodriguez transferred to the Department of Health Care
11 Services.

12 As a result of industrial injuries, Respondent Nellie Rodriguez was restricted from field
13 work and placed in a temporary modified position on or about May 2, 2013. By November, 2013
14 her Department was unable to continue to accommodate her work restrictions.

15 Subsequently, on or about June 26, 2014, Nellie Rodriguez filed for an Industrial
16 Disability Retirement with CalPERS.

17 In her decision, Judge Tentser summarizes the evidence when at page 10 of her Proposed
18 Decision, Point Number 9 under Legal Conclusions, she states:

19 "Here, the evidence showed the Respondent was physically
20 incapable of performing all of the usual duties associated with her
21 position as an Investigator, as established through her credible
22 testimony and her medical records, based on factual findings 9
23 through 38." (Emphasis added)

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Judge Tentser provided the Board a complete and thorough analysis of the testimonial and documentary evidence in this matter. Respondent Nellie Rodriguez requests the Board adopt the Proposed Decision.

DATED: October 17, 2016

Respectfully submitted,

LEWIS, MARENSTEIN, WICKE, SHERWIN & LEE, LLP

By: 
THOMAS J. WICKE
Attorneys for Respondent
NELLIE E. RODRIGUEZ

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 20750 Ventura Boulevard, Suite 400, Woodland Hills, CA 91364-2338.

On October 17, 2016, I served true copies of the following document(s) described as

RESPONDENT NELLIE E. RODRIGUEZ'S ARGUMENT on the interested parties in this action as follows:

Cheree Swedensky, Assistant to the Board
CalPERS Executive Office
P.O. Box 942701
Sacramento, CA 94229-2701
Served via facsimile only to:
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BY FAX TRANSMISSION: I faxed a copy of the document(s) to the persons at the fax numbers listed in the Service List. The document(s) were transmitted at or before 5:00 p.m. The telephone number of the sending facsimile machine was (818) 703-0200. No error was reported by the fax machine that I used. A record of the fax transmission was properly issued by the sending fax machine.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 17, 2016, at Woodland Hills, California.


Terry Hernandez