

**ATTACHMENT C**

**RESPONDENT'S ARGUMENT**

## **WRITTEN ARGUMENT IN SUPPORT OF REVERSAL OF DENIAL OF INDUSTRIAL DISABILITY RETIREMENT**

### **I. INTRODUCTION**

This appeal concerns CalPERS's denial of Industrial Disability Retirement pursuant to Government Code section 21151 based on the conclusion that Respondent failed to establish that she was substantially incapacitated from the performance of her duties as a Correctional Counselor II Supervisor at North Kern Valley State Prison at the time she filed her application on June 1, 2023. That conclusion is not supported by substantial evidence and reflects a misapplication of the governing legal standard. The Administrative Law Judge improperly discounted the only contemporaneous, job-specific Qualified Medical Evaluation in the record, and relied on a later Independent Medical Evaluation (IME) that speculated about expected recovery rather than actual functional capacity, and failed to address undisputed evidence that Respondent was denied return to work because her permanent medical restrictions could not be accommodated. When the record is evaluated under the correct legal framework, Respondent satisfies the statutory requirements for Industrial Disability Retirement.

### **II. GOVERNING LEGAL STANDARD**

Government Code section 21151 provides that a member is entitled to disability retirement if the member is incapacitated for the performance of duty as a result of industrial injury. California courts have repeatedly emphasized that this standard does not require absolute incapacity or total inability to work. In *Mansperger v. Public Employees' Retirement System*(1970) 6 Cal.3d 614, 628, the California Supreme Court explained that disability retirement provisions are intended to protect employees who are “*incapacitated from performing the duties of their positions*,” not only those who are completely helpless. The Court rejected an unduly restrictive interpretation of incapacity and made clear that the relevant inquiry is the employee's ability to perform their job duties in a meaningful way.

Similarly, in *Harmon v. Board of Retirement* (1976) 62 Cal.App.3d 689, 693, the Court of Appeal held that “*the test is whether the member is able to perform his usual duties*,” and not whether the employee might theoretically improve or perform some other type of work. The court further cautioned that disability determinations must focus on present functional capacity, stating that speculative future recovery does not defeat a showing of incapacity at the relevant time.

Critically, the determination must be based on the member's condition at the time the application for disability retirement is filed. Medical opinions rendered after the relevant period or opinions that merely hypothesize improvement without addressing actual job performance do

not constitute substantial evidence sufficient to deny benefits under Government Code section 21151.

### **III. THE QUALIFIED MEDICAL EVALUATION ESTABLISHES SUBSTANTIAL INCAPACITY AT THE TIME OF APPLICATION**

The most probative medical evidence in the record is the Qualified Medical Evaluation performed by Dr. G. Sunny Uppal on March 2, 2023, approximately three months prior to Respondent's application for Industrial Disability Retirement. Dr. Uppal reviewed the official Correctional Counselor II Supervisor job description, evaluated Respondent's industrial injuries, declared her permanent and stationary, and expressly concluded that she could not return to her usual occupation. His opinion directly addressed the statutory standard articulated in *Mansperger* and *Harmon* by analyzing whether Respondent could perform the essential duties of her position.

Dr. Uppal's opinion was definitive and qualified. He did not suggest that Respondent might be temporarily limited or that further treatment could restore her capacity to perform her duties. Instead, he concluded that Respondent was unable to return to her usual occupation based on the job description reviewed at the time of his evaluation. His conclusions were sufficiently credible that they were relied upon by Dr. Foxley, M.D., in preparing Respondent's work status documentation. No physician in the record provided a contemporaneous, job-specific medical opinion establishing that Respondent was capable of performing the essential duties of a Correctional Counselor II Supervisor at or near the time she filed her application.

### **IV. RELIANCE ON A LATER IME DOES NOT CONSTITUTE SUBSTANTIAL EVIDENCE**

The Administrative Law Judge instead relied on an Independent Medical Evaluation conducted by Dr. Kaloostian on November 10, 2023, more than five months after the application was filed and more than eight months after Dr. Uppal's QME. Dr. Kaloostian opined that Respondent's condition was muscular in nature and should have resolved within approximately twelve weeks. This opinion does not establish that Respondent was capable of performing her duties at the time of application. An opinion that a condition should have been temporary does not rebut evidence that the condition was permanent and disabling when evaluated during the relevant period.

In *Curtis v. Board of Retirement* (1986) 177 Cal.App.3d 293, 302–303, the Court of Appeal held that an administrative body errs when it relies on medical opinions that fail to address the employee's actual ability to perform required job duties or that are inconsistent with the weight of the evidence. Here, Dr. Kaloostian's IME did not establish that Respondent could perform the essential functions of her position on June 1, 2023. It merely expressed a retrospective expectation of recovery that was contradicted by Respondent's continued inability to return to work.

## **V. EMPLOYER DENIAL OF RETURN TO WORK CONFIRMS INCAPACITY**

The administrative record further establishes that Respondent was denied return to work because her permanent medical restrictions could not be accommodated. After exhausting her paid leave, Respondent contacted North Kern State Return To Work Coordinator regarding her return to work and elected to pursue return with reasonable accommodations. The employer expressly denied that request, stating that her permanent restrictions could not be accommodated. This determination is documented in Exhibit B and was based on Dr. Uppal's medical evaluation.

Exhibit C, the letter from the Return to Work Coordinator, further confirms that Respondent's inability to return to work was directly tied to her permanent restrictions and the essential requirements of her position. This evidence directly supports a finding of substantial incapacity under the standard articulated in *Harmon*, which focuses on the ability to perform usual duties rather than speculative alternatives. The ALJ's decision failed to address this evidence entirely.

## **VI. CONCLUSION AND REQUEST FOR RELIEF**

Under the standards articulated in *Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.3d 614, *Harmon v. Board of Retirement* (1976) 62 Cal.App.3d 689, and *Curtis v. Board of Retirement* (1986) 177 Cal.App.3d 293, the record establishes that Respondent was substantially incapacitated from the performance of her duties as a Correctional Counselor II Supervisor at the time she filed her application for Industrial Disability Retirement. Dr. Uppal's contemporaneous Qualified Medical Evaluation, his finding that Respondent was permanent and stationary, and the employer's denial of return to work based on the inability to accommodate permanent restrictions, as reflected in Exhibits B and C, satisfy the requirements of Government Code section 21151. Respondent respectfully requests that the denial of Industrial Disability Retirement be reversed and that Industrial Disability Retirement benefits be granted.