

ATTACHMENT C

RESPONDENT'S ARGUMENT

THE DYKMAN LAW FIRM

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December 30, 2025

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Board Services Unit Coordinator
California Public Employees' Retirement System
Post Office Box 942701
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Subject: In the Matter of the Appeal of Reinstatement from Industrial Disability Retirement of ANDREY Y. ANDRSH, Respondent, and CALIFORNIA MEDICAL FACILITY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, Respondent.

Reference: Ref. No. 2023-0569

Hearing Date: January 20, 2026

RESPONDENT'S ARGUMENT

Dear Board Members:

I am writing to you in support of the PROPOSED DECISION made by Administrative Law Judge (ALJ) Michael Starkey that ...

... respondent Andrey Andrsh remains substantially incapacitated from the performance of his former duties of a Medical Technical Assistant (MTA) for respondent California Medical Facility (CMF), California Department of Corrections and Rehabilitation, due to orthopedic (bilateral shoulders, elbows, wrists, neck, and back) conditions. (Proposed Decision & Order ("PD") at page 21)

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An MTA is a sworn Peace Officer, similar to a state police officer, correctional officer etc. The MTA position is unique in that the MTA must perform both custodial duties and highly specialized duties working with incarcerated many times dangerous inmates who are also psychiatrically unstable. An MTA at CMF must be physically capable of providing medical attention while also performing the very physical custodial responsibilities of maintaining safety and security for both the highly volatile inmate population and the staff.

This unique combination of duties and inherent risk justifies the MTA's sworn Peace Officer status along with state police officers, correctional offices and firefighters. This classification provides a well deserved benefits package which exceeds the benefits provided to those in other job classifications.

MTA Andrsh was required to receive extensive special training in both medical emergencies and custody procedures. Aside from the needed medical training, Andrsh also attended and graduated from the Correctional Academy, leading to his sworn Peace Officer status.

Please consider the following in support of the ALJ's determination:

1. THE ALJ DETERMINED THAT ANDRSH REMAINS SUBSTANTIALLY INCAPACITATED.

As described by the ALJ in his PROPOSED DECISION, Andrsh was hired as an MTA in February 2011 and completed Peace Officer training in May 2011. Andrsh reported being in excellent physical shape and was very proud of attaining his position as an MTA/Peace Officer. He was assigned to the psychiatric unit of the CDCR California Medical Facility (CMF).

Over the course of the next 10 years while at work at CMF as an MTA, Andrsh suffered multiple job related orthopedic injuries which led to several surgeries to both shoulders, his right elbow and both wrists. He was also left with permanent limitations in his neck and back. All of these injuries and subsequent surgeries are well documented by the ALJ in his report.

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Andrsh's last day of work as an MTA was on or about July 16, 2019. Dr. Cabayan, his treating physician, told him that he probably could no longer perform the physical duties of an MTA. As Andrey testified at the hearing, this news was heartbreaking. He stated that he was very proud of being a Peace Officer and an MTA. He stated that he would return to work if he were able.

On August 14, 2020, Andrsh submitted an application for an Industrial Disability Retirement (IDR) from his position as an MTA/Peace Officer.

At CalPERS's request, Andrsh underwent an IME examination with Dr. Anthony Bellomo. In his written reports, "Dr. Bellomo opined that Andrsh's orthopedic impairments rose to the level of substantial incapacity..." (PD, Pg. 9, par. 36)

On February 18, 2021, CalPERS notified Andrsh this his IDR application had been approved based upon his position as an MTA, effective February 5, 2021.

On May 12, 2022, CalPERS notified Andrsh that his IDR was under review. At CalPERS request, he underwent another IME examination, this time with a Dr. Robert Henrichsen.

After the examination, Dr. Henrichsen issued a report concluding that Andrsh could in fact physically perform the duties of an "MTA".

On April 25, 2023, CalPERS notified Andrsh that he was to be reinstated, as an LVN, not as an MTA, although MTA was his position on his last date of work and over the previous 10 years, and MTA is the position for which he applied and received an IDR approval.

On May 8, 2023, Andrsh filed a timely appeal and requested an administrative hearing.

On June 18, 2025, this case proceeded to trial.

On November 19, 2025, after hearing medical testimony from Dr. Henrichsen, the CalPERS IME, from Dr. Manijeh Ryan, the IME for Andrsh, testimony from Andrey Andrsh himself, and after review all of the medical evidence and briefs submitted by the parties, Judge Starkey found that respondent Andrsh remains substantially

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incapacitated from performance of his former duties of a MTA.

2. THE ANDRSH APPLICATION FOR AN IDR WAS APPROVED BASED UPON HIS POSITION AS AN MTA/PEACE OFFICER.

There was pretrial discussion about the possibility of returning Andrsh to work as an LVN with a safety classification. However, unlike an MTA, or a police officer or a correctional officer, an LVN, even an LVN (safety), is not within the Peace Officer classification. Andrsh cannot have his Peace Officer classification taken from him by sending him back to work as an LVN (safety).

It should also be noted that at the hearing, CalPERS did not offer a single piece of evidence in support of Andrsh's possible ability to return to work as an LVN. The totality of their evidence was in support of their position that Andrsh was no longer substantially incapacitated from performing the physical duties of an MTA.

It is arguably a moot point in that Dr. Ryan found Andrsh cannot perform the nursing duties required of an MTA. During her direct testimony at the hearing, Dr. Ryan testified that Andrsh had lost the full use of his hands due to the failed bilateral carpal tunnel surgery. She reported that Andrsh has also lost full use of his shoulders and back.

Dr. Ryan testified ...

A. So as an LVN or MTA, the first thing also they have to know to be able to do CPR. That means chest compressions. And so chest compression needs pressure on the wrist area where the carpal tunnel is. And he has to be able to push down hard and far enough. And he needs his shoulders to do that because that is the motion. He won't be able to do basic life support which is needed as an LVN. (Hearing Transcript I, 142:12-19)

This CPR example demonstrates the importance of an MTA's full use of his hands and shoulders in order to perform this basic but critical life saving procedure. This is

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equally necessary for someone working as an LVN (safety) or otherwise.

3. CONCLUSION

Judge Starkey provides us with a strong and detailed summary of why he found that respondent Andrsh remains substantially incapacitated from performing the physical duties of an MTA.

Only Judge Starkey was able to listen to and evaluate the reasoning and credibility of the 2 medical witnesses who testified at the hearing. Only Judge Starkey was able to listen to and evaluate the credibility of Andrey Andrsh.

Andrsh reported to his last day on the job as an MTA/Peace Officer. Unable to continue, he filed for an IDR as an MTA/Peace Officer. His IDR application was approved by CalPERS based upon the IME opinion of Dr. Bellomo, who concluded that Andrsh was substantially incapacitated from performance of his former position as an MTA/Peace Officer. He has been receiving pension payments from CalPERS based upon the approval of his IDR as an MTA/Peace Officer.

Andrsh has sustained significant permanent orthopedic injuries all on the job, mostly in the line of dangerous duty as an MTA, involving hand-to-hand combat while protecting fellow officers, nurses and the inmates themselves. He is a deserving Peace Officer.

It is respectfully requested that the Board adopt Judge Starkey's Proposed Decision and allow this disabled Peace Officer to continue receiving his well-earned IDR benefits.

Thank you for your careful consideration of this matter.

Sincerely,



Craig Dykman, Esq.

Attorney for Andrey Andrsh

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