ATTACHMENT A

RESPONDENT'S PETITION FOR RECONSIDERATION

PETITION FOR RECONSIDERATION

DEMAND DUE DILIGENCE IN REVIEWING EVIDENCE/ARGUMENT IN SUPPORT OF ELIGIBILITY FOR DISABILITY RETIREMENT—DON'T JUST AGREE WITH OPPOSING PARTY AND IGNORE THE EVIDENCE (AS BEFORE) JUST TO SHUFFLE THIS THRU THE PROCESS

THIS IS A WRITTEN ARGUMENT AGAINST THE PROPOSED DECISION OF DENIAL ON THE RIGHT TO FILE AN APPLICATION FOR DISABILITY RETIREMENT.

IF THE LEGAL ARGUMENT IS ADOPTED, RESPONDENT IS REQUESTING THAT THE BOARD DESIGNATE THE DECISION AS PRECEDENT IN WHOLE OR IN PART.

ISSUE: IS RESPONDENT ELIGIBLE TO APPLY FOR DISABILITY RETIREMENT OR IS SHE OTHERWISE PRECLUDED BY APPLICABLE LAW?

RESPONDENT is pleading to the Board for appeal based on Haywood v. American River Fire Protection District (1998) 67 Cal. App. 4th 1292, Smith v. City of Napa (2004) 120 Cal. App. 4th 194, Martinez v. Public Employees Retirement System (2019) 33 Cal. App. 5th 1156, as well as the CalPERS Precedential Decisions in the Matter of the Application for Industrial Disability Retirement of Robert Vandergoot (2013) CalPERS Precedential Dec. No. 13-01 and In the Matter of Accepting the Application for Industrial Disability Retirement of Phillip MacFarland (2016) CalPERS Precedential Dec. No. 16-01.

California Public Employees' Retirement Law Government Code Section 20026 **"defines "Disability" and "incapacity for performance of duty" as a basis of retirement, mean disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death, as determined by the board, or in the case of a local safety member by the governing body of the contracting agency employing the member, on the basis of competent medical opinion."**

FOR OVER 2.5 YEARS THE RESPONDENT MET THE REQUIREMENTS OF CONTINUING DISABILITY AND INCAPACITATION FOR PERFORMANCE OF DUTIES WHEN SHE WAS PLACED OFF OF WORK BY HER DOCTORS AND CONTINUES TO DO SO. There are 1000 pages of continuing disability evidence that the Employer had access to per email dated 4/14/21 from Manager EMPLOYER 1 to new Manager EMPLOYER 2. (Reference CALPERS DOCKET #DRRR0712 AND #DRRR0713). RESPONDENT BECAME DISABLED FROM HER POSITION ON 4/22/19 AS A RESULT OF AN ON-THE-JOB INJURY. SHE HAS BEEN ON CONTINUING DISABILITY AS DETERMINED BY COMPETENT PROFESSIONAL MEDICAL DOCTORS THROUGH MONTHLY TREATING PHYSICIAN REPORTS, STATE QME REPORTS, AND AN ADMINISTRATIVE JUDGE'S DECISION FINALIZING ALL *CONTINUING DISABILITY* FROM THE DATE OF INCAPACITATION TO PERFORM HER DUTIES (4/22/19) TO PRESENT (ONGOING) WHICH WERE PROVIDED TO INSURER/EMPLOYER. (EVIDENCE DRRR0737 THRU DRRR0869-DR. Z-TREATING PHYSICIAN AND DRRR0951 THRU DRRR1037-DR. X-QME) THIS INFORMATON HAS BEEN AVAILABLE TO THE EMPLOYER THROUGHOUT THE DATE OF INCAPACITATION FROM DUTY AND/OR DISABILITY AND DURING THE COURSE OF THIS PROCESS. THE EMPLOYEE WAS INCAPACITATED FROM EMPLOYMENT DUE TO AN INDUSTRIAL INJURY.

Government Code Section 21153 **"obligates the employer to file on behalf of the member if you have reason to believe they may be disabled and the member has not applied on their own behalf. You cannot separate the employee without first filing on their behalf. Prior to applying for disability retirement on a member's behalf, issues of modified work and reasonable accommodations should have been considered and exhausted."**

In 4/14/21 Email, EMPLOYER 1 states interactive process completed by EMPLOYER 1 who stated to EMPLOYER 2 (new Mgr) ***"she cannot return to her job here as a Security Guard, and there are no other jobs available her employment with District needs to come to a close whether or not her claim has been settled,..."*** (Reference Email 4/14/21, CALPERS DOCKET #DRRR0712 AND DRRR0713). On 4/14/21 EMPLOYER 1 gave a breakdown of the completed interactive process as well as respondent's choice on election of disability retirement to EMPLOYER 2. She informed EMPLOYER 2 that RESPONDENT was permanent and stationary, she could not return to her job and there were no other jobs available. EMPLOYER 1 also informed EMPLOYER 2 that there were over 1000 medical documents in support of the total disability.

EMPLOYER 2 STATED THE INTERACTIVE PROCESS WAS NOT COMPLETE. HOWEVER, THE INTERACTIVE PROCESS WAS COMPLETED PER EMPLOYER 1 AND STATED ON EXHIBIT DRRR0720 "WE WILL DEFINITELY NOT BE ABLE TO ACCOMMOCATE HER IN ANY ROLE HERE. AS YOU KNOW WE JUST LAID OFF CLOSE TO 70% OF OUR PERMANENT, FULL-TIME STAFF AND HAVE NO OTHER POSITION FOR HER, SECURITY WAS THE ONLY DEPARTMENT WHERE NO ONE WAS LAID OFF." EMPLOYEE WAS DEEMED DISABLED FROM SECURITY. PLEASE NOTE THIS WAS DURING COVID AND THE FAIRGROUNDS WERE CLOSED DOWN DUE TO THE PANDEMIC.

A NEW PERSONNEL MGR (EMPLOYER 2) (WHO WAS UNFAMILIAR WITH THE RESPONDENT'S CASE WHICH CONTAINED 1000 PAGES OF CONTINUING DISABILITY MEDICAL DOCUMENTATION), BELIEVED SHE HAD THE AUTHORITY TO OVERRIDE THE PROFESSIONAL MEDICAL OPINIONS OF 1) DR. Z-THE TREATING PHYSICIAN, 2) STATE QME PHYSICAN, AND 3) ANOTHER

ADMINISTRATIVE LAW JUDGE'S OPINION DECLARING THE DISABLING INCAPACITY. PERSONNEL MGR (EMPLOYER 2) DEMANDED THE EMPLOYEE RETURN TO WORK (TO THE SAME POSITION DEEMED DISABLED FROM) WHEN EMPLOYEE NOT AUTHORIZED TO DO SO BY DOCTORS. EMPLOYEE BEGAN THE INDUSTRIAL DISABILITY APPLICATION ON APPROXIMATELY 11/17/21 BY MAILING THE EMPLOYER PORTION TO EMPLOYER 2.

ON 11/24/21, EMPLOYEE SENT MSG TO EMPLOYER (DRRR0044) ADVISING OF THE REAFFIRMING OF INTENTIONS TO FILING A DISABILITY RETIREMENT. THIS MSG WAS SENT PRIOR TO THE AWOL SEPARATION/VOLUNTARY TERMINATION. EMPLOYEE ALSO ADVISED EMPLOYER 2 THAT SHE MAILED OUT THE EMPLOYER SECTION OF THE DISABILITY APPLICATION TO THEM. EMPLOYER 2 ACKNOWLEDGES RECEIPT OF THE APPLICATION AND STATED "WE ARE IN THE PROCESS OF COMPLETING THEM AND WILL RETURN THEM TO YOU EXPEDITIOUSLY".

EMPLOYER 2 DID SIGN OFF ON THE DISABILITY APPLICATION 11/30/24, TO PROCEED WITH RETIREMENT WITHOUT ISSUE AND DID NOT IDENTIFY ANY AWOL'S. THE SUPERVISOR/PUBLIC SAFETY DEPT. PORTION WAS SIGNED OFF ON 12/2/21, TO PROCEED WITHOUT ISSUE. PAYROLL THEN SIGNED OFF TO PROCEED WITH THE DISABILITY APPLICATION FOR RETIREMENT AND PAYROLL SHOWED NO TERMINATION, OR SEPARATION DATES LISTED AND APPROVED TO PROCEED WITHOUT ISSUE. ALL PARTIES CONFIRMED THE DISABILITY RETIREMENT APPLICATION TO MOVE FORWARD WITHOUT ISSUE OR ANY AWOL'S. (DRRR0279 TO DRRR0280)

THE DEMAND TO REPORT TO WORK TOOK PLACE SHORTLY AFTER EMPLOYEE STARTED PROCESS FOR DISABILITY RETIREMENT AND NOTIFYING EMPLOYER OF FILING THE INDUSTRIAL DISABILITY RETIREMENT APPLICATION. THIS RESULTED IN A "VOLUNTARY TERMINATION" AND/OR AN "AWOL SEPARATION"

EMPLOYEE HAD 40 HOURS OF LEAVE ON THE BOOKS, AND SHE CALLED OUT SICK TO HER DEPT. PER REGULATION.

According to the Disability Retirement Resource Guide, Temporary Disability Allowance (State and California State University Employees) Temporary Disability Allowance (TDA) "Is a program administered by CalHR. When there is medical or other pertinent information that indicates an employee is unable to perform the essential functions of their current position or any other position, the employer may file an application for disability retirement on the employee's behalf. The employer must give the employee 15 days written notice of its intention to file a disability retirement application."

The employer failed to file the application for disability retirement on the employee's behalf after notification of medical and/or other pertinent information i.e., QME reports that indicate the employee was unable to perform the essential functions of her position as early as 2/25/20.

According to the Disability Retirement Resource Guide, Senate Bill 1073 "allows the employer to remove the employee from their job and place them on involuntary leave (IL) when they file an application for disability retirement. It provides for a temporary disability allowance for employees who exhaust their leave credits and programs while on involuntary leave. CalPERS will reimburse the temporary disability allowance to the employer, if the application for disability retirement is approved."

Employee began the application process on 11/24/21, EMPLOYEE SENT MSG TO EMPLOYER (DRRR0044) ADVISING OF THE REAFFIRMING OF INTENTIONS TO FILING A DISABILITY RETIREMENT. According to Senate Bill 1073 the employer did not remove the employee and place them on involuntary leave, but placed the employee on AWOL or voluntary termination. These practices are against the very nature of the Disability Retirement process.

(Id at pp1305-1306, 79 Cal Rptr 2d 749). There is unrebutted evidence of an eligibility for disability, which ante-dates the AWOL. There was an agreement by the parties by another Administrative Law Judge for continuing disability and continuing incapacity for the performance of duty. The EMPLOYER did not have a right to issue an AWOL status when they were notified of ***"continuing disability"*** by the Judge and through their INSURER and ATTORNEY per the QME reports 1/25/21, 5/3/21 and 6/25/21 AND ongoing monthly treating physician incapacity reports or work statuses. There are over 1000 documents which show continuing disability from the industrial injury. (Per EMPLOYER 1 STATEMENTS).

CA GOV'T CODE SECTION 19253.5, (i)(1), "Medical examination, evaluation of employees work states, If the appointing power after considering the conclusions of the medical examination provided for by this section or medical reports from the employee's physician and other pertinent information concludes that the employee is unable to perform the work of his or her present position or any other position in the agency and the employee is eligible and does not waive the right to retire for disability, the appointing power shall file an application for disability retirement on the employee's behalf. The appointing power shall give the employee 15 days written notice of its intention to file such an application and a reasonable opportunity to respond to the appointing power prior to the appointing power's filing of the application." Based on this, the EMPLOYER has an obligation to file an application of disability retirement for RESPONDENT, but failed to do so.

Haywood, Vandergoot, and Smith Cases Case law "Impacts a member's eligibility to apply for and qualify for disability retirement. The Haywood, Vandergoot, and Smith cases provide clarification regarding the member's eligibility for disability retirement. Haywood v. American River Fire Protection District (1998) 67 Cal.App.4th 1292, 79 Cal. Rptr.2d 749 holds that when an employee is terminated for cause and the discharge is not the ultimate result of a disabling medical condition, the termination renders the employee ineligible for disability retirement."

Employer 2 was forcing the employee to report to work after fully being aware the employee had a disabling medical condition which prevented her from reporting to work. Even after evidence was submitted which showed the disability, Employer 2 was not satisfied with the evidence presented. Employer 2 disregarded all evidence presented and stated it did not satisfy the EMPLOYERS (STATE OF CA, DAA'S) requirement. (DRRR0042)

The employee was not authorized and/or released to return to work and, therefore, she abided by her doctor's orders with the continuing disability and did not report as directed by Employer 2. This is the reason Employer 2 put employee on AWOL and/or voluntary termination.

The EMPLOYER AGREED BEFORE AN APPOINTED ADMINISTRATIVE JUDGE that RESPONDENT had *"CONTINUING DISABILITY AND "CONTINUING INCAPACITY FOR THE PERFORMANCE OF DUTY", (IDENTIFIED IN QME REPORT).* When RESPONDENT is declared with ***CONTINUING DISABILITY AND "CONTINUING INCAPACITY FOR THE PERFORMANCE OF DUTY" THIS INDICATES RESPONDENT IS CONTINUOUSLY INCAPACITATED TO PERFORM HER DUTIES DUE TO A CONTINUOUS DISABLING CONDITION.***

8 C C R Section 10152 defines the definition of "permanent and stationary" as, "A disability is considered permanent when the employee has reached maximal medical improvement, meaning his or her condition is well stabilized and unlikely to change substantially in the next year with or without medical treatment".

QME Dr. X in his QME report dated 1/25/21 uses the definition of ***"permanent and stationary"*** to establish a ***"permanent disability"*** for RESPONDENT. Dr. X states, ***"The definition of permanent and stationary is found in 8 C C R Section 10152, "A disability is considered permanent when the employee has reached maximal medical improvement, meaning his or her condition is well stabilized and unlikely to change substantially in the next year with or without medical treatment".***

QME Dr. X issued 1/25/21-QME SUPPLEMENTAL REPORT, MAY 3, 2021-QME SUPPLEMENTAL REPORT AND JUNE 25, 2021-ADDENDUM SUPPLEMENTAL REPORT to respondent's-EMPLOYER/INSURER AND RESPONDENT. In these reports QME Dr. X determined there was ***"continuing disability and continuing incapacity for the performance of duty"*** and that RESPONDENT was ***"permanent and stationary"*** in her position as a Security Guard. These are the final QME REPORTS and conclusions regarding continuing disability prior to the AWOL separation.

The purpose of the QME report by QME Dr. X dated 1/25/21 was to determine whether RESPONDENT reached Maximum Medical Improvement. Dr. X states in the report *"Regarding permanent and stationary status, ...February 25, 2020 was the MMI date in question. The patient would have been on temporary total disability from April 22, 2019 through February 25, 2020."* Dr. X goes on in the 1/25/21 report to state, *"The applicant has reached permanent and stationary status or maximum medical improvement."* He further states, *"This injury to left foot, cervical spine, thoracic spine, and lumbar spine is industrial in causation."*

Dr. X's statement establishes that there will be no changes in the RESPONDENT's condition for at least one year, with little to no improvement. Dr. X establishes that this condition of *"permanent and stationary status or maximum medical improvement"* will be through at least 1/25/22 per the definitions set forth in 8 C C R Section 10152. THIS ASSESSMENT OF CONTINUING DISABILITY COVERS THE PERIOD THROUGH 1/25/22, WHICH ANTE-DATES THE AWOL TERMINATION CHARGE AND DETERMINES THAT RESPONDENT IS ELIGIBLE TO APPLY FOR DISABILITY RETIREMENT.

IN 5/3/21 QME REPORT AUTHORED BY STATE QME Dr. X is contributing *"100% of the disability to the industrial injury."* DR. X ALSO STATES, *"All periods of disability were appropriate to date...Dates of disability started in 04/2019 until present".* Since QME Dr. X states ***"Dates of disability started in 04/2019 until present"***, the medical records are reflecting documented evidence of ***"continuous disability"*** from last day on pay through the date of the application and ongoing. This report was dated 5/3/21. Additionally, Dr. X indicates ***RESPONDENT is physically incapacitated to perform duties from the date of discontinuance of service to the time of application.*** Dr. X has not waived in this regard and states ***"All periods of disability were appropriate to date...***. **AGAIN, THE ASSESSMENT IN THIS QME REPORT COVERS THE PERIOD WHICH ANTE-DATES THE AWOL TERMINATION CHARGE. As such, Dr. X continues to maintain that this condition of *"permanent continuing disability"* will be through at least 5/3/22 per the definitions set forth in 8 C C R Section 10152, *"A disability is considered permanent when the employee has reached maximal***

medical improvement, meaning his or her condition is well stabilized and unlikely to change substantially in the next year with or without medical treatment". **THIS QME ASSESSMENT REPORT DATED 5/3/21 COVERS THE CONTINUING DISABILITY PERIOD THROUGH 5/3/22, WHICH ANTE-DATES THE AWOL TERMINATION CHARGE AND INDICATES THAT RESPONDENT IS ELIGIBLE TO APPLY FOR DISABILITY RETIREMENT.**

By denying RESPONDENT'S application for disability benefits, the Board violated the Contract Clauses of the state and federal constitutions (Cal. Const., art. I, § 9; U.S. Const., art. I, § 10, cl. 1) and its duty to administer the CalPERS system "in a manner that will assure prompt delivery of benefits ... to the participants." (See Cal. Const., art. XVI, § 17, subds. (a)-(b).) RESPONDENT'S concluding allegation is that the Board has "a duty to comply with Article XVI, section 17 of the California Constitution and ... to process disability retirement applications on the merits even where an employer has issued the applicant a notice ... terminating their employment".

There was sufficient evidence ante-dating the AWOL and documenting the continued disability as noted above in the QME reports AND treating physician's reports. The application for disability retirement should NOT have been denied. There were close to 1000 pages of continuing disability evidence that the Employer had access to per email dated 4/14/21 from Manager EMPLOYER 1 to new Manager EMPLOYER 2. (Reference CALPERS DOCKET #DRRR0712 AND #DRRR0713). EMPLOYER 2 testified she did not have sufficient medical documentation. Additionally, (Reference CALPERS DOCKET #DRRR0638) Insurance Representative provides EMPLOYER 2 with a complete synopsis of continuing medical disability status for RESPONDENT. EMPLOYER 2 testified and also written to RESPONDENT in District letter dated 11/30/21 she did not have sufficient medical evidence which prompted her to invoke the AWOL. RESPONDENT repeatedly informed EMPLOYER 2 to contact her Representative/Insurer regarding any medical documentation and disability updates.

RESPONDENT requested a Hearing based on the "Topic: AWOL"/AWOL Dismissal. The Hearing Representative stated she would provide a decision based on the evidence and emails RESPONDENT submitted to her. **However, RESPONDENT never received a decision/determination regarding the Informal Hearing on the "Topic: AWOL"/AWOL Dismissal from the Hearing Representative. HEARING REP. stated if not able to make a meeting date, she would make a decision with information provided in email.** Hearing Representative had a natural disaster and RESPONDENT had long term COVID and no date was given due to recovery by both people. Employer 2 testified she received a decision and respondent did not receive any notice, which violated due process rights.

The Employer failed to meet the Employer Requirements and Responsibilities in completing the Disability Retirement forms which clearly states to mail to CalPERS and as directed in Haywood, Vandergoot and Smith case law.

IN 6/25/21 QME REPORT AUTHORED BY DR. X STATES, *"It is my medical opinion, based within reasonable medical probability that the patients "current symptoms and disability" appear to be causally related to the industrial injury in question."* Dr. X indicates ***RESPONDENT continues to be physically incapacitated to perform duties from the date of discontinuance of service to the time of application.*** Dr. X has not waivered in this regard of RESPONDENT'S disability and states ***"All periods of disability were appropriate to date..."*** **AGAIN, THE ASSESSMENT IN THIS QME REPORT COVERS THE CONTINUING DISABILITY PERIOD THROUGH 6/25/22, WHICH ANTE-DATES THE AWOL TERMINATION CHARGE. As such, Dr. X continues to maintain that this condition of *"permanent continuing disability"* will be through at least 6/25/22 per the definitions set forth in 8 C C R Section 10152, *"A disability is considered permanent when the employee has reached maximal medical improvement, meaning his or her condition is well stabilized and unlikely to change substantially in the next year with or without medical treatment".* THIS QME ASSESSMENT REPORT DATED 6/25/21 COVERS THE CONTINUING DISABILITY PERIOD THROUGH 6/25/22, WHICH ANTE-DATES THE AWOL TERMINATION CHARGE AND INDICATES THAT RESPONDENT IS ELIGIBLE TO APPLY FOR DISABILITY RETIREMENT.**

The EMPLOYER was notified of RESPONDENT'S ***"current symptoms and disability"***, through these QME reports, as well as through ongoing treating physician reports provided to the EMPLOYER through the INSURER. RESPONDENT maintained the ***"continuing disability" and "the incapacity for performance of duties"*** throughout the duration of the disability of 4/22/19 to present per Dr. X's QME reports which cover the periods of disability which ante-dates the AWOL termination.

CA GOV'T CODE SECTION 19253.5, (i)(1), "Medical examination, evaluation of employees work states, If the appointing power after considering the conclusions of the medical examination provided for by this section or medical reports from the employee's physician and other pertinent information concludes that the employee is unable to perform the work of his or her present position or any other position in the agency and the employee is eligible and does not waive the right to retire for disability, the appointing power shall file an application for disability retirement on the employee's behalf. The appointing power shall give the employee 15 days written notice of its intention to file such an application and a reasonable opportunity to respond to the appointing power prior to the appointing power's filing of the application." Based on this, the EMPLOYER has an obligation to file

an application of disability retirement for RESPONDENT, but failed to do so. RESPONDENT WAS CLEAR TO EMPLOYER SHE MERELY WANTED TO CONFIRM ANY SERVICE CREDITS, NOT FORBID THE EMPLOYER FROM ACTING ON HER BEHALF. EMPLOYER HAD AS EARLY AS 2/25/20 AFTER THE DISABILITY WAS CONFIRMED TO FILE ON BEHALF OF THE EMPLOYEE. THEIR OBLIGATION BEGAN 2/25/20 WAY BEFORE RESPONDENT MADE THE STATEMENT THAT SHE WANTED TO CONFIRM HER SERVICE CREDIT.

According to the **Employer Disability Resource Guide** the basis to grant Disability Retirement/Industrial Disability Retirement (DR/IDR), CalPERS is governed by specific laws and regulations contained in the California Public Employees' Retirement Law. Government Code section 20026 defines "disability" and "incapacity for the performance of duty". "Disability" and "incapacity for performance of duty" as a basis of retirement, mean disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death, as determined by the board, or in the case of a local safety member by the governing body of the contracting agency employing the member, on the basis of competent medical opinion. RESPONDENT meets these requirements as evidenced above.

REGARDING CAUSATION, **In 6/25/21 QME REPORT UNDER AFFIDAVIT OF COMPLIANCE, DR. X STATES, *"I have discussed apportionment ... of the approximate percentage of disability caused by the industrial injury and the approximate percentage of disability caused by the other factors..."***

Dr. X apportioned 100% of the disability to the industrial injury as noted in his QME report 6/25/21.
(Reference 6/25/21 QME Dr. X's report, CAUSATION, CALPERS DOCKET #DRRR1033 AND AFFIDAVIT OF COMPLIANCE, CALPERS DOCKET #DRRR1035.)

State QME Dr. X under causation relates and states, ***"It is my medical opinion, based within reasonable medical probability that the patient's "current symptoms and disability" appear to be causally related to the industrial injury in question."*** Dr. X's professional medical opinion is indicative that RESPONDENT's current condition is, in fact, unequivocally disabling and causally related to the industrial injury. He also apportions ***"100% of the disability"*** to the industrial injury.

When a qualified medical provider provides causal relationship, this means that the EMPLOYER should take responsibility in what has occurred regarding the industrial injury and provide the RESPONDENT with any benefits available to RESPONDENT, specifically that of *disability retirement*.

RESPONDENT was **eligible** to apply for disability retirement and **timely filed** the application for disability retirement. (Id. at pp. 1306-1307, 79 Cal.Rptr.2d 749.) RESPONDENT has a valid claim for disability retirement. (67 Cal.App.4th at p. 1307, 79 Cal.Rptr.2d 749.) By denying RESPONDENT'S application for disability benefits/disability retirement, the Board violated the Contract Clauses of the state and federal constitutions (Cal. Const., art. I, § 9; U.S. Const., art. I, § 10, cl. 1) and its duty to administer the CalPERS system "in a manner that will assure prompt delivery of benefits ... to the participants." (See Cal. Const., art. XVI, § 17, subds. (a)-(b).) RESPONDENT'S concluding allegation is that the Board has "a duty to comply with Article XVI, section 17 of the California Constitution and ... to process disability retirement applications on the merits even where an employer has issued the applicant a notice ... terminating their employment".

GOV'T CODE SECTION 21154, an application for disability retirement must be made... (c) Within four months after the discontinuance of the service, or while in approved at leave of absence; or (d) While the member is physically or mentally incapacitated to perform duties from the date of discontinuance of service to the time of application. The regulation states that "If a member applies for disability greater than four months following last day on pay, then the medical records must reflect "continuous disability." This means the member's medical records must reflect documented evidence of continuous disability from last day on pay through the date of the application and ongoing..." QME documentation as noted above was provided along with physician's report.

RESPONDENT has satisfied the criteria for a ***"disability", namely a continuing medical condition resulting in a substantial inability to perform the usual duties,*** **per case law.** (Haywood, supra, 67 Cal.App.4th at pp. 1303-1304, 79 Cal.Rptr.2d 749.) The agreed upon medical examiner (QME) determined RESPONDENT had ***continuing disability*** from RESPONDENT'S position prior to the personnel action of AWOL and the disability is continuing through the present. As such, she is eligible to apply for a disability retirement.
There is unrebutted evidence of an eligibility for disability, which ante-dates the AWOL. (Id at pp1305-1306, 79 Cal Rptr 2d 749). The EMPLOYER did not have a right to issue an AWOL status when they were notified of ***"continuing disability"*** through their INSURER and ATTORNEY per these QME reports 1/25/21, 5/3/21 and 6/25/21 AND ongoing monthly treating physician reports.
CA GOV'T CODE SECTION 19253.5, (i)(1), "Medical examination, evaluation of employees work states, If the appointing power after considering the conclusions of the medical examination provided for by this section or medical reports from the employee's physician and other pertinent information concludes that the employee is unable to perform the work of his or her present position or any other position in the agency and the employee is eligible and does not waive the right to retire for disability, the

appointing power shall file an application for disability retirement on the employee's behalf. The appointing power shall give the employee 15 days written notice of its intention to file such an application and a reasonable opportunity to respond to the appointing power prior to the appointing power's filing of the application." Respondent did not waive her right to retire for disability. Respondent only stated she wanted to confirm her service credits/years prior to filing. To this day, these remain inaccurate. EMPLOYER had an obligation to file an application of disability retirement for RESPONDENT since 2/25/20.

Based on the QME continuing disability reports of 1/25/21, 5/3/21 and 6/25/21, along with the Notice of Personnel Actions that should have been issued to extend the Leave of Absence time out to 1/25/22, 5/3/22 and 6/25/22, thereby makes the RESPONDENT ELIGIBLE for a disability retirement and the AWOL invalid. CA GOV'T CODE SECTION 19253.5, (l)(1), Medical examination, evaluation of employees work. Based on this, the EMPLOYER should have filed an application of disability retirement for RESPONDENT.

After receipt of the QME reports and supplementals, the Employer had many opportunities regarding their obligation to file an application of disability retirement on behalf of the RESPONDENT, but the Employer failed to apply for an application of retirement. QME reports were completed by 6/25/21 AND the last Notice of Personnel Action should have been issued to extend out till 6/25/22. CA GOV'T CODE SECTION 19253.5, (l)(1), Medical examination, evaluation of employees work. Based on this, the EMPLOYER should have filed an application of disability retirement for RESPONDENT.

If an employee is permanent and stationary, per 8 C C R Section 10152, *"A disability is considered permanent when the employee has reached maximal medical improvement, meaning his or her condition is well stabilized and unlikely to change substantially in the next year WITH OR WITHOUT medical treatment", and the RESPONDENT has NO MEDICAL to provide within the period demanded from the employer, entitles the employer to sever the relationship through no fault of the employee.* During the COVID period, it was very difficult to obtain the medical documentation within the allotted time period. However, RESPONDENT advised the EMPLOYER the documentation was requested and would take time to receive. Since **8 C C R Section 10152 states WITH OR WITHOUT medical treatment, which in turn could mean with or without documentation.**

CALHR HUMAN RESOURCE MANUAL, SECTION 2126, ABSENCE WITHOUT LEAVE, UNDER STATEMENT, states: to invoke the AWOL statute, it is only necessary for the appointing power to demonstrate that the employee missed 5 consecutive working days without obtaining leave. Leave means permission from the employee's supervisor to be absent; it does not mean leave time on the books.

Per the **CALHR HUMAN RESOURCE MANUAL, SECTION 2126, ABSENCE WITHOUT LEAVE, UNDER STATEMENT, RESPONDENT** abided by these regulations and called and contacted her Lead "Rodney" to notify him that she was calling out sick indefinitely due to her ongoing medical conditions (naming all body parts) who acknowledged and granted permission by stating "OK" to the request. He indicated she was not on the schedule to report. RESPONDENT still had approximately 40 hours on the books at that time. Can the EMPLOYER still move forward with the AWOL after RESPONDENT abided by this rule?
When a qualified medical provider provides causal relationship, this means that the EMPLOYER should take responsibility in what has occurred regarding the industrial injury and provide the RESPONDENT with any benefits available to RESPONDENT, specifically that of *disability retirement*.

CalPERS has "a duty to comply with Article XVI, section 17 of the California Constitution and ... to process disability retirement applications on the merits even where an employer has issued the applicant a notice ... terminating their employment." Per Vandergoot, Haywood and Smith.

By denying RESPONDENT'S application for disability benefits, the Board violated the Contract Clauses of the state and federal constitutions (Cal. Const., art. I, § 9; U.S. Const., art. I, § 10, cl. 1) and its duty to administer the CalPERS system "in a manner that will assure prompt delivery of benefits ... to the participants." (See Cal. Const., art. XVI, § 17, subds. (a)-(b).) RESPONDENT'S concluding allegation is that the Board has "a duty to comply with Article XVI, section 17 of the California Constitution and ... to process disability retirement applications on the merits even where an employer has issued the applicant a notice ... terminating their employment".

There was sufficient evidence documenting the continued disability as noted above in the QME reports AND treating physician's reports. The application for disability retirement should NOT have been denied. There were close to 1000 pages of continuing disability evidence that the Employer had access to per email dated 4/14/21 from Manager EMPLOYER 1 to new Manager EMPLOYER 2. (Reference CALPERS DOCKET #DRRR0712 AND #DRRR0713). EMPLOYER 2 testified she did not have sufficient medical documentation. Additionally, (Reference CALPERS DOCKET #DRRR0638) Insurance Representative provides EMPLOYER 2 with a complete synopsis of continuing medical disability status for RESPONDENT. EMPLOYER 2 testified and also written to RESPONDENT in District letter dated 11/30/21 she did not have sufficient medical evidence which prompted her to invoke the AWOL.