

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Stephen O. Santiago (Respondent) was employed by Respondent Pleasant Valley State Prison, California Department of Corrections and Rehabilitation (Respondent CDCR) as a Correctional Officer. By virtue of his employment, Respondent was a state safety member of CalPERS. On March 12, 2014, Respondent submitted an application for industrial disability retirement on the basis of an orthopedic (back) condition. Respondent's application was approved by CalPERS and Respondent retired effective September 17, 2014 .

On October 24, 2019, CalPERS staff notified Respondent that CalPERS conducts reexamination of persons on industrial disability retirement, and that he would be reevaluated for purposes of determining whether he remains substantially incapacitated and is entitled to continue to receive industrial disability retirement.

In order to remain eligible for disability retirement, competent medical evidence must demonstrate that the individual remains substantially incapacitated from performing the usual and customary duties of his former position. The injury or condition which is the basis of the claimed disability must be permanent or of an extended duration which is expected to last at least 12 consecutive months or will result in death.

As part of CalPERS' review of Respondent's medical condition, Respondent was sent for an Independent Medical Examination (IME) to Don T. Williams, M.D. Dr. Williams interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed medical records. Dr. Williams also performed a comprehensive IME.

Dr. Williams opined that Respondent was not substantially incapacitated. He found that Respondent had good motion of his cervical spine. He also found good range of motion in Respondent's upper extremities, including his shoulders, elbows, wrists, and hands. Dr. Williams also found the Respondent had good strength in his lower extremities, including his hips, knees, ankles, and feet. Dr. Williams further found Respondent was able to perform a full squat and had a good range of motion in his hips and knees. Based on these findings, he determined Respondent was able to perform his job duties.

After reviewing all medical documentation and the IME report, CalPERS determined Respondent was no longer substantially incapacitated, was no longer eligible for industrial disability retirement, and should therefore be reinstated to his former position as a Correctional Officer.

Respondent appealed this determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on February 18, 2021 9:00 AM. Respondent represented himself at the hearing. Respondent CDCR did not appear at the hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support his case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent's questions and clarified how to obtain further information on the process.

At the hearing, Dr. Williams testified in a manner consistent with his examination of Respondent and the report prepared after the IME. Dr. Williams's medical opinion is that Respondent can perform the duties of his position and is therefore no longer substantially incapacitated. He based this conclusion on the findings identified in his IME report as well as the surveillance footage obtained of Respondent. Dr. Williams found Respondent's actions in the video show excellent range of motion with bending to 90 degrees multiple times, which exceeded Respondent's claimed range of motion at the IME exam.

Respondent testified on his own behalf. Respondent testified that he cannot perform the activities required of a Correctional Officer with his back injury and was afraid he may be assaulted from behind or hesitate when put in a situation requiring him to assist his partner because of his back injury. Respondent also testified that he did not seek medical treatment for his back because they "only want to put [him] on pills." Respondent did not call any physicians or other medical professionals to testify. Respondent also testified that he disagreed with the results of Dr. Williams' examination and report.

The ALJ found that the only competent medical evidence was presented by Dr. Williams. It established that Respondent is no longer substantially incapacitated from performing his duties as a Correctional Officer for Respondent CDCR.

After considering all the evidence introduced as well as arguments by the parties at the hearing, the ALJ denied Respondent's appeal. The ALJ found that the persuasive medical evidence provided by Dr. Williams established Respondent is no longer substantially incapacitated for the performance of his usual job duties as a Correctional Officer due to an orthopedic (back) condition.

For all the above reasons, staff argues that the Proposed Decision be adopted by the Board.

June 16, 2021

Dustin Ingraham
Staff Attorney