

ATTACHMENT C

RESPONDENT'S ARGUMENT

THE DYKMAN LAW FIRM

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May 24, 2022

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Respondent's Argument

Matthew Scott - Industrial Disability Retirement Election Application

CalPERS Appeal, Agency Case No. 2021-0134
OAH No. 2021060534
Date of Board Hearing: 6/15/22

TO: The Board of Administration of CalPERS
FROM: Craig Dykman, Attorney for Respondent, Matthew M. Scott

Ladies and Gentlemen:

This letter is to advise the Board that we are in agreement with the Proposed Decision of the Honorable Sarah Sandford-Smith, Administrative Law Judge, Office of Administrative Hearings, dated 5/11/22.

As summarized by Judge Sandford-Smith, and strongly supported by both the medical evidence and testimony presented at the hearing in this matter, CalPERS failed to meet its burden of proving that the respondent's orthopedic permanently disabling

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Re: Matthew Scott
May 24, 2022
Page 2

condition had changed since his retirement such that he could now substantially perform the usual duties of a correctional officer.

In her Proposed Decision, Judge Sandford-Smith determined that, "for several reasons," the opinion of Dr. Robert Henrichsen, that respondent is capable of performing the duties of a correctional officer, was not persuasive.

In contrast, she found that the opinion of Dr. Steven Isono, that respondent cannot currently perform the duties of a correctional officer, was persuasive. She noted that Dr. Isono was able to describe in detail the nature of respondent's spine condition and how that condition precluded respondent from engaging in the duties of a correctional officer. She said that Dr. Isono's comprehensive analysis and understanding of the physical duties of a correctional officer "contributed to the overall credibility of his testimony."

Judge Sandford-Smith concluded that the evidence did not establish that respondent had ceased to be substantially incapacitated from the performance of his job duties. As a result, she issued an ORDER finding that Matthew M. Scott remains substantially incapacitated for the performance of his duties as a correctional officer with the California Department of Corrections and Rehabilitation at San Quentin State Prison.

Respondent respectfully requests that the Board adopt the Proposed Decision.

Sincerely,



Craig Dykman

CD:rl