

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Roy Taylor (Respondent) applied for Industrial Disability Retirement based on an orthopedic (back) condition on September 9, 2021. By virtue of his employment as a Materials and Stores Supervisor II for Deuel Vocational Institution, California Department of Corrections and Rehabilitation (Respondent CDCR), Respondent was a state safety member of CalPERS.

As part of CalPERS' review of Respondent's medical condition, Anthony F. Bellomo, M.D., a board-certified orthopedic surgeon, performed an Independent Medical Examination (IME) to evaluate Respondent's claimed orthopedic condition. Dr. Bellomo interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed his medical records. Dr. Bellomo initially opined that Respondent was substantially incapacitated.

Following the initial IME, CalPERS received surveillance videos and reports completed by Respondent CDCR's Workers' Compensation Fraud Unit and by SCIF. The surveillance depicts Respondent engaging in various activities at a softball complex including preparing and maintaining the softball fields while standing on and driving a specialized vehicle, carrying and setting up canopies, carrying and lifting up wooden pallets, pushing a small refrigerator on a dolly, loading and unloading items from a vehicle, bending and lifting storage containers, barbecuing food and cleaning grills, sweeping, carrying trash bins, and using a leaf blower. CalPERS provided the surveillance materials to Dr. Bellomo.

Following review of the surveillance materials, Dr. Bellomo changed his prior opinion and concluded that Respondent was not substantially incapacitated from performing his usual and customary work duties. Dr. Bellomo explained that Respondent "was seen standing and walking for extended periods of time without any difficulties, bending fully at the waist and twisting at the waist without difficulties in addition to lifting and carrying apparently heavy objects." Dr. Bellomo opined that Respondent "did not appear to be debilitated in any way." He further explained Respondent "had a significantly different presentation on examination with difficulty with ambulation as well as loss of range of motion. This would indicate that there was evidence of significant symptom magnification during the examination."

To be eligible for disability retirement, competent medical evidence must demonstrate that an individual is substantially incapacitated from performing the usual and customary duties of their 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.

After reviewing all medical documentation and the IME reports, CalPERS determined that Respondent was not substantially incapacitated from performing the duties of his

position. 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 December 21, 2022. Respondent represented himself at the hearing. Respondent CDCR did not appear at the hearing and the matter proceeded as a default against Respondent CDCR.

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. Bellomo testified in a manner consistent with his examination of Respondent and his Supplemental IME report. Dr. Bellomo found that Respondent presented significantly differently on examination as compared to the surveillance footage. During the IME, Respondent claimed difficulty with ambulation as well as lost range of motion. The surveillance materials tell a different story. Dr. Bellomo observed Respondent standing and walking for extended periods of time without any difficulties, bending fully at the waist, twisting at the waist while operating machinery, and lifting and carrying heavy objects. Dr. Bellomo opined that Respondent's subjective symptoms were magnified, and without objective support. Although Dr. Bellomo initially credited Respondent's subjective reports at the time of the IME, they were later significantly undermined by the surveillance footage. Dr. Bellomo opined that Respondent is not substantially incapacitated to perform his usual duties as a Material and Stores Supervisor II.

Respondent testified that he sustained an injury while attempting to open a heavy roll-up door in a secured area at CDCR. Following that injury, Respondent complained of pain in his lower back and between his shoulder blades, with pain and numbness also radiating to his buttocks and legs. Respondent does not take any prescription pain medication. He takes ibuprofen and performs a daily stretching regimen. Respondent did not call any physicians or other medical professionals to testify, and did not submit any medical records from his treating physicians to support his appeal.

After considering all of the evidence introduced, as well as arguments made by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent held the burden of proof to show by a preponderance of the evidence that he is entitled to IDR, and he did not meet his burden. He failed to offer any competent medical opinion to support his application, nor did he provide reports or testimony by any treating physician. In contrast, the ALJ found Dr. Bellomo to have completed a thorough IME, including reviewing Respondent's medical records and history, performing a thorough physical examination and reviewing the surveillance. Dr. Bellomo's opinion was consistent with the MRI report findings, certain portions of the physical examination, and the surveillance videos, which depict Respondent engaged in numerous activities that contradicted his performance on the more subjective portions of the physical

examination. The ALJ concluded that Respondent is not eligible for IDR because he is not substantially incapacitated.

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

February 14, 2023

Nhung Dao
Attorney