

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Andres E. Florez (Respondent) was employed by Respondent California State Prison, Los Angeles County, 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 May 25, 2018, Respondent submitted an application for industrial disability retirement on the basis of an orthopedic (left knee) condition. Respondent's application was approved by CalPERS with an effective retirement date of July 25, 2018.

In August 2020, CalPERS staff notified Respondent that CalPERS conducts reexamination of persons on disability retirement, and that he would be reevaluated for purposes of determining whether he remains substantially incapacitated and is entitled to continue to receive an 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, CalPERS sent Respondent for an Independent Medical Examination (IME) to John D. Kaufman, M.D. Dr. Kaufman interviewed Respondent, reviewed his work history and job descriptions, measured and reviewed current x-rays of Respondent's lower extremities, and conducted a physical examination which included an assessment of Respondent's lower extremity range of motion and stability of his lower extremity ligaments.

Based upon his evaluation of Respondent, Dr. Kaufman opined that Respondent had slight tenderness along the medial and lateral joint lines and full range of motion. He concluded that Respondent's medial collateral ligament was stable and without stress pain; his anterior cruciate ligament was stable; his posterior cruciate ligament was stable, and Respondent had no patellofemoral crepitus, or air seeping into his knee joint. He determined that Respondent had no atrophy of his lower extremities, which indicated that Respondent was not favoring his left or right lower extremity during his daily living. Dr. Kaufman concluded that Respondent did not have any substantial impairment that would affect Respondent's ability to perform a Correctional Officer's usual job duties, and there were no objective findings to substantiate Respondent's complaints.

After reviewing all medical documentation and the IME reports, CalPERS determined that 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 October 20, 2021. Respondent represented himself at the hearing. Respondent CDCR appeared briefly at the hearing, but left shortly after the hearing began because they did not have any evidence or argument to submit for consideration.

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. Kaufman testified in a manner consistent with his examination of Respondent and his IME report. Dr. Kaufman's medical opinion is that Respondent is not disabled or substantially incapacitated from performance of his duties as a Correctional Officer. The objective evidence he obtained through physical examination demonstrated Respondent's left knee had full range of motion and no swelling or muscle atrophy. According to Dr. Kaufman's testimony, if Respondent were experiencing significant pain or discomfort in his left knee, examination of his left knee would have revealed at least one-half inch of atrophy in his left thigh or lower leg.

Respondent testified on his own behalf. Respondent testified that he is unable to perform the essential functions of his job duties, such as running, standing for long periods of time, squatting, pulling, and lifting heavy objects. He opined that the IME exam was unfair because, he claimed, Dr. Kaufman asked Respondent only a few questions about Respondent's knee. He testified that he is still substantially incapacitated.

The ALJ found that Respondent's testimony did not overcome CalPERS' evidence that Respondent is no longer disabled or substantially incapacitated from performing the duties of a Correctional Officer. The only competent medical evidence presented by Dr. Kaufman established that Respondent is no longer substantially incapacitated from performing his duties as a Correctional Officer for Respondent CDCR.

After considering all of the evidence introduced as well as arguments by the parties at the hearing, the ALJ denied Respondent's appeal. The ALJ held:

CalPERS established by a preponderance of the evidence that respondent Florez is no longer substantially incapacitated from the performance of his usual duties as a correctional officer with respondent CDCR due to an orthopedic (left knee) condition. . . . Respondent Florez's subjective evidence of his continued knee pain and the case notes and evaluation from Dr. Sisto did not overcome CalPERS objective evidence that respondent Florez's left knee does not exhibit any signs of significant pain or indicators of continuing disability.

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

January 18, 2022

Dustin Ingraham
Staff Attorney