

ATTACHMENT B

Staff Argument

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Aaron Williams (Respondent) was employed as a State Traffic Officer by the Department of the California Highway Patrol (Respondent CHP) from 2008 until 2022. By virtue of his employment, Respondent was a state safety member of CalPERS.

Respondent filed an application for industrial disability retirement (IDR) on March 6, 2020, claiming disability based on an orthopedic condition (right knee).

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 his or her 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, Anthony F. Bellomo, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. Bellomo examined Respondent, reviewed his medical records, and CalPERS' surveillance videos as well as the job requirements for a CHP Officer. Dr. Bellomo also performed a comprehensive physical examination.

After reviewing all of the 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). Three days of hearing were completed on March 8, October 23, and October 24, 2023. Respondent was represented by counsel at the hearing. Respondent CHP did not appear at the hearing and a default was taken as to Respondent CHP only.

At the hearing, Dr. Bellomo testified that he diagnosed Respondent with chronic right knee pain status post arthroscopy, but opined that Respondent was not substantially incapacitated from performing his usual and customary job duties of a State Traffic Officer for Respondent CHP. Dr. Bellomo found full range of motion in Respondent's right knee, found Respondent to be cooperative, and did not detect any signs of malingering on the physical examination. After watching the surveillance videos, Dr. Bellomo found that Respondent was able to bend his knees normally, and he found no evidence of tenderness or antalgic gait. For those reasons, Dr. Bellomo opined that Respondent is not substantially incapacitated from the performance of his usual job duties as a State Traffic Officer.

Respondent testified on his own behalf regarding ongoing pain and impairment problems. He asserted he had trouble with normal day-to-day activities like walking a few blocks. Respondent's wife also testified, confirming his ongoing orthopedic condition.

Respondent called board-certified Orthopedic Surgeon, Dave Atkin, M.D. to testify on his behalf. Dr. Atkin originally examined Respondent as part of his workers' compensation claim in 2019, but he now acts as Respondent's treating physician. Dr. Atkin's examinations were largely consistent, with objective findings of an antalgic gait, crepitus, reduced range of motion, quadriceps weakness and atrophy associated with right knee dysfunction. Dr. Atkin diagnosed patellar maltracking, and opined that Respondent is unable to perform several of the 14 critical tasks required of CHP officers due to his right knee condition, including lifting/carrying, pushing/pulling, squatting/bending/kneeling, walking, running, climbing and jumping. Dr. Atkin believes Respondent could probably perform the sitting and standing requirements, but with pain.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ granted Respondent's appeal. The ALJ found that Respondent bears the burden of proving that he is entitled to receive IDR benefits, and that he met his burden. When the record as a whole was considered, the ALJ found that Dr. Atkin's testimony was more persuasive than Dr. Bellomo's, in part because Dr. Atkin examined Respondent three times over several years, allowing him to obtain a longitudinal picture of Respondent's right knee condition. The ALJ found that Dr. Atkin's conclusion is supported by objective findings and is more consistent with the opinions of other medical providers who evaluated Respondent over the years. In contrast, the ALJ found that Dr. Bellomo saw Respondent once and based his opinion, in part on an inaccurate interpretation of the surveillance videos. Finally, the ALJ found Respondent to be a credible witness. When all of the evidence was considered, the ALJ found that Respondent is substantially incapacitated from the performance of his usual duties as a State Traffic Officer.

For all the foregoing reasons, the Proposed Decision should be adopted by the Board.

March 20, 2024

Mehron Assadi
Staff Attorney