

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Angelita R. Resendez (Respondent) was employed as a Special Agent Supervisor with the Department of Justice (DOJ). By virtue of her employment, Respondent was a state safety member of CalPERS. Respondent submitted an application for Industrial Disability Retirement (IDR) on the basis of a claimed neurological (cervical spine) condition. CalPERS reviewed relevant medical reports and a written description of Respondent's usual and customary job duties. CalPERS approved Respondent's application for IDR and Respondent retired effective July 2, 2009.

Respondent voluntarily requested reinstatement to her position as a Special Agent Supervisor with DOJ. Again, staff reviewed relevant medical reports and a written description of Respondent's usual and customary job duties. At CalPERS' request, Respondent was evaluated by Theodore Georgis, Jr., M.D., a board-certified Orthopedic Surgeon. Dr. Georgis reviewed a written job description, relevant medical reports and performed an Independent Medical Examination (IME) of Respondent. Dr. Georgis prepared a written report which contained his findings on clinical examination of Respondent and his conclusions and/or opinion. Dr. Georgis concluded that Respondent was no longer substantially incapacitated from performing the usual and customary duties of a Special Agent Supervisor for the DOJ because of the condition of her cervical spine. CalPERS approved Respondent's request to be reinstated to her former position with DOJ. DOJ appealed CalPERS determination and a hearing was held on March 22 and August 16, 2012. The parties submitted post-hearing briefs.

In order to be eligible to receive disability retirement benefits, 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 that is the basis for the claimed disability must be permanent or of an extended and uncertain duration.

Disability retirement is considered to be a temporary separation from state service. Government Code section 21192 gives the Board the authority to evaluate an individual who is receiving disability retirement benefits and who requests to be reinstated to their previous position. Government Code section 21193 provides that a previously disabled state employee, determined to no longer be substantially incapacitated, shall be reinstated to their former position.

The Administrative Law Judge (ALJ) found that, "The issue on appeal is whether Respondent Resendez is still incapacitated for performance of the usual job duties of a Special Agent Supervisor. (See Gov. Code. Sec. 21192.)"

At the hearing, the DOJ did not present any competent medical evidence disputing or contradicting the CalPERS determination that Respondent was no longer substantially incapacitated.

The ALJ found that Dr. Georgis testified credibly and consistently with the observations, findings, conclusions and opinions contained in his written report. Accordingly, the ALJ found that, "The totality of the evidence established that Respondent Resendez is no longer incapacitated for performance of the usual job duties of a Special Agent Supervisor."

At the hearing, the DOJ asserted that the criteria set forth in Government Code section 1031 are a part of the determination whether Respondent can or should be reinstated to her previous position. Both CalPERS and Respondent objected to DOJ's assertion and argument in support thereof. The ALJ found that, "while Government Code section 1031, subdivision (f), is incorporated into Respondent Resendez's job description and forms a part of her usual duties as a peace officer, that section's specific requirements are not at issue in this case." (See Factual Finding No. 34; emphasis added.) Based upon such Finding, the ALJ also concluded as follows:

"While Section 1031 may be incorporated into a peace officer's job description, and while employers of peace officers may be required to verify continued compliance with Government Code section 1031 and regulations dealing with Peace Officer Standards and Training (POST), there is no authority which would require CalPERS to apply Section 1031 in all reinstatement cases or to to verify that applicants for reinstatement to a peace officer position meet all of the POST standards."

(See Legal Conclusion No. 7 (e); emphasis added.)

The ALJ concluded that Respondent's (Department of Justice) appeal should be denied. The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision.

Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. The Department of Justice may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

November 15, 2012

for 
RORY J. COFFEY
Senior Staff Attorney