

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Seth Boone (Respondent) was employed by the California State Prison, Lassen County, as a Correctional Officer and by virtue of his employment, was a state safety member of CalPERS subject to Government Code section 21151. Respondent signed an application for industrial disability retirement, claiming disability on the basis of an orthopedic (left knee) condition, a diagnosis later extended to a neurologic condition of reflex sympathetic dystrophy and low back pain.

In order to be eligible for a disability retirement under the California Public Employees' Retirement Law (PERL), an individual must establish, on the basis of competent medical opinion, that he or she 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 uncertain and extended duration.

CalPERS has obtained or received medical reports concerning Respondent's orthopedic and neurologic conditions from competent medical professionals. CalPERS also obtained surveillance video of Respondent over a period of days. After review of the reports, including the surveillance videos, CalPERS determined that Respondent was not permanently disabled or incapacitated from performance of his duties as a Correctional Officer at the time the application for industrial disability retirement was filed.

Respondent was notified of CalPERS' determination and was advised of his appeal rights. Respondent filed a timely appeal and a hearing was held before an Administrative Law Judge (ALJ) on November 15, 2012.

At the hearing, Respondent testified on his own behalf; he was able to undertake examination of CalPERS' medical and law witnesses, but did not present medical testimony. CalPERS presented the testimony of two independent medical experts, an employer witness, the testimony of a CalPERS investigator concerning a series of surveillance videos taken over a period of days, and detailed documentation and testimony regarding Respondent's medical and work history. In addition to testimony of four medical experts at the hearing, the ALJ also reviewed the substantive report from Respondent's other independent medical evaluations performed in connection with Respondent's application for workers' compensation benefits.

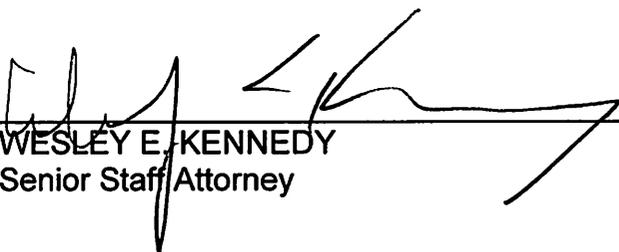
The ALJ found that Respondent's reports of substantial incapacity and disability were not supported by the medical evidence and surveillance videos. Even though there were some objective findings supporting the clinical diagnosis, the evidence did not support a finding of a disabling condition. The ALJ discussed that the surveillance videos taken of Respondent, including his bouncing a small child on his back, extended walking without an apparent limp, and walking into medical appointments with a significant limp, that disappeared later the same day, supported CalPERS determination.

After receiving the evidence, the ALJ issued a 17-page Proposed Decision wherein she determined that Respondent had failed to establish by a preponderance of the evidence that he was substantially incapacitated for the performance of his usual and customary duties, and therefore, denied Respondent's application for industrial disability retirement.

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 member may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

February 21, 2013



WESLEY E. KENNEDY
Senior Staff Attorney