

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Robert Aceves (Respondent) was employed as a Campus Police Officer by the San Diego Unified School District. By virtue of his employment, Respondent is a state safety member of CalPERS.

Respondent applied for industrial disability retirement based on orthopedic injuries. He described his claim as orthopedic conditions related to injuries to his neck, right shoulder, right elbow, left knee, left hip, right wrist and fingers.

CalPERS arranged for Respondent to be examined by Independent Medical Examiner (IME) Dr. Paul Milling, a board-certified Orthopedist. Dr. Milling concluded that Respondent's condition did not substantially incapacitate him from performing the usual and customary duties of his position as a Campus Police Officer. After reviewing Dr. Milling's reports and other medical evidence, CalPERS denied Respondent's application for industrial disability retirement. Respondent appealed the decision and a hearing was held on December 17, 2012.

Respondent was represented by counsel and did not provide any medical documents to CalPERS as part of discovery. The parties agreed to stipulate to the introduction of medical records because one of the doctors had died. The medical records confirm that Respondent was injured on several occasions and had surgery to correct orthopedic issues relating to his shoulder.

Respondent did testify at the hearing about his condition. The Director of the Classified Personnel for the School District testified about Respondent's duties as a Campus Police Officer.

Under the applicable court rulings construing disability under the California Public Employees' Retirement Law (PERL), Respondent has the burden of showing that he is substantially incapacitated from performing the usual duties in his position as a Campus Police Officer. Prophylactic restrictions and risk of possible future injury cannot support a finding of disability. (*Mansperger v. Pub. Employees' Ret. System* (1970) 6 Cal.App.3d 873; *Hosford v. Bd. of Administration* (1978) 77 Cal.App.3d 854.)

Additionally, under section 20026, "disability" and "incapacity for performance of duty" as a basis of retirement mean disability of a permanent or extended and uncertain duration, as determined by the Board, on the basis of competent medical opinion. (Government Code section 20026.)

The Administrative Law Judge (ALJ) found that the medical evidence presented by Respondent supported his contention that he is substantially incapacitated from his usual and customary duties as a Campus Police Officer.

The ALJ concluded that Respondent's appeal should be granted. 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 is not likely to file a Writ Petition in Superior Court seeking to overturn a Decision of the Board in his favor.

February 21, 2013



RORY J. COFFEY, Senior Staff Attorney