

**ATTACHMENT B**  
**STAFF'S ARGUMENT**

**STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Larry Hedrick (respondent Hedrick) was employed as a Psychiatric Technician at Atascadero State Hospital. By virtue of his employment, respondent Hedrick is a State safety member of CalPERS within the meaning of Government Code section 21151.

Respondent Hedrick claims to have injured his knees while at work. Respondent Hedrick underwent knee surgery and was placed on restrictions. Respondent, California Department of Mental Health (respondent Mental Health) applied for disability retirement on behalf of respondent Hedrick.

In the employer application for disability retirement, respondent Mental Health states that respondent Hedrick was unable to carry more than 20 pounds, and was "unable to kneel, crouch or climb stairs." It further described his limitations as "unable to stand or walk for four hours per eight hour work day," and "could not participate in patient containments, CPR or climb stairs to the second floor and there is no elevator to the second floor." Finally, it claimed he could not work even part-time.

CalPERS arranged for respondent Hedrick to be examined by an Independent Medical Examiner, Dr. Brendan McAdams, a board-certified Orthopedic Surgeon. After his examination, Dr. McAdams recommended that sub rosa filming be conducted because respondent Hedrick's complaints did not match his physical condition.

Respondent Hedrick's actions were filmed over a period of several days and the CD was sent to Dr. McAdams for his review. After review of the medical records and CD, Dr. McAdams concluded that respondent Hedrick's condition did not substantially incapacitate him from performing the usual and customary duties of his position as a Psychiatric Technician. After reviewing Dr. McAdams' reports and other medical evidence, staff denied the employer's application for disability retirement.

Respondent Mental Health did not appeal the decision. Respondent Hedrick appealed the decision and a hearing was held on October 16, 2012.

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 Psychiatric Technician. 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.)

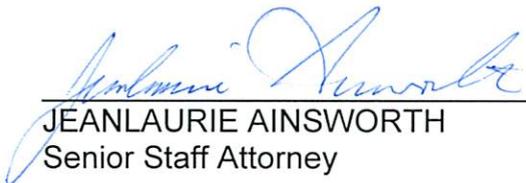
Respondent Mental Health did not appear at the hearing. Respondent Hedrick was represented by counsel. Prior to the hearing, medical records were exchanged and extensive medical records were admitted at hearing. Dr. McAdams testified and the sub rosa film of respondent Hedrick was played. Respondent Hedrick also testified at the hearing.

After review of the medical reports and sub rosa film, the Administrative Law Judge (ALJ) concluded that respondent Hedrick's appeal should be denied. The ALJ explained that respondent Hedrick's testimony should not be given much weight because "the man that respondent tried to depict to Dr. McAdams during his examination is not the man depicted in the video." The ALJ went on to explain that respondent Hedrick moved freely and did many of the tasks he claimed he could not do as recorded in the film. The ALJ found that respondent Hedrick had not met his burden and his appeal should be denied.

The Proposed Decision is supported by the law and the facts. Staff argues that the Board should 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.

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