

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Lydia B. Francis was employed by the Department of Corrections and Rehabilitation, State Prison – Solano (CDCR) as a Correctional Officer. By virtue of her employment, Respondent was a state safety member of CalPERS. Respondent applied for Service Pending Industrial Disability Retirement on the basis of lower back pain, bilateral carpal tunnel syndrome and high blood pressure. CalPERS staff reviewed copies of relevant medical reports regarding Respondent's condition and a written job description. Edward M. Katz, M.D., a board-certified Orthopedic Surgeon, reviewed applicable medical reports, a written job description and performed an Independent Medical Examination (IME) of Respondent. Dr. Katz prepared written reports, which contained his findings, observations and conclusions. Dr. Katz offered his opinion that Respondent was not substantially incapacitated from performing her usual and customary duties as a Correctional Officer. CalPERS staff denied Respondent's application for industrial disability retirement. Respondent appealed this determination and a hearing was held on November 13, 2013. Respondent began receiving a service retirement benefit and has continued to receive such benefit.

Prior to hearing, CalPERS explained the hearing process to Respondent and the need to support her case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process handbook. CalPERS answered Respondent's questions, and provided her with information on how to obtain further information on the process.

In order 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 that is the basis for the claimed disability must be permanent or of an extended and uncertain duration.

Respondent testified that she injured her lower back in 2004 in a work related incident. She received treatment and returned to work as a Correctional Officer, with a work restriction that allowed her to not wear her duty belt. In 2011, CDCR advised Respondent that it would no longer accommodate her with the work restriction of not wearing her duty belt. Respondent testified that she could not continue to perform the usual and customary duties of a Correctional Officer without the work restriction/accommodation of not wearing a duty belt.

Respondent offered copies of various medical records into evidence. Respondent did not call a physician witness to testify on her behalf.

Because of his own personal health issues, Dr. Katz was not available to appear at the hearing and therefore did not testify as a witness. However, copies of Dr. Katz's written reports were received into evidence for all purposes.

The Administrative Law Judge (ALJ) reviewed and considered all of Dr. Katz's written reports. In his initial report, Dr. Katz noted that Respondent had tenderness and

spasms in her lumbar spine, that there was restricted range of motion in her lumbar spine and that Respondent complained of chronic low back pain, made worse by wearing her duty belt. Dr. Katz concluded that Respondent was permanently incapacitated from performing her usual duties as a Correctional Officer.

In a subsequent report, Dr. Katz was asked to review an MRI study of Respondent's lumbar spine. The MRI was performed approximately seven months before his examination of Respondent. Dr. Katz commented on the results of the MRI as follows:

"The etiology [source] of her back pain is due to chronic ligamentous strain. The Elk Grove Diagnostic Imaging impressions described on page 8 on 9/16/2011 showed diffuse disc bulges that were present, accounting for her pain. This is true symptomatology with bilateral spondylolysis, L5, with grade spondylolisthesis of L5/S1 noted."

In another subsequent report, Dr. Katz offered an opinion that Respondent was not substantially incapacitated from performing her usual and customary duties as a Correctional Officer. However, Dr. Katz did not explain in such subsequent report how or why he changed his opinion. And, because Dr. Katz did not appear at the hearing, it was not possible to question him regarding why he changed his opinion. Accordingly, the ALJ correctly gave more weight to Dr. Katz's opinion, as contained in his initial report and his comment upon the 2011 MRI study of Respondent's lumbar spine, finding that the competent medical evidence did demonstrate that Respondent was/is substantially incapacitated from performing the usual and customary duties of a Correctional Officer.

The ALJ also found that competent medical evidence did not establish that Respondent was disabled on the basis of the other claimed conditions; bilateral carpal tunnel syndrome and high blood pressure.

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

February 20, 2014



RORY J. COFFEY
Senior Staff Attorney