

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Nathan Stough (Respondent) applied for Industrial Disability Retirement, based on orthopedic conditions (bilateral knees). By virtue of his employment as a Correctional Officer for Respondent Department of Corrections, Deuel Vocational Institute, he was a safety member of CalPERS. The hearing was completed on November 19, 2013, and Respondent was represented by counsel.

As part of CalPERS' review of his medical condition, Respondent was sent for an Independent Medical Examination (IME) to Orthopedic Surgeon Dr. Daniel D'Amico. Dr. D'Amico interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed medical records.

Dr. D'Amico performed a comprehensive orthopedic examination of Respondent, including both knees. The *only* thing Dr. D'Amico found was some discomfort and tenderness along the knee joints. Dr. D'Amico does not believe that either of those findings rises to the level of substantial incapacity to perform his duties as a Correctional Officer.

Dr. D'Amico also viewed surveillance DVDs of Respondent, showing him engaged in routine activities including walking, standing, and getting in and out of a vehicle. At no time on the DVDs did Dr. D'Amico observe any difficulty or evidence of pain.

Following his examination and review of all documentation, Dr. D'Amico opined that in his medical opinion, Respondent is not substantially incapacitated from performance of his usual job duties. He believes that there are no job duties Respondent is unable to perform because of his physical condition.

At hearing, Dr. D'Amico testified to his examination and reports. Dr. D'Amico's medical opinion is that Respondent is not substantially disabled, even if he is experiencing some discomfort and tenderness along his knee joints.

Respondent testified on his own behalf. He did not call any physicians or other medical professionals to testify.

The Administrative Law Judge (ALJ) found that respondent bears the burden to show by a preponderance of evidence (based on competent medical evidence) that his physical condition rendered him substantially incapacitated for the performance of his usual duties. Because Respondent provided no objective, competent medical evidence to support his disability claim, the ALJ denied his appeal.

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


ELIZABETH YELLAND
Senior Staff Attorney