

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

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Doyel S. Guillory (Respondent) was employed by the Department of Corrections and Rehabilitation (CDCR) as a Correctional Sergeant. As a result of his employment, he was a state safety member of CalPERS, subject to Government Code section 21151. Respondent submitted an application for industrial disability retirement, wherein he stated that he was unable to work due to an orthopedic (back) condition. CalPERS retained Joseph W. McCoy, M.D., an Orthopedist, as its Independent Medical Examiner (IME) in this case. Dr. McCoy examined Respondent, reviewed his medical records, and prepared a report documenting his findings and conclusions. Dr. McCoy concluded that Respondent was not substantially incapacitated from performing his usual and customary duties. Accordingly, CalPERS denied Respondent's application for industrial disability retirement. He appealed and a hearing was conducted on January 10, 2014, by an Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH).

In order to be eligible for disability retirement, an individual must demonstrate, through competent medical evidence, 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.

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

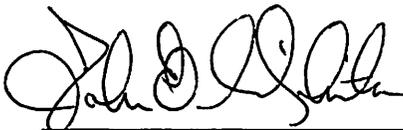
Respondent testified at the hearing. He complained of problems with his back after he slipped on a wet floor in the main kitchen and twisted his back. He stated that he had difficulty bending over and lifting things, but testified that he still played golf, and rode his motorcycle. In response to questions, he acknowledged that he had worked at a golf course and had done security work at River Cats games at Raley Field. He also acknowledged that he prepared his meals and did his own housekeeping, including laundry.

The parties had previously stipulated that all doctors' reports would be entered as direct evidence; therefore, the ALJ considered the reports as if the doctors had testified at the hearing. On behalf of CalPERS, the ALJ received into evidence the report of Dr. McCoy, who concluded that Respondent was not substantially incapacitated from performing his duties as a Correctional Sergeant, although he might have difficulties with more demanding tasks. Dr. McCoy's conclusion was based on his examination of Respondent's relevant medical records, which indicated progress toward a return to work, and on Respondent's post-injury activities, which indicated part-time work at a golf course and at a baseball stadium. Finally, Dr. McCoy opined that during his examination, Respondent appeared to measurably exaggerate his complaints.

The Proposed Decision notes that the person seeking a disability retirement bears the burden of establishing a right to that benefit. The ALJ concluded that Respondent did not carry his burden of proof. The ALJ noted that Respondent did not establish by competent, objective medical opinion that, at the time of his industrial disability application, he was permanently disabled or incapacitated from performing the usual duties of a Correctional Sergeant for the CDCR due to a back injury. Because it is supported by the facts and the law, the Proposed Decision of the OAH should be adopted and Respondent's appeal denied.

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.

March 19, 2014

A handwritten signature in black ink, appearing to read "John A. Mikita", written over a horizontal line.

JOHN A. MIKITA  
Senior Staff Attorney