

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

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Jimmy Hope (Respondent) was employed by the California Department of Corrections and Rehabilitation as a Correctional Supervising Cook I at Sierra Conservation Center. By virtue of his employment, Respondent is a state safety member of CalPERS subject to Government Code section 21151.

Respondent claims an orthopedic injury. In his application for industrial disability retirement, Respondent claimed "chronic back pain in the right leg/foot and bilateral plantar fasciitis." On his application, Respondent stated he initially injured his back when he slipped and fell while carrying a 50-pound sack of flour. He returned to work after the injury.

CalPERS arranged for Respondent to be examined by an Independent Medical Examiner, Dr. Joseph Serra, a Board-Certified Orthopedic Surgeon. Dr. Serra found that Respondent was not substantially incapacitated from the usual and customary duties of a Correctional Supervising Cook I.

After reviewing Dr. Serra's report and other medical evidence, staff denied Respondent's application for industrial disability retirement. Respondent appealed the decision and a hearing was held on January 30, 2014.

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 and customary duties in his position as a Correctional Supervising Cook I. 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 represented himself with the assistance of his wife. Prior to the hearing, CalPERS sent all exhibits to Respondent. CalPERS staff worked with Mr. Hope and he produced some medical records at the hearing, which were admitted.

Dr. Serra testified extensively and explained that Respondent had limitations due to back pain and went through the extensive medical records he reviewed. In his opinion, the limitations were not enough to render him permanently substantially incapacitated from his duties as a Correctional Supervising Cook I.

Respondent testified about his condition. He was allowed time to submit additional medical evidence during the hearing.

In finding in favor of CalPERS, the Administrative Law Judge (ALJ) explained Respondent failed to meet his burden of proof because the persuasive medical evidence established that Respondent was not substantially incapacitated from his usual duties as a Correctional Supervising Cook I. The ALJ denied Respondent's application for industrial disability retirement.

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.

April 16, 2014

*for*   
JEANLAURIE AINSWORTH  
Senior Staff Attorney