

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Melody Wilson (Respondent) was approved for Industrial Disability Retirement on June 10, 2002, based on an orthopedic condition (left hip). CalPERS subsequently determined that Respondent was no longer disabled from the performance of her duties as a Correctional Officer with Respondent California Department of Corrections and Rehabilitation, State Prison - Corcoran, and that she should be reinstated. Respondent appealed. The hearing was completed on February 13, 2014.

As part of CalPERS' review of her medical condition, Respondent was sent for an Independent Medical Examination (IME) to Orthopedic Surgeon Dr. Mohinder Nijjar. Dr. Nijjar interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed substantial medical records. He also performed a comprehensive IME examination.

Dr. Nijjar examined Respondent's left hip, groin and bilateral knees. The only thing Dr. Nijjar diagnosed was bursitis (resolved). Dr. Nijjar does not believe that bursitis rises to the level of substantial incapacity to perform her duties as a Correctional Officer.

Dr. Nijjar viewed approximately three hours of investigative surveillance of Respondent, showing her walking briskly, running, boating, bending and squatting. She was performing all normal activities of life, without any pain behavior, no limitations and no limitation of hip function. Dr. Nijjar found no restricted motion and no limp. He found no signs of hip pain involvement, which if there was, would be noticeable in the DVDs. At no time on the DVDs did Dr. Nijjar observe any difficulty or evidence of pain.

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

At the hearing, Dr. Nijjar testified about his examination and reports. Dr. Nijjar's medical opinion is that Respondent is not substantially incapacitated.

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

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.

The Administrative Law Judge (ALJ) found that CalPERS bears the burden to show by a preponderance of the evidence (based on competent medical evidence) that

Respondent was no longer substantially incapacitated and should be involuntarily reinstated to her former position (Gov. Code sections 21191 and 21192). The ALJ found that CalPERS met its burden of proof, based on Dr. Nijjar's testimony and Respondent's activities as shown on the surveillance DVDs. The ALJ further found that Respondent provided no objective, competent medical evidence to support her claim of continued disability.

The ALJ concluded that Respondent failed to establish that she was substantially unable to perform her usual job duties, and therefore, was not entitled to continue on Industrial Disability Retirement.

The ALJ concluded that Respondent's appeal should be denied and that she should be reinstated to her former usual job duties as a Correctional Officer. 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.


ELIZABETH YELLAND
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