

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

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION WITH MODIFICATION**

Respondent Patrick Etheridge (Respondent) was approved for Industrial Disability Retirement effective February 28, 1997, based on an orthopedic condition (right knee). CalPERS subsequently determined that Respondent was no longer disabled from the performance of his duties as a Correctional Officer with Respondent California Department of Corrections and Rehabilitation, R.J. Donovan Correctional Facility, and that he should be reinstated. Respondent appealed. The hearing was completed on March 3, 2014.

As part of CalPERS review of his medical condition, Respondent was sent for an Independent Medical Examination (IME) to board-certified Orthopedic Surgeon, Mark Mikulics, M.D. Dr. Mikulics interviewed Respondent, reviewed his work history and job description, obtained a history of his past and present complaints, reviewed substantial medical records, performed a comprehensive IME examination and reviewed sub rosa surveillance of Respondent engaging in recreational and daily activities.

Dr. Mikulics prepared a report that supported CalPERS determination that Respondent was no longer substantially incapacitated for the performance of his duties.

In addition to testifying on his own behalf at the hearing, Respondent called Orthopedic Surgeon Richard Greenfield as a witness and introduced medical reports prepared by Dr. Greenfield. The Administrative Law Judge (ALJ) found Dr. Greenfield was an extremely knowledgeable, credible and persuasive witness.

Respondent also called his brother-in-law as a witness to testify about the recreational softball games that the sub rosa video surveillance demonstrated Respondent participated in. The ALJ found that Respondent's brother-in-law corroborated Respondent's testimony and that he was a very credible witness.

After considering all of the evidence, the ALJ concluded that Respondent's appeal should be granted. Pursuant to Government Code section 11517(c)(2)(C), the Board is authorized to "make technical or other minor changes in the Proposed Decision." In order to avoid ambiguity, staff recommends that the word "industrial" be inserted before the words "disability retirement" on pages two, three, four and seven of the Proposed Decision. The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision, as modified.

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, which is unlikely, as the Decision is in his favor.

May 21, 2014

A handwritten signature in blue ink, appearing to read "C. Phillips", written over a horizontal line.

CHRISTOPHER PHILLIPS  
Staff Attorney