

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Robert Valenzuela (Respondent) was approved for disability retirement on November 1, 2002, based on an orthopedic (left arm) condition. CalPERS subsequently determined that Respondent was no longer disabled from the performance of his duties as a Supervising Cook with Respondent Ironwood State Prison, California Department of Corrections and Rehabilitation (Respondent CDCR), and that he should be reinstated. Respondent appealed. A hearing was completed on March 6, 2014.

Prior to 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 handbook. CalPERS answered Respondent's questions, and provided him with information on how to obtain further information on the process.

As part of CalPERS' review of his medical condition, Respondent was sent for an Independent Medical Examination (IME) to Orthopedic Surgeon Dr. Neil J. Halbridge. Dr. Halbridge interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed substantial medical records. Dr. Halbridge also performed a comprehensive IME examination, emphasizing Respondent's left shoulder, arm, wrist and hand. Dr. Halbridge does not believe that Respondent is substantially incapacitated to perform his duties as a Supervising Cook.

As part of the IME examination, Dr. Halbridge viewed surveillance video of Respondent taken over various dates in 2010. Dr. Halbridge opined that Respondent used his left arm without difficulty. Respondent could lift, push and pull without difficulty, wash and dry his SUV including the roof, use a trigger operated power hose, lift his arm above the shoulder, pump gas, push a shopping cart containing a propane tank and grocery bags, lift the propane tank, and lift a bicycle – all using his left arm, wrist and hand, and all with no difficulty. Dr. Halbridge saw no pain behavior, no limitation, no restricted motion and no guarding. He found no signs of pain involvement, which if there was, would be noticeable in the DVDs. At no time did Dr. Halbridge observe any difficulty or evidence of pain.

Following his examination and review of all documentation, Dr. Halbridge opined that 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.

Respondent testified on his own behalf. He did not call any physicians or other medical professionals to testify. Respondent claimed that his left arm has gotten weaker each year. He also claimed that he is taking various pain medications. However, both Dr. Halbridge and Respondent's workers' compensation doctor note that Respondent is not taking any pain medication. In addition, Respondent's medical records show that he has not sought medical treatment for problems with his left arm since 2006.

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 is no longer substantially incapacitated and should be involuntarily reinstated to his former position (Gov. Code sections 21191 and 21192). The ALJ found that CalPERS met its burden of proof, based on Dr. Halbridge's medical opinion and Respondent's activities as shown on the surveillance DVDs. The ALJ further found that Respondent's workers' compensation doctor's report and his unsubstantiated claims of left side pain provided no objective, competent medical evidence to support his claim of continued disability.

The ALJ concluded that Respondent failed to establish that he is substantially unable to perform his usual job duties, and therefore, is not entitled to continue receiving disability retirement.

The ALJ concluded that Respondent's appeal should be denied and that he should be reinstated to his former usual job duties as a Supervising Cook. 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.

May 21, 2014.


ELIZABETH YELLAND
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