

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Byron L. Stacey (Respondent) was employed as a Correctional Officer by the Department of Corrections and Rehabilitation, Correctional Institution Tehachapi (CDCR). By virtue of his employment, Respondent was a state safety member of CalPERS. Respondent submitted an application for Industrial Disability Retirement (IDR) on the basis of claimed orthopedic (cervical spine, left shoulder, left arm, left hand and knees) conditions. Staff reviewed applicable medical reports and a written description of the usual and customary job duties of a Correctional Officer. Brendan McAdams, M.D., a Board-certified Orthopedic Surgeon, reviewed medical reports, a written job description, and performed an independent medical evaluation of Respondent. Dr. McAdams prepared a written report which contained his observations, findings, conclusions, and opinion that Respondent was not substantially incapacitated from performing the usual and customary duties of a Correctional Officer for CDCR. Staff denied Respondent's application for IDR. Respondent appealed staff's determination and a hearing was held on January 14 and August 27, 2013. The matter was submitted for decision on March 24, 2014.

In order to be eligible for IDR, competent medical evidence must demonstrate that the individual is substantially incapacitated from performing the usual and customary duties of his or her position. The injury or condition which is the basis of the claimed disability must be permanent or of an extended and uncertain duration.

Respondent testified that he was injured as a result of being involved in an altercation with an inmate at the Tehachapi CDCR facility. He stated that he has residual pain in his neck and left shoulder, and numbness and weakness in his left arm and hand.

Evidence regarding the usual and customary job duties of a Correctional Officer was received into evidence.

A copy of Dr. McAdams' written report was introduced into evidence and its contents considered by the Administrative Law Judge (ALJ). Dr. McAdams testified at the hearing, consistent with his findings, conclusions, and opinion, as expressed in his written report. Dr. McAdams stated that he did not find sufficient objective evidence to corroborate Respondent's subjective complaints, and therefore found that Respondent was not substantially incapacitated from performing the usual and customary duties of a Correctional Officer.

Respondent was examined and treated by Alan Moelleken, M.D. Dr. Moelleken did not testify at the hearing, but copies of his written reports were received into evidence. Additionally, over the objection of CalPERS counsel, the ALJ received into evidence the testimony of Dr. Moelleken, provided in a deposition, which was part of a companion claim for Workers' Compensation benefits. CalPERS was not a party to the Workers' Compensation action, did not participate in the deposition of Dr. Moelleken and

therefore did not have any opportunity to question (cross examine) Dr. Moelleken regarding matters contained in his written reports nor his deposition testimony.

After considering all of the evidence, the ALJ found the findings, conclusions and opinion of Dr. Moelleken to be more persuasive than the findings, conclusions and opinion of Dr. McAdams. The ALJ concluded that the weight of the competent medical evidence demonstrated that Respondent was, and is, substantially incapacitated from performing the usual and customary duties of a Correctional Officer for CDCR.

The ALJ concluded that Respondent's appeal should be granted. 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.

May 21, 2014



RORY J. COFFEY
Senior Staff Attorney