

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

David E. Emler (Respondent) is a CalPERS state safety member through his employment at Respondent Substance Abuse Treatment Facility and State Prison-Corcoran, California Department of Corrections and Rehabilitation (SATF-CDCR). He is employed there as a Licensed Vocational Nurse.

On July 13, 2012, Respondent filed an application for industrial disability retirement on the basis of claimed orthopedic (right shoulder, right knee) conditions. He had not worked since a slip and fall accident on April 16, 2010. He is approximately 47 years old, and not yet qualified for a service retirement.

CalPERS staff reviewed relevant medical reports and a written description of Respondent's usual and customary job duties. After a review of the report of Dr. Mohinder Nijjar, M.D., a Board-certified Orthopedic Surgeon, CalPERS determined that Respondent was not substantially incapacitated from performing the usual and customary duties of a Licensed Vocational Nurse for SATF-CDCR. CalPERS denied Respondent's application for industrial disability retirement. Respondent appealed CalPERS' determination and a hearing was held on June 24, 2014.

In order to be eligible for disability retirement, 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 that is the basis for the claimed disability must be permanent or of an extended and uncertain duration.

At the hearing, Mr. Emler informed the court that he did not have any evidence to produce. Mr. Emler informed the court that he was willing and able to return to work but would need some accommodations for his pain.

The court informed Mr. Emler that he was required to put on competent medical evidence of incapacity to perform his job duties in order to prevail. Mr. Emler agreed to stipulate to the medical report of CalPERS expert, Dr. Nijjar, as a record of his medical condition. Dr. Nijjar was present.

The medical report found that Respondent was not substantially incapacitated for performance of his duties. He can perform all of his essential job duties. His condition is not disabling.

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 clarified how to obtain further information on the process.

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

September 17, 2014

for Marguerite Seaborn

CYNTHIA A. RODRIGUEZ
Senior Staff Attorney