

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Eugene Henrich (Respondent) was employed as a Correctional Officer by the California Department of Corrections and Rehabilitation (CDCR) at the California Correctional Center. By virtue of this employment, Respondent was a safety member of CalPERS. Respondent was granted an Industrial Disability Retirement by CalPERS on June 5, 2006, based on an orthopedic (bilateral foot) condition. In 2011, CalPERS conducted a standard statutory review of Respondent's medical condition and determined that Respondent is no longer permanently and substantially incapacitated from his usual job duties and should be reinstated to his prior position. CalPERS informed Respondent of this determination and Respondent filed a timely appeal.

A hearing was held on August 28, 2014, to determine whether Respondent was no longer permanently disabled and substantially incapacitated for the performance of the usual job duties of a Correctional Officer. Respondent was represented by an attorney, Richard E. Elder, Jr., at the hearing. Expert medical testimony was presented, the Respondent testified, and documentary evidence of medical reports and job duties was presented. The Administrative Law Judge (ALJ) was asked to decide whether or not there was competent medical and other evidence to establish Respondent could perform his duties as a CDCR Correctional Officer and therefore should be reinstated.

CalPERS presented testimony of Independent Medical Examiner (IME) Dr. Mohinder Nijjar, a board-certified Orthopedic Surgeon. IME Nijjar opined that although Respondent had suffered from foot disabilities, they were resolved and Respondent was able to return to his prior employment at CDCR as a Correctional Officer. Dr. Nijjar testified to the injury to the Respondent's foot and subsequent surgeries at length.

IME Dr. Robert Henrichsen, a board-certified Orthopedic Surgeon, testified that he examined and wrote a report of Respondent's condition. IME Henrichsen's report was entered into evidence. This expert found that Respondent was not incapacitated from the regular duties of his job.

Respondent testified to his capacity to use his feet and body, his job duties, and his activities upon retirement. Dr. Vincent C. Merino, DPM, a Podiatrist, testified about Respondent's medical condition. In Dr. Merino's expert opinion, Respondent is medically incapable of performing the job duties of a Correctional Officer at CDCR. Dr. Merino reviewed the job duties, the report he had prepared, and testified extensively on IME Nijjar's report.

The ALJ issued a Proposed Decision on November 10, 2014, overturning the determination of CalPERS staff and agreeing with Respondent that he is unable to return to work. The ALJ determined that Respondent was not medically capable to perform his job duties and that his appeal should be granted and the accusation dismissed.

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.

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CYNTHIA A. RODRIGUEZ
Senior Staff Attorney