

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

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Mike Schmidke (Respondent) applied for Industrial Disability Retirement on March 20, 2007, based on a cardiovascular condition (atrial fibrillation). CalPERS determined that Respondent was not disabled from the performance of his duties as a Correctional Officer with Respondent California Department of Corrections and Rehabilitation (Respondent CDCR). Respondent appealed. A hearing was conducted on July 14, 2014. Respondent was represented by counsel during the hearing.

As part of CalPERS' review of Respondent's medical condition, Respondent was sent for three different Independent Medical Examinations (IMEs) to Cardiologists Drs. Robert Weber and Malcolm Pond, and Internist Dr. Michael Bloom. The doctors who performed the IMEs agreed that Respondent has diabetes mellitus, sleep apnea, high blood pressure, hyperthyroidism, hypotestosteronism, hypercholesterolemia, hyperlipidemia and morbid obesity. The doctors who performed the IMEs reviewed and discussed the duties, physical requirements and essential functions of a Correctional Officer position.

All three doctors testified at hearing. Dr. Weber testified that Respondent is unable to run, crawl, kneel, climb, squat, bend or carry weights up to 50 pounds for a distance of 100 yards. Dr. Weber found that Respondent was not substantially incapacitated from his usual duties due to a cardiovascular condition or hypertension. However, Dr. Weber opined that various conditions singly and in combination are responsible for Respondent's inability to perform his job duties (including morbid obesity, cardiovascular deconditioning, sleep apnea, hypotestosteronism and hypothyroidism). Drs. Pond and Bloom agreed with Dr. Weber.

The Administrative Law Judge (ALJ) found that Drs. Pond and Weber were the most credible regarding Respondent's atrial fibrillation. She found their reports to be well reasoned and supported by objective medical evidence. Both doctors' opinions regarding atrial fibrillation were consistent.

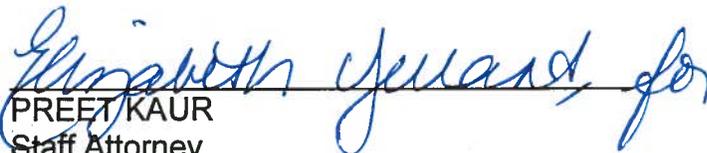
The ALJ reasoned that there is no dispute regarding Respondent's various medical conditions. She found that the conditions that singly and in combination are responsible for Respondent's inability to perform his job duties are morbid obesity, cardiovascular deconditioning, sleep apnea, hypotestosteronism and hypothyroidism. Considering the duties and physical requirements of the position of Correctional Officer and the competent medical evidence, the ALJ found Respondent to be substantially incapacitated for the performance of his duties, singly and in combination on the bases of morbid obesity, cardiovascular deconditioning, sleep apnea, hypotestosteronism and hypothyroidism.

The ALJ found that Respondent met his burden to show by a preponderance of the evidence (based on competent medical evidence) that he is substantially incapacitated. The ALJ concluded that Respondent cannot perform his usual job duties, and therefore, is entitled to receive Industrial Disability Retirement.

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. The Proposed Decision grants Respondent's appeal. Respondent is unlikely to file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

February 19, 2015

  
PREET KAUR  
Staff Attorney