

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Eric Reingrover (Respondent) was employed as a Correctional Officer by the California Department of Corrections and Rehabilitation, Institution for Men (CDCR). By virtue of his employment, Respondent was a state safety member of CalPERS subject to Government Code section 21151.

On September 13, 2010, Respondent submitted an application for Industrial Disability Retirement (IDR). Respondent claims an orthopedic injury. In his application for IDR, Respondent claimed "cumulative occupational trauma causing injury to (his) spine."

CalPERS arranged for Respondent to be examined by an Independent Medical Examiner Neil Halbridge, M.D., a board-certified Orthopedic Surgeon. Dr. Halbridge reviewed medical records, a written job description, and performed an Independent Medical Examination (IME) of Respondent on April 19, 2011.

In his first report, Dr. Halbridge opined that Respondent was substantially incapacitated from performing the usual and customary duties of a Correctional Officer. Following receipt of Dr. Halbridge's first report, CalPERS provided Dr. Halbridge with a video of sub rosa images, showing Respondent exercising in a gym, driving, and washing his car.

On June 15, 2011, Dr. Halbridge prepared a second report in which he changed his opinion based upon his review of the surveillance images of Respondent. Dr. Halbridge now believed that Respondent was not substantially incapacitated from performing the usual and customary duties of a Correctional Officer.

After reviewing Dr. Halbridge's report and other medical evidence, CalPERS staff denied Respondent's application for IDR and his request for an earlier date of retirement. Respondent appealed staff's determination and a hearing was held on December 9, 2014. Respondent was represented by counsel.

Under the applicable court rulings construing disability under the California Public Employees' Retirement Law (PERL), Respondent has the burden of showing that he is substantially incapacitated from performing the usual and customary duties in his position as a Correctional Officer. Prophylactic restrictions and risk of possible future injury cannot support a finding of disability. (*Mansperger v. Pub. Employees' Ret. System* (1970) 6 Cal.App.3d 873; *Hosford v. Bd. of Administration* (1978) 77 Cal.App.3d 854.) The injury or condition which is the basis for the claimed disability must be permanent or of an extended and uncertain duration.

At the hearing, the Administrative Law Judge (ALJ) received documentary evidence regarding the usual and customary duties of a Correctional Officer. Respondent also described the usual and customary duties that he performed as a Correctional Officer during his testimony.

The parties stipulated to the introduction into evidence of copies of relevant medical reports from Respondent's treating physicians, an examining physician in Respondent's companion claim for Workers' Compensation benefits and from the IME, Dr. Halbridge.

Following staff's denial of Respondent's application for IDR, Respondent had low back surgery in October 2011; anterior and posterior lumbar discectomy and fusion at L4-5 and L5-S1, with insertion of 14 screws and 2 plates to stabilize his spine.

Additional medical records, including the operative report from the October 2011, surgery, were provided to Dr. Halbridge. Following his receipt of these records, in January 2012, Dr. Halbridge prepared a third report in which he stated his opinion that Respondent was substantially incapacitated from performing the usual and customary duties of a Correctional Officer. Dr. Halbridge clarified his opinion in another supplemental report wherein he stated that the effective date of Respondent's disability was the date of his lumbar spine surgery; October 2011, and not earlier, i.e., the date Respondent had submitted his application for IDR.

After considering all of the documentary evidence and Respondent's testimony, the ALJ found that competent medical evidence supported Respondent's claim he was rendered substantially incapacitated from performing the usual and customary duties of a Correctional Officer based on his lumbar spine condition.

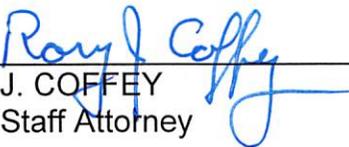
Respondent argued that the effective date of his retirement should be September of 2009. Respondent received temporary disability benefits through a Workers' Compensation claim and those temporary benefits expired in September, 2009.

The ALJ also found that Respondent did not demonstrate that the effective date of his disability retirement should be earlier than the date he submitted his application for IDR.

The ALJ concluded that Respondent's appeal should be granted in part and denied in part. Specifically, the Industrial Disability was granted and the earlier date of retirement was 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.

March 18, 2015



RORY J. COFFEY
Senior Staff Attorney