

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

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Respondent Elias Mendez (Respondent Mendez) applied for industrial disability retirement on June 18, 2013, on the basis of an orthopedic (right knee) condition. By virtue of his employment as a Correctional Officer for Respondent California State Prison-Corcoran, California Department of Corrections and Rehabilitation (Respondent CDCR), Respondent Mendez is a state safety member of CalPERS.

Prior to the hearing, CalPERS explained the hearing process to Respondent Mendez and the need to support his case with witnesses and documents. CalPERS provided Respondent Mendez with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent Mendez's questions and clarified how to obtain further information on the process.

As part of CalPERS review of his medical condition, Respondent Mendez was sent for an Independent Medical Examination (IME) to Daniel D'Amico, M.D., a board-certified Orthopedic Surgeon. Dr. D'Amico interviewed Respondent Mendez and obtained a summary of his medical history, treatment, work history and present complaints. Dr. D'Amico also reviewed Respondent Mendez's medical records, took an oral history and performed a comprehensive physical examination of the lower extremities.

Dr. D'Amico prepared a report and testified at the hearing. Dr. D'Amico reported that his examination did not reveal a pathological basis for any knee pain that Respondent Mendez reported. Based on the physical examination, Dr. D'Amico found that both the right and left knees were equal. Dr. D'Amico testified that there was no medical basis for concluding that Respondent Mendez is substantially incapacitated from performing the usual duties of his job as a Correctional Officer.

Respondent Mendez did not offer any medical testimony at the hearing. Rather, he testified about his physical limitations and his current duties. At the time of hearing, Respondent Mendez had been working for the previous eleven months as a Correctional Officer with no restrictions. Due to his seniority as a Correctional Officer, Respondent Mendez testified that he was able to put in a "bid" for the control booth position. Working in the control booth substantially lowers the likelihood that Respondent Mendez will be required to respond to an emergency or engage in activities that he described to be painful, such as repeatedly climbing flights of stairs.

The ALJ concluded that Respondent Mendez failed to meet his burden of establishing his entitlement to industrial disability retirement benefits and the 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.

June 17, 2015



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Senior Staff Attorney