

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Natalie Lindsey (Respondent Lindsey) applied for service pending industrial disability retirement on the basis of neurological (head, jaw) conditions. By virtue of her employment as a Registered Nurse with Respondent Department of Corrections & Rehabilitation – Avenal State Prison (Department), Respondent Lindsey was a state safety member of CalPERS. Effective September 1, 2011, Respondent Lindsey retired for service and has been receiving her retirement allowance since that date.

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

As part of CalPERS review of her medical condition, Respondent Lindsey was sent for an Independent Medical Examination (IME) to Harish Porecha, M.D. a Neurologist and Surgeon. Dr. Porecha interviewed Respondent Lindsey and obtained a summary of her medical history, treatment, work history and present complaints. Dr. Porecha issued an IME report containing his findings and testified at the hearing. Dr. Porecha also authored supplemental IME reports after receiving additional medical records and questions from CalPERS.

In his IME report, Dr. Porecha opined that Respondent Lindsey was not substantially incapacitated from the performance of her usual job duties and that she should be able to continue her employment as a Registered Nurse. However, when testifying at the hearing, Dr. Porecha changed his opinion after reviewing additional information regarding the job duties of Respondent Lindsey. Dr. Porecha testified that Respondent Lindsey could not perform tasks such as following up on inmates with infectious diseases or overseeing tracking and administration of PPD skin tests because those tasks require that Respondent Lindsey give injections to inmates. If Respondent Lindsey is exposed to tuberculosis, her resistance against infection is low because of "all she has been through." Dr. Porecha also indicated that Respondent Lindsey is not able to work with biohazard materials because of her susceptibility to infection and her reduced resistance, she is not able to lift over 50 pounds, walk on uneven surfaces or work with heavy equipment.

Respondent Lindsey offered medical reports substantiating her disability and a written narrative in lieu of testimony.

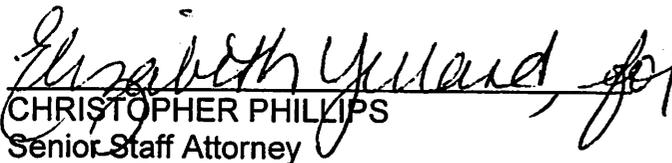
Based on the testimony of Dr. Porecha and the information provided by Respondent Lindsey, the Administrative Law Judge (ALJ) determined that Respondent Lindsey is substantially incapacitated from performing her usual and customary duties.

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 with a minor change to reflect the correct type of disability application at issue.

Pursuant to Government Code section 11517(c)(2)(C), the Board is authorized to "make technical or other minor changes in the proposed decision." In order to avoid ambiguity, staff recommends inserting the word "Industrial" before the words "disability retirement" in the case caption and in the "Order" section of 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. Since the member prevailed it is not likely that she will file a Writ Petition in Superior Court seeking to overturn the Decision of the Board

August 19, 2015


CHRISTOPHER PHILLIPS
Senior Staff Attorney