

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Bruce Flores (Respondent Flores) was employed by the California Department of Corrections and Rehabilitation (CDCR) as a Correctional Officer. As a result of his employment, he was a state safety member of CalPERS, subject to Government Code section 21151. Respondent Flores submitted an application for service pending Industrial Disability Retirement (IDR), wherein he claimed a left shoulder injury. He stated he could not swing a baton to strike an inmate, disarm, subdue or restrain an inmate; defend against an inmate's attack, climb ladders, lift and carry over 100 pounds, pull or push locked gates and cell doors or lift above his shoulders.

CalPERS arranged for Respondent Flores to be examined by Andrew Brooks, M.D., a Board-Certified Orthopedist. The doctor testified as an Independent Medical Examiner (IME) in this case. Dr. Brooks reviewed Respondent Flores' medical records, and prepared an initial report finding that Respondent Flores was substantially incapacitated from the usual and customary duties of his position as a Correctional Officer.

Dr. Brooks was then provided with six DVD's showing surveillance of Respondent Flores conducted by CDCR's Internal Affairs Office, including the detailing of a van. Based on Respondent Flores' actions in the surveillance tapes, Dr. Brooks changed his opinion to find that Respondent Flores was not substantially incapacitated from performing his usual and customary duties.

Accordingly, CalPERS denied Respondent Flores' application for IDR. Respondent Flores appealed and a hearing was conducted on July 31, 2015, by an Administrative Law Judge (ALJ) from the Office of Administrative Hearings.

Under the applicable court rulings construing disability under the California Public Employees' Retirement Law, Respondent Flores has the burden of showing that he is substantially incapacitated from performing the usual and customary duties of 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.)

CalPERS explained the hearing process to Respondent Flores and the need to support his case with witnesses and documents. CalPERS provided Respondent Flores with a copy of the Administrative Hearing Process pamphlet.

At the hearing, Respondent Flores confirmed that he was the person in the surveillance tapes and authenticated the tapes. Respondent Flores testified that he only detailed one van to teach his son the business.

Respondent Flores did not provide any medical evidence or reports. His mother testified about two occasions when she saw him in pain. He presented no medical evidence or reports.

Dr. Brooks also testified about Respondent Flores' orthopedic condition. He explained the examination he conducted, and how the surveillance tapes helped in providing accurate information to him about Respondent Flores. Dr. Brooks detailed why he changed his opinion and found Respondent Flores was not substantially incapacitated from his usual and customary duties.

In his Proposed Decision, the ALJ found that Respondent Flores did not establish by competent, objective medical opinion, that at the time of his IDR application he was permanently disabled or incapacitated from performing the usual duties of a Correctional Officer. Accordingly, the ALJ denied Respondent Flores' appeal.

The Proposed Decision is supported by the law and the facts. Staff recommends 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.

October 21, 2015



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Senior Staff Attorney