

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

## **STAFF'S ARGUMENT TO DENY PETITION FOR RECONSIDERATION**

The hearing on this case was completed June 4, 2015. Following the hearing, a Proposed Decision was issued on June 30, 2015. The Proposed Decision was in favor of CalPERS (to reinstate Respondent because he is no longer substantially incapacitated from performing his usual job duties). The Board voted to adopt the Proposed Decision on August 19, 2015. Respondent Joel Marzan (Respondent) submitted this Petition for Reconsideration on September 14, 2015.

Respondent was employed by the Department of Corrections and Rehabilitation (Respondent CDCR) as a Correctional Officer. Respondent was approved for CalPERS Industrial Disability Retirement (IDR) on November 14, 2011, for post-traumatic stress disorder (PTSD) and anxiety (psychological conditions). He was 39 years old at the time. He has remained on IDR since that time.

On November 26, 2013, Respondent was notified that under Government Code section 21192, CalPERS was reviewing his disability retirement status. Pursuant to Government Code section 21192, a member who retires on disability at an age less than 50 can be required to undergo subsequent medical examination to determine if he or she remains incapacitated from the usual and customary duties of his or her position. Respondent was 41 years old in 2013.

CalPERS staff arranged for a new medical examination, and then reviewed that report as well as other relevant medical reports. Dr. Andrea Bates, a board-certified Psychiatrist, conducted an Independent Medical Examination (IME) of Respondent, and determined that he was no longer substantially incapacitated from performing his usual and customary job duties at Respondent CDCR. Based on this report, CalPERS determined that Respondent is no longer entitled to IDR.

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

At the hearing, the Administrative Law Judge (ALJ) heard evidence from two witnesses. CalPERS presented the testimony of Dr. Andrea Bates, who examined Respondent in March 11, 2014. Respondent testified on his own behalf.

Dr. Bates testified that after her examination of Respondent, she found that he had been rehabilitated and no longer exhibited any symptoms of PTSD. Although he did have some anxiety, it was not at a level that would interfere with his ability to perform his job duties at Respondent CDCR. She found that Respondent was not substantially incapacitated from the performance of his duties due to a psychological condition.

Respondent testified that he was concerned that returning to work could trigger his prior psychological problems, and that he did well in the evaluation by Dr. Bates because he did not have to be around inmates. Respondent also testified that he had concerns about his decision-making abilities.

The ALJ found that Dr. Bates' findings were sufficient to sustain reinstatement of Respondent to his former position as a Correctional Officer. The ALJ determined that Dr. Bates' testimony was persuasive that Respondent lacked sufficient symptoms to qualify for a PTSD diagnosis and that his level of anxiety was not sufficient to prevent him from performing the essential functions of his job. The ALJ found that Respondent's medical submissions were not persuasive, especially since the authors of those documents did not opine whether Respondent was substantially incapacitated from the performance of his job duties. The ALJ concluded that Respondent's appeal should be denied.

The ALJ concluded that Respondent failed to establish that he was substantially unable to perform his usual job duties, and therefore, was not entitled to industrial disability retirement. The ALJ concluded that Respondent's appeal should be denied.

Respondent gave no reason at all for his Petition for Reconsideration. Presumably, Respondent did not like the result after hearing. Respondent disagrees with the ALJ's findings of fact and legal analysis, but it is clear from the Proposed Decision that evidence was taken on the underlying facts, medical evidence, and Respondent's claimed disability. Exhibits from both parties were submitted for consideration by the ALJ. The ALJ simply found against Respondent. Respondent has not raised any new evidence or change in circumstances which would warrant reconsideration.

Staff argues the Board deny the Petition for Reconsideration and uphold its decision.

Because the Decision applies the law to the salient facts of this case, the risks of denying the Petition for Reconsideration are minimal. Respondent may file a writ petition in superior court seeking to overturn the decision of the Board.

October 21, 2015.

  
ELIZABETH YELLAND  
Senior Staff Attorney