

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Montell Pierce (Respondent) was employed as a Correctional Supervising Cook by Respondent California Department of Corrections and Rehabilitation, California State Prison, Los Angeles (CDCR). By virtue of his employment, Respondent was a State safety member of CalPERS. Respondent submitted an application to CalPERS on February 22, 2011, seeking industrial disability retirement on the basis of claimed orthopedic (right knee, low back) conditions. Respondent's application for industrial disability retirement was approved and he was retired for disability effective October 6, 2010. CalPERS sought reevaluation of Respondent, which included a review of relevant medical records and an independent medical examination by Clive Segil, M.D., a Board-certified Orthopedic Surgeon. Dr. Segil prepared a written report, dated June 13, 2013, which contained his observations, findings, and conclusions. Dr. Segil's opinion was that Respondent was not substantially incapacitated from performing the usual and customary duties of a Correctional Supervising Cook for CDCR. CalPERS determined that Respondent was no longer disabled and therefore was no longer eligible for industrial disability retirement. Notice of CalPERS' determination was provided to both Respondent and CDCR. Respondent appealed the determination and a hearing was held on September 16, 2015.

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.

In order for an individual who was previously approved for industrial disability retirement to be reinstated to his or her former position, competent medical evidence must demonstrate that he or she is no longer substantially incapacitated, because of the injury or condition for which he or she was disabled, from performing the usual and customary duties of his or her former position.

Respondent testified at the hearing. Respondent did not call a qualified medical professional to testify on his behalf. Respondent offered into evidence copies of limited medical records.

The only competent medical evidence offered at the hearing was the medical report prepared by Dr. Segil and Dr. Segil's testimony, which was entirely consistent with his report.

Despite this fact, the Administrative Law Judge (ALJ) found that the competent medical evidence offered by CalPERS in support of the determination that Respondent was no longer substantially incapacitated from performing his duties as a Correctional Supervising Cook was inadequate. The ALJ applied an inconsistent analysis at times, commenting that Dr. Segil "very briefly" mentioned his review of medical records in his

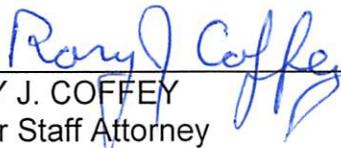
report, yet simultaneously noting that the IME's medical record review consisted of 13 pages, single-spaced. To support his findings, the ALJ quoted at length, for several pages of the Proposed Decision, certain entries found in the medical records. However, it should be noted that the entries quoted by the ALJ were entries from 2008 and 2009, which preceded Respondent's reevaluation in June 2014, and entries which referred to workers' compensation work restrictions, which are not controlling for purposes of applying the CalPERS standard for disability retirement.

The ALJ further criticized Dr. Segil's findings, conclusions, and opinion, but many of these criticisms were based on a misunderstanding of the facts. For example, the ALJ found that Dr. Segil "spent no more than 30 minutes with Respondent," when Dr. Segil's testimony was that he spent at least 60 minutes in face-to-face time in the examination of Respondent. The ALJ also found that Dr. Segil "did not discuss Respondent's continuing back pain," without considering that Respondent was approved for industrial disability retirement because of the condition of his right knee, not his low back, and without acknowledging that Respondent described his low back complaint as being "only a small ache."

Ultimately, the ALJ concluded that CalPERS had presented "insufficient competent medical evidence to determine that Respondent is not currently physically incapacitated for the performance of his usual duties as a Correctional Supervising Cook for CDCR...." Thus, the ALJ concluded that Respondent's appeal should be granted. Staff argues that the Board adopt the Proposed Decision.

Since the member's appeal was granted, it is not likely he will file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

November 18, 2015



RORY J. COFFEY
Senior Staff Attorney