

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

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

Respondent Socorro Licon (Respondent) was approved for industrial disability retirement on February 22, 2010, based on an orthopedic condition (right knee). On June 26, 2014, CalPERS found that Respondent was no longer disabled from the performance of her duties as a Correctional Officer (CO) with California Department of Corrections and Rehabilitation, State Prison–Corcoran (CDCR), and that she should be reinstated. Respondent appealed. The hearing was completed on September 1, 2015.

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

As part of CalPERS' review of her medical condition, Respondent was sent for an independent medical examination (IME) to Orthopedic Surgeon Dr. Ghol Ha'Eri. Dr. Ha'Eri interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, reviewed medical records, and performed a comprehensive IME examination.

Dr. Ha'Eri examined Respondent's lower extremities, and focused on her right knee. He noted a well-healed scar from prior arthroscopic surgery. He found no swelling, effusion or tenderness. Both knees had full range of motion, and normal patellar tracking. He observed that Respondent has mild chondromalacia (roughness on the back side of the kneecap that can cause occasional clicking and popping on motion). However, he testified that while this condition can be disconcerting, the condition does not make the joint unstable or prone to failure on physical activity. He testified, "all of [Respondent's] colleagues [her] age have chondromalacia, and [her] older colleagues are very much likely worse." He testified that if Respondent's standard of fitness for her right knee were applied to her colleagues, "99% of your colleagues would be unable to function." He stated that "there is no objective orthopedic reason in [Respondent's] right knee to preclude [her] from doing her job."

At the hearing, Dr. Ha'Eri testified to his examination and reports. Dr. Ha'Eri's medical opinion is that Respondent is not substantially disabled, even if she is experiencing some aging, and wear and tear in her joints.

Respondent testified on her own behalf. She did not call any physicians or other medical professionals to testify.

The Administrative Law Judge (ALJ) found that CalPERS bears the burden to show by a preponderance of the evidence (based on competent medical evidence) that Respondent was no longer substantially incapacitated and should be involuntarily reinstated to her former position (Govt. Code §§ 21191, 21192). The ALJ found that CalPERS met its burden of proof, by a preponderance of the evidence that Respondent

is no longer substantially incapacitated for the performance of her usual and customary duties as a CO with the CDCR. The ALJ further found that Respondent provided no objective, competent medical evidence to support her claim of continued disability.

The ALJ found that the medical evidence shows Respondent's temporary total disability was recognized by CalPERS' initial grant of industrial disability retirement, but no longer exists. The medical evidence shows that Respondent has recovered from her temporary disability, she received excellent surgical treatment, and has recovered. The ALJ found that the great weight of the medical evidence supports a conclusion that there is no orthopedic reason why Respondent cannot perform the usual and customary duties of her position. The ALJ found that Respondent is no longer substantially incapacitated, and should be returned to work.

The ALJ concluded that Respondent's appeal should be denied and that she should be reinstated to her former usual job duties as a CO for CDCR. 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.

November 18, 2015.

  
ELIZABETH YELLAND  
Senior Staff Attorney