

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Daniel Salinas (Respondent) applied for Industrial Disability Retirement based on an orthopedic condition (neck). By virtue of his employment as a Correctional Officer (CO) for Respondent California Department of Corrections and Rehabilitation, California State Prison, North Kern (Respondent CDCR), he was a state safety member of CalPERS. CalPERS determined that Respondent was not disabled, and Respondent appealed. A hearing was completed on September 15, 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.

On August 23, 2010, Respondent claimed that he was injured in an altercation with an inmate, when he fell and injured his neck. He testified that he would be unable to perform the essential functions of his job as a CO because of his neck pain.

As part of CalPERS' review of his medical condition, Respondent was sent for an Independent Medical Examination (IME) to Orthopedic Surgeon Dr. Ghol Ha'Eri. Dr. Ha'Eri interviewed Respondent, took Respondent's work history, and reviewed Respondent's job descriptions, medical records and diagnostic studies. He also performed a comprehensive IME examination. Dr. Ha'Eri found age appropriate degenerative changes in Respondent's cervical spine.

Dr Ha'Eri opined that there were no specific job duties that Respondent was unable to perform, and that Respondent was not substantially incapacitated from performing the duties of a CO. At the hearing, Dr. Ha'Eri testified to his examination and report. Dr. Ha'Eri's medical opinion is that Respondent is not substantially disabled.

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

The Administrative Law Judge (ALJ) found that Respondent bears the burden to show by a preponderance of evidence (based on competent medical evidence) that his symptomology renders him unable to perform his usual job duties. The ALJ found that Respondent failed to carry his burden of proof and that Respondent did not establish by competent, objective medical opinion, that, at the time of application, he was permanently disabled or incapacitated from performing his usual duties of a CO for Respondent CDCR.

The ALJ concluded that Respondent's appeal should be denied. 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
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