

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Vincent Miller (Respondent) was employed by the California Department of Corrections (CDCR) as a correctional officer. By virtue of his employment, Respondent is a safety member of CalPERS. Respondent submitted an application for industrial disability retirement on the basis of psychological (major depressive disorder and personality disorder) conditions. Respondent's application was approved by CalPERS and he retired effective November 1, 2009.

On August 19, 2013, CalPERS staff notified Respondent that CalPERS conducts reexamination of persons on disability retirement, and that his file was currently under review. As part of the reexamination, staff reviewed medical reports regarding Respondent's condition, a written description of his usual and customary job duties, records from Respondent's treating physician, and Respondent's workers' compensation file. Andrea Bates, M.D., a board certified psychiatrist, examined Respondent, reviewed medical reports and two written job descriptions. In her report, Dr. Bates concluded that Respondent was no longer substantially incapacitated from the performance of the usual and customary job duties of a Correctional Officer. Respondent timely appealed this determination, and a hearing was conducted on December 1, 2015. Respondent was not present at the hearing.

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. Respondent informed CalPERS that he might not attend the hearing.

Dr. Bates testified at the hearing that she found Respondent could perform the essential functions of his job. Dr. Bates testified that Respondent had fully recovered and was no longer substantially incapacitated from performing his job duties.

The Administrative Law Judge (ALJ) found Dr. Bates' testimony persuasive. After reviewing the evidence, the ALJ determined by a preponderance of the evidence that Respondent was no longer substantially incapacitated from performing the usual and customary duties of a Correctional Officer.

The ALJ denied Respondent's appeal of CalPERS' determination that he be reinstated to his former position as a Correctional Officer. 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 motion with the Board under Government Code section 11520(c), requesting that, for good cause shown, the Decision be vacated and a new hearing be granted.

February 18, 2016

A handwritten signature in blue ink, appearing to read 'Preet', is written over a horizontal line. The signature is fluid and cursive.

PREET KAUR
Senior Staff Attorney