

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Nila A. Job (Respondent Job) applied for service pending Industrial Disability Retirement on the basis of an orthopedic (bilateral shoulder and back) condition. By virtue of her employment as a Correctional Supervising Cook with Respondent California Department of Corrections, Wasco State Prison (CDCR), Respondent Job was a state safety member of CalPERS.

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

Despite proper notice being given to Respondent Job and Respondent CDCR, no appearances were made at the November 17, 2015, hearing by either respondent. Due to the failure to appear at the hearing, defaults of the respondents were taken by the Administrative Law Judge (ALJ).

As part of CalPERS' review of her medical condition, Respondent Job was sent for an independent medical examination (IME) to Orthopedic Surgeon Dr. Ghol Ha'Eri. Dr. Ha'Eri interviewed Respondent Job, 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.

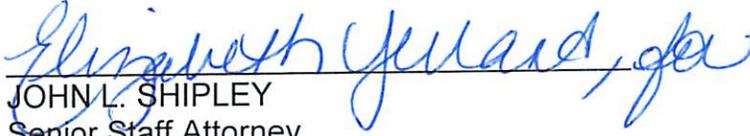
At the hearing, CalPERS made arguments, called Dr. Ha'Eri as a witness, and introduced documentary evidence, including medical reports. Dr. Ha'Eri testified to his examination and reports.

The ALJ found that Dr. Ha'Eri's credible testimony and report established that (1) Respondent Job sustained an injury; (2) the injury had resolved; (3) Respondent Job has no residual permanent incapacity; (4) there are no job duties that Respondent Job is unable to perform due to a back/shoulder condition; and (5) Respondent Job is not substantially incapacitated for performance of her usual duties as a Correctional Supervising Cook.

After considering all of the evidence, the ALJ concluded that Respondent Job's appeal should be denied. Pursuant to Government Code section 11517(c)(2)(C), the Board is authorized to "make technical or other minor changes in the Proposed Decision." In order to avoid ambiguity, staff recommends that the word "industrial" be inserted before the words "disability retirement" on pages one, two, three and four of the Proposed Decision. The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision, as modified.

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



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