

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Eric Faul (Respondent) applied for disability retirement based on an orthopedic condition (cervical and thoracic pain). Respondent was employed as a Park Maintenance Worker II (PMW II) for Respondent City of Lodi (Respondent Lodi).

On May 9, 2010, Respondent was mowing on a hillside and fell, hitting his head. He claimed that he could not perform his job duties due to headache, neck and back pain.

As part of CalPERS' review of his medical condition, Respondent was sent for an Independent Medical Examination (IME) to Orthopedic Surgeon Dr. Gerald Barnes. Dr. Barnes interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, reviewed medical records, and performed a comprehensive IME examination. Dr. Barnes concluded that, "based on the absence of significant objective findings, we have only subjective complaints to consider. As I understand his job duties, I believe that he should be able to perform these." He believed Respondent was capable of returning to full work duties. Dr. Barnes testified that all his findings and conclusions on clinical exam were negative, and were supported by negative x-rays, Respondent's treatment records, and a reliable MRI.

Dr. Barnes opined that there are no specific job duties that Respondent is unable to perform because of his condition. He found that Respondent is not substantially incapacitated to perform his job duties as a PMW II, and that he has no substantial incapacity or disability. CalPERS thereafter determined that Respondent is not entitled to disability retirement. Respondent appealed this determination. A hearing was completed on January 21, 2016.

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 provided him with information on how to obtain further information on the process.

At the hearing, Dr. Barnes testified to his examination and report. Dr. Barnes provided the only competent medical evidence, giving his opinion that Respondent is not substantially disabled to perform his job duties as a PMW II.

The Administrative Law Judge (ALJ) found that Respondent failed to carry his burden to prove that he is substantially incapacitated for the performance of his usual and customary duties as a PMW II for Respondent Lodi. The competent persuasive medical evidence does not support Respondent's claim of disability on the basis of his claimed orthopedic condition. While Respondent sustained a period of temporary disability immediately following the May 2011 accident at work, he has recovered and is not substantially incapacitated as revealed by the medical evidence.

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.

April 20, 2016


ELIZABETH YELLAND
Senior Staff Attorney