

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent William Anglin (Respondent Anglin) worked as a Correctional Officer (CO) for Respondent California Department of Corrections, California Correctional Center-Susanville (Respondent CDCR). By virtue of his employment, Respondent Anglin was a state safety member of CalPERS.

In 2001, Respondent Anglin applied for and received industrial disability retirement from CalPERS on the basis of an orthopedic (left knee) condition. In 2010, CalPERS referred Respondent Anglin for a re-evaluation with Doctor Frank Minor, a board-certified orthopedic surgeon. Dr. Minor issued a written report finding Respondent Anglin was no longer substantially incapacitated from performing the duties of a CO for Respondent CDCR. On the basis of the Independent Medical Examiner (IME) report, and a review of Respondent Anglin's medical and employment records, CalPERS determined that Respondent Anglin was no longer substantially incapacitated, and moved to reinstate him to the CO position with CDCR.

Respondent Anglin appealed CalPERS' determination. A one-day hearing was held in Sacramento, California on February 17, 2016. Counsel appeared on behalf of CalPERS. Respondent Anglin represented himself. Respondent CDCR did not appear.

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

Pursuant to the California Public Employees' Retirement Law (PERL), a CalPERS member who is incapacitated from the performance of his or her duties shall be retired for disability. (Cal. Gov. Code §21150(a).) The statute has been interpreted and applied to require a showing of substantial inability to perform the usual duties of the job. (See, e.g., *Mansperger v. Public Employees Retirement System* (1970) 6 Cal.App.3d 873, 876.) On-the-job discomfort does not qualify a member for disability retirement; risk of further or future injury is similarly insufficient. (*Hosford v. Board of Administration* (1978) 77 Cal.App.3d 854, 862-64.) Where CalPERS seeks to have a member removed from the disability retirement roll and reinstated to employment, it is CalPERS' burden to prove substantial incapacity no longer exists. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051.)

At hearing, CalPERS presented the oral testimony and written IME report of Dr. Minor. Dr. Minor testified that he interviewed Respondent Anglin, obtained a personal and medical history, physically examined Respondent Anglin and reviewed his medical and work records.

