

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Jordan Conway (Respondent) was approved for Industrial Disability Retirement on October 17, 2011, based on an orthopedic condition (left knee) caused by jumping over a creek while working for his employer Respondent California Forestry and Fire Protection (CalFIRE). On April 14, 2015, CalPERS determined that Respondent was no longer disabled from the performance of his duties as a Firefighter I with CalFIRE, and that he should be reinstated. Respondent appealed. A hearing was completed on March 8, 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.

As part of CalPERS' review of his medical condition, Respondent was sent for a second Independent Medical Examination (IME) to Board Certified Orthopedic Surgeon Dr. Ghol Ha'Eri. Dr. Ha'Eri interviewed Respondent, obtained a personal and medical history, had Respondent complete a questionnaire, conducted a physical exam, and reviewed Respondent's medical records related to his orthopedic condition. He also reviewed Respondent's duty statement and physical requirements of his position of Firefighter I.

Dr. Ha'Eri diagnosed left knee sprain/strain, and opined that Respondent underwent a full course of conservative medical care. He noted that Respondent would need to continue with his own exercise program to strengthen his thigh muscle in the left lower extremity. He concluded that Respondent was not substantially incapacitated to perform his usual job duties as a Firefighter I. He found nothing unusual in his examination of Respondent.

At the hearing, Dr. Ha'Eri testified to his examination and report. Dr. Ha'Eri's medical opinion is that Respondent is not substantially incapacitated to perform the duties of Firefighter I.

The Administrative Law Judge (ALJ) found that CalPERS bears the burden to show by a preponderance of the evidence (based on competent medical evidence) that Respondent was no longer substantially incapacitated and should be involuntarily reinstated to his former position (Govt. Code §§ 21191, 21192). The ALJ found that CalPERS met its burden of proof, by a preponderance of the evidence, that Respondent is no longer substantially incapacitated for the performance of his usual and customary duties as a Firefighter I with CalFIRE. The ALJ further found that Respondent provided no objective, competent medical evidence to support his claim of continued disability.

The ALJ concluded that Respondent's appeal should be denied and that he should be reinstated to his former usual job duties as a Firefighter I for CalFIRE. 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.

May 18, 2016


ELIZABETH YELLAND
Senior Staff Attorney