

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Leslie C. Riley (Respondent Riley) applied for disability retirement based on orthopedic (carpal tunnel syndrome, neck and right knee) conditions. By virtue of his employment as an Associate Safety Engineer for Respondent California Department of Industrial Relations (CDIR), he was a state miscellaneous member of CalPERS.

As part of CalPERS' review of his medical condition, Respondent Riley was sent for an Independent Medical Examination (IME) by orthopedic surgeon Joseph Serra, M.D. Dr. Serra interviewed Respondent Riley, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed medical records. Dr. Serra also performed a comprehensive IME. Dr. Serra opined that Respondent Riley is not substantially incapacitated to perform his job duties as an Associate Safety Engineer. After reviewing all medical documentation and the IME report, CalPERS determined that Respondent Riley was not disabled.

Respondent Riley appealed this determination. A hearing was completed on March 7, 2016. Respondent represented himself at the hearing.

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

At the hearing, Dr. Serra testified in a manner consistent with his examination of Respondent Riley and the report prepared after the IME. Dr. Serra's medical opinion is that there are no specific job duties Respondent Riley is unable to perform; therefore, Respondent Riley is not substantially incapacitated.

Respondent Riley testified on his own behalf. He did not call any physicians or other medical professionals to testify. Respondent Riley submitted certain medical reports to support his claim; however, the doctors authoring those reports did not use the CalPERS standard in determining whether Respondent Riley was substantially incapacitated.

The Administrative Law Judge (ALJ) denied Respondent Riley's appeal. The ALJ found that Respondent Riley bears the burden to prove by a preponderance of evidence (based on competent medical evidence) that his orthopedic condition renders him unable to perform his usual job duties. The ALJ found that Respondent Riley failed to carry his burden of proof.

The ALJ concluded that Respondent Riley is not permanently and substantially disabled or incapacitated from the performance of his job duties, and therefore, is not entitled to disability retirement.

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



JOHN SHIPLEY
Senior Staff Attorney