

**ATTACHMENT B**  
**STAFF'S ARGUMENT**

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Mark Hitt (Respondent) was approved for Industrial Disability Retirement on March 2, 2013, based on an orthopedic condition (right knee) caused when he twisted his right knee while working for his employer Respondent California Department of Corrections and Rehabilitation (CDCR). On March 10, 2015, CalPERS determined that Respondent was no longer disabled from the performance of his duties as a Correctional Officer (CO) with CDCR, and that he should be reinstated. Respondent appealed. A hearing was completed on March 29, 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 an Independent Medical Examination (IME) to Board Certified Orthopedic Surgeon Dr. Ghol Ha'Eri. Dr. Ha'Eri interviewed Respondent, obtained a personal and medical history, conducted a physical exam, reviewed Respondent's medical records, and reviewed Respondent's duty statement and physical requirements of his position.

Dr. Ha'Eri initially found that Respondent was not substantially incapacitated from the performance of his job duties. However, on review of additional medical records, Dr. Ha'Eri changed his opinion, and concluded that Respondent is permanently incapacitated from performing his usual job duties as a CO for CDCR.

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 (Gov. Code §§ 21191, 21192), and that CalPERS did not meet its burden of proof. The ALJ further found that the competent medical evidence in the case showed that Respondent continued to be substantially incapacitated to perform his usual job duties.

The ALJ concluded that Respondent's appeal should be granted. 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. Because the member prevailed, he will not likely file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

June 15, 2016

  
ELIZABETH YELLAND  
Senior Staff Attorney