

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Brian Boyle (Respondent Boyle) was employed by the California Department of Corrections and Rehabilitation, Folsom State Prison, (CDCR) as a Correctional Officer and is a safety member of CalPERS.

Respondent Boyle submitted an application for Industrial Disability Retirement on the basis of orthopedic conditions.

CalPERS reviewed written descriptions of Respondent Boyle's job duties and relevant medical reports submitted by Respondent Boyle. CalPERS also sent Respondent Boyle for an Independent Medical Examination with orthopedic surgeon, Daniel M. D'Amico, M.D. Based on relevant medical evidence, CalPERS determined Respondent Boyle was not substantially incapacitated from performance of his duties as a Correctional Officer at the time his application for disability retirement was filed.

Respondent Boyle appealed CalPERS' determination and a hearing as to whether Respondent Boyle is substantially incapacitated from performing his usual and customary job duties was held on March 14, 2016.

To be eligible for disability retirement, competent medical evidence must demonstrate the member is substantially incapacitated from performing the usual and customary duties of his position. Furthermore, the injury and condition that is the basis for the claimed disability must be permanent or of an extended and uncertain duration.

At the hearing, Respondent Boyle was represented by counsel. Respondent Boyle testified at the hearing regarding his job duties and his inability to perform his usual and customary job duties due to the physical conditions. Respondent Boyle testified concerning his medical conditions and the limitations imposed by the health issues.

Respondent Boyle offered the testimony of Dr. Andrew Burt, M.D., who had evaluated Respondent Boyle in 2012 and later in 2016. Dr. Burt testified that Respondent Boyle was permanently disabled and substantially incapacitated from performing the usual and customary duties of a Correctional Officer.

Dr. D'Amico testified regarding his examination of Respondent Boyle and the diagnosis. Dr. D'Amico opined that Respondent Boyle was not restricted from performing any job functions from an orthopedic point of view.

The ALJ concluded that Respondent's appeal should be granted because the ALJ found Respondent Boyle demonstrated, based on competent medical evidence, that he is unable to perform the usual functions of his job.

The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision.

Because the Proposed Decision is in favor of Respondent Boyle, it is unlikely he will appeal the decision. Therefore, the risks of adopting the Proposed Decision are minimal.

June 15, 2016

A handwritten signature in blue ink, appearing to read "Preet Kaur", written over a horizontal line.

PREET KAUR
Senior Staff Attorney