

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Lori Gibson (Respondent) was employed by the California Department of Corrections (CDCR) as a correctional officer. By virtue of her employment, Respondent is a safety member of CalPERS. On March 12, 2003, Respondent submitted an application for industrial disability retirement on the basis of orthopedic conditions. Respondent's application was approved by CalPERS and she retired effective December 2, 2003.

In 2014, CalPERS staff notified Respondent that CalPERS conducts reexamination of persons on disability retirement, and that her file was currently under review. As part of the reexamination, staff reviewed medical reports regarding Respondent's condition, a written description of her usual and customary job duties, records from Respondent's treating physician, and Respondent's workers' compensation file. Joseph Serra, M.D., a board certified orthopedist, examined Respondent, reviewed medical reports and two written job descriptions. In his report, Dr. Serra concluded that Respondent was no longer substantially incapacitated from the performance of the usual and customary job duties of a Correctional Officer. Respondent timely appealed this determination, and a hearing was conducted on February 11, 2016.

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

Respondent presented the testimony of Dr. Andrew Burt, M.D., who testified that Respondent was permanently disabled and still unable to perform her usual and customary job functions.

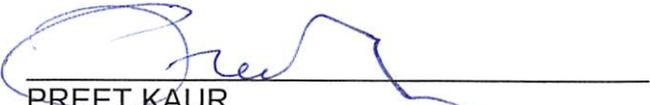
Dr. Serra testified at the hearing that he found Respondent could perform the essential functions of her job. Dr. Serra testified that Respondent had fully recovered and was no longer substantially incapacitated from performing her job duties.

The Administrative Law Judge (ALJ) found Dr. Serra's testimony persuasive. After reviewing the evidence, the ALJ determined by a preponderance of the evidence that Respondent was no longer substantially incapacitated from performing the usual and customary duties of a Correctional Officer.

The ALJ denied Respondent's appeal of CalPERS' determination that she be reinstated to her former position as a Correctional Officer. Pursuant to Government Code section 11517(c)(2)(C), the Board is authorized to "make technical or other minor changes in the Proposed Decision." In order to avoid ambiguity, staff recommends that the word "industrial" be inserted before the words "disability retirement on pages one, two, three, four, five, nine, ten, eleven and twelve of the Proposed Decision. Staff argues that the Board adopt the Proposed Decision, as modified.

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.

June 15, 2016



PREET KAUR
Senior Staff Attorney