

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Gustavo Miranda (Respondent) was approved for Industrial Disability Retirement (IDR) on October 16, 2013, based on an orthopedic (back) condition caused by falling down steps while working for his employer Respondent California Department of Corrections and Rehabilitation (CDCR). Respondent was initially found temporarily disabled based on an Independent Medical Examination (IME), for a period not to exceed one to two years from the date of his original injury (August 2011). On November 10, 2014, Respondent was notified that he was to undergo re-examination of his Industrial Disability Retirement. On May 1, 2015, CalPERS determined that Respondent was no longer disabled from the performance of his duties as a Correctional Officer with CDCR, and that he should be reinstated. Respondent appealed. A hearing was completed on April 12, 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' re-examination of his medical condition, Respondent was sent for a second 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 Correctional Officer.

Dr. Ha'Eri diagnosed lumbar strain superimposed on pre-existing mild lumbar degenerative disc disease (age appropriate). Dr. Ha'Eri testified that Respondent's injury occurred in 2011, and an MRI of his back was taken in 2013, two years later. Dr. Ha'Eri noted the Respondent's fall was a "very trivial" injury and that Respondent "shopped around and found an orthopedic surgeon to justify his herniated disc and steroidal injections, which are very expensive." Dr. Ha'Eri found that all Respondent's x-rays and electromagnetic studies were normal, and he could find no justification for steroid injections, which are risky and can cause complications. Dr. Ha'Eri further stated that usually injections are done in intervals, because they are very expensive and the doctor must see how the patient responds to the first injection. Dr. Ha'Eri did not understand why further injections were administered in Respondent's case. He opined that the mechanism of Respondent's injury and his medical history did not justify steroidal injections. Dr. Ha'Eri testified that he has evaluated many Correctional Officers, is very familiar with their duties, and found that Respondent's complaints were not substantiated by the objective normal findings.

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

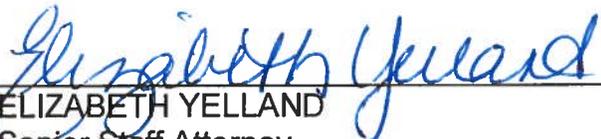
reinstated to his former position (Govt. Code §§ 21191, 21192). The ALJ found that CalPERS met its burden of proof, by a preponderance of the evidence, that Respondent is no longer substantially incapacitated for the performance of his usual and customary duties as a Correctional Officer with CDCR. The ALJ further found that Respondent provided no objective, competent medical evidence to support his claim of continued disability.

When all the evidence was considered, the ALJ found Dr. Ha'Eri's opinion that Respondent is not substantially incapacitated from performing his usual duties of a Correctional Officer was persuasive. As Dr. Ha'Eri explained, Respondent's pain complaints were not supported by any objective findings. The ALJ found that CalPERS presented sufficient competent medical evidence to meet its burden of proof. Consequently, the ALJ granted CalPERS' request to reinstate Respondent from Industrial Disability Retirement.

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

June 15, 2016


ELIZABETH YELLAND
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