

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Edward Aragon (Respondent Aragon) was employed by Respondent California Highway Patrol (CHP) as a Patrol Officer. By virtue of his employment, Respondent Aragon became a state safety member of CalPERS. On August 1, 2014, Respondent Aragon submitted an application for service pending Industrial Disability Retirement. Respondent Aragon claimed disability on the basis of orthopedic (lower back) and cardiovascular (hypertension) conditions. Respondent Aragon service retired effective November 29, 2014, and has been receiving a service retirement allowance since that date.

CalPERS obtained medical reports concerning Respondent Aragon's orthopedic condition from competent medical professionals, including an Independent Medical Examination (IME) report from Dr. Pierre Hendricks, a board-certified orthopedic surgeon. After review of the reports, CalPERS determined that Respondent Aragon was not permanently and substantially incapacitated for the performance of his duties as a CHP Officer at the time that he filed his application for Industrial Disability Retirement. Respondent Aragon was notified of CalPERS' determination and was advised of his appeal rights by letter dated November 25, 2014.

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

At the hearing, Respondent Aragon did not present medical opinion testimony in support of his disability claim. Rather, Respondent Aragon submitted two medical evaluation reports prepared by Dr. Neil Haldbridge. The reports were entered into evidence as administrative hearsay; however, the reports were not applicable to the appeal because they did not address Respondent Aragon's claimed disabilities.

Dr. Hendricks testified at the hearing and the IME Report he authored was entered into evidence. Dr. Hendricks reviewed medical records, including MRI results, and conducted a physical examination of Respondent Aragon. The physical examination revealed no objective deficit in Respondent Aragon's capabilities. Dr. Hendricks opined that the condition of Respondent Aragon's lumbar spine was age-appropriate and that he was not substantially incapacitated from the performance of his usual duties.

The Administrative Law Judge (ALJ) determined that the professional opinion of Dr. Hendricks was persuasive and that Respondent Aragon's testimony that he is disabled was uncorroborated by direct and/or relevant medical evidence.

The ALJ concluded that Respondent Aragon's appeal should be denied. 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.

September 21, 2016



CHRISTOPHER PHILLIPS
Senior Staff Attorney