

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Paul D. Walker (Respondent Walker) was employed by the CDCR as a Correctional Officer at Pelican Bay State Prison (Respondent CDCR). As such, Respondent Walker is a state safety member of CalPERS covered by Government Code section 21151, which provides that any state safety member "incapacitated for the performance of duty as the result of an industrial disability shall be retired for disability."

On October 12, 2010, Respondent Walker submitted an application for disability retirement on the basis of an orthopedic condition of the feet. On November 17, 2011, CalPERS approved Respondent Walker's application based upon his orthopedic (feet) condition.

Pursuant to Government Code section 21192, CalPERS may re-evaluate members receiving disability retirement benefits who are under the minimum age for service retirement. Respondent Walker is under 50, which is the minimum age for voluntary service retirement for a Correctional Officer. Accordingly in a letter dated August 12, 2014, CalPERS notified Respondent Walker that it would be reexamining him to determine his continuing eligibility to receive disability retirement. On January 22, 2015, John D. Hollander, D.P.M., performed an independent medical evaluation of Respondent Walker. Dr. Hollander reviewed medical records, interviewed Respondent Walker, conducted a physical examination, and authored a report.

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

At the hearing, Respondent Walker testified on his own behalf. CalPERS confirmed the hearing date with Dr. Hollander through MES Solutions (a third party independent medical examination services provider). Due to a communication error between MES Solutions and Dr. Hollander's office, Dr. Hollander did not appear at the hearing.

The Administrative Law Judge (ALJ) held that CalPERS had the burden of proving that Respondent Walker is no longer substantially incapacitated from performing his usual duties as a Correctional Officer for Respondent CDCR.

The ALJ concluded that Dr. Hollander's report was not persuasive in establishing that Respondent Walker is no longer disabled. After reviewing the evidence, the ALJ held that CalPERS did not meet its burden of establishing through competent medical evidence that Respondent Walker is no longer substantially incapacitated from performing his usual duties as a Correctional Officer for Respondent CDCR. The ALJ granted Respondent Walker's appeal of CalPERS determination that he should be reinstated to his former position as a Correctional Officer.

Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. If adoption occurs, the member is not likely to file a Writ Petition in Superior Court seeking to overturn the Decision of the Board, since the Decision would be in his favor.

September 21, 2016



AUSTA WAKILY
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