

**ATTACHMENT B**  
**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Respondent Matthew Kime (Respondent) applied for Industrial Disability Retirement (IDR) based on an orthopedic condition (chronic thoracic strain). By virtue of his employment as a Correctional Officer (CO) for Respondent California Department of Corrections and Rehabilitation, Pelican Bay State Prison (Respondent CDCR), he was a state safety member of CalPERS. On August 28, 2003 CalPERS determined that Respondent was disabled.

In 2010, CalPERS sent Respondent to Mohinder Nijjar, M.D. for a medical re-evaluation, and Dr. Nijjar concluded that Respondent was still disabled. On April 22, 2014, CalPERS sent Respondent to Robert Henrichsen, M.D. for a medical re-evaluation and Dr. Henrichsen determined that Respondent was no longer substantially incapacitated in his duties as a CO. On May 29, 2013, CalPERS informed Respondent that he was no longer disabled and Respondent appealed. A hearing was completed on July 12, 2016.

On March 30, 2016, CalPERS sent a letter to the Respondent which explained the hearing process 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 clarified how to obtain further information on the process.

As part of CalPERS' re-evaluation of his medical condition, Respondent was referred for an Independent Medical Examination (IME) to Orthopedic Surgeon Dr. Henrichsen. Dr. Henrichsen interviewed Respondent, took Respondent's work history, and reviewed Respondent's job descriptions, medical records and diagnostic studies. He also performed a comprehensive IME examination.

Dr. Henrichsen opined that there were no specific job duties that Respondent was unable to perform, and that Respondent was not substantially incapacitated from performing the duties of a CO. At the hearing, Dr. Henrichsen testified to his examination and report. Dr. Henrichsen's medical opinion is that Respondent is not substantially disabled.

At the hearing the Respondent testified that his disability occurred on March 21, 2002. Respondent testified that he was injured when he and his partner lifted an inmate onto a gurney; as he was lifting the inmate he felt a "snap" in the middle of his upper back. He further testified that he would be unable to perform the essential functions of his job as a CO because of his back pain. He did not call any physicians or other medical professionals to testify.


The Administrative Law Judge (ALJ) found that Respondent bears the burden to show by a preponderance of evidence (based on competent medical evidence) that his symptomology renders him unable to perform his usual job duties. The ALJ found that

Respondent failed to carry his burden of proof and that Respondent did not establish by competent, objective medical opinion, that, at the time of application, he was permanently disabled or incapacitated from performing his usual duties of a CO for Respondent CDCR.

The ALJ concluded that Respondent'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



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