

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Leonard B. Deters (Respondent Deters) was employed by the California Department of Corrections and Rehabilitation at Pelican Bay State Prison (CDCR) as a Correctional Lieutenant. By virtue of his employment, Respondent Deters was a State safety member of CalPERS. Respondent Deters applied for and was approved to receive Industrial Disability Retirement (IDR) on the basis of an orthopedic (back) condition effective September 1, 2010. In July 2013 Respondent Deters was the subject of re-evaluation to determine if he remained substantially incapacitated from performing the usual and customary duties of a Correctional Lieutenant. Robert Henrichsen, M.D., a Board Certified Orthopedic Surgeon, examined Respondent Deters in January of 2014, reviewed applicable medical reports and reviewed the duties of a Correctional Lieutenant. Dr. Henrichsen prepared a written report which contained his observations, findings, conclusions, and ultimate opinion that Respondent Deters was not substantially incapacitated from performing the usual and customary duties of a Correctional Lieutenant. CalPERS' staff determined that Respondent Deters was no longer substantially incapacitated, was no longer eligible for Industrial Disability Retirement, and should, therefore, be reinstated to his former position as a Correctional Lieutenant. Respondent Deters appealed staff's determination. A hearing was held on July 20, 2016.

In order to remain eligible for disability retirement, competent medical evidence must demonstrate that the individual remains substantially incapacitated from performing the usual and customary duties of their former position. The injury or condition which is the basis for the disability must be permanent or of an extended and uncertain duration.

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

At the hearing, the Administrative Law Judge (ALJ) received into evidence multiple documents describing the usual and customary duties of a Correctional Lieutenant. The record includes copies of the State Personnel Board (SPB) Specification for Correctional Lieutenant, a Correctional Lieutenant Essential Functions list, and the Physical Requirements of the Position/Occupational Title for Leonard Deters submitted by Pelican Bay State Prison. In addition, Respondent Deters testified regarding the usual and customary duties of a Correctional Lieutenant.

Dr. Henrichsen testified about his examination and record review for Respondent. Dr. Henrichsen testified that as a Board Certified Orthopedic Surgeon, he determined through tests and observation that Respondent Deters had a normal gait, no evidence of weakness, had some low back and butt pain but was in good condition with no current nerve impingement or persistent symptoms. Dr. Henrichsen noted that

Respondent Deters can perform all of the necessary duties of a Correctional Lieutenant. Dr. Henrichsen testified that Respondent did not have any present inability to do the duties of his job.

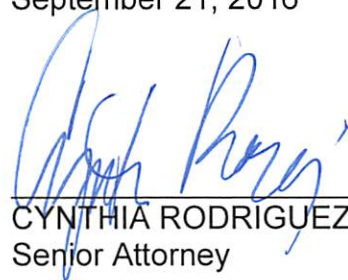
Dr. McBride did not testify at the hearing; however, his report was entered into evidence as hearsay. Dr. McBride's report was prepared for the worker's compensation case Respondent Deters brought. Dr. McBride found that Respondent Deters' condition was permanent and stationary and did not include a finding of substantial incapacity to perform Respondent Deters' job duties as a Correctional Officer. Dr. McBride opined prophylactically that Respondent Deters "would benefit" from some movement restrictions.

After considering all of the documentary evidence and testimony of witnesses, the ALJ found that Dr. Henrichsen's medical opinion was the more persuasive expert witness on the question of Respondent Deters' substantial capacity to perform his usual duties. The ALJ found that Dr. McBride's testimony did not find incapacity of Respondent Deters to perform his job duties, and no other competent medical evidence demonstrated that his condition prohibited Respondent Deters for performing his job. Accordingly, the ALJ found that the weight of the competent medical evidence supported the conclusion that Respondent Deters is no longer substantially incapacitated from performing the usual and customary duties of a Correctional Lieutenant.

The ALJ concluded that Respondent Deters' 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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