

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent James Bieg (Respondent Bieg) applied for service pending disability retirement on the basis of orthopedic (low back injury issues affecting back, waist, and ankle) conditions. By virtue of his employment as a Security Patrol Sergeant with Respondent Rancho Murieta Community Services District (RMCS D), Respondent Bieg was a local miscellaneous member of CalPERS.

As part of CalPERS' review of his medical condition, Respondent Bieg was sent for an independent medical examination (IME) to Orthopedic Surgeon Dr. Robert Henrichsen. Dr. Henrichsen interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, reviewed medical records, and performed a comprehensive IME examination.

Dr. Henrichsen's IME report stated Respondent Bieg did not suffer a specific work injury, but experienced a gradual increase in pain on the job. Dr. Henrichsen's IME report also found that Respondent Bieg did not suffer from significant ongoing nerve impingement or muscle spasticity. Contrary to Respondent Bieg's assertions prior to the examination, Dr. Henrichsen further concluded that Respondent Bieg's duty belt was not the cause of the problems. Although Respondent Bieg's duty belt may have aggravated his degenerative disc disease, Dr. Henrichsen found Respondent Bieg's low back function to be good. Dr. Henrichsen concluded that Respondent Bieg was not substantially incapacitated. As a result, CalPERS denied the application for disability retirement. Respondent Bieg timely appealed and a hearing was held on September 14, 2016, before an Administrative Law Judge (ALJ) of the Office of Administrative Hearings (OAH).

Prior to the hearing, CalPERS explained the hearing process to Respondent Bieg 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 Bieg's questions and clarified how to obtain further information on the process.

Despite proper notice being given to Respondent Bieg and Respondent RMCS D, no appearances were made at the September 14, 2016 hearing by either respondent. Due to the failure to appear at the hearing, defaults of the respondents were taken by the ALJ.

At the hearing, CalPERS made arguments, called Dr. Henrichsen as a witness, and introduced documentary evidence, including medical reports. Dr. Henrichsen testified to his examination and reports.

The ALJ found Dr. Henrichsen's testimony at hearing was consistent with his IME report, which ultimately opined that Respondent Bieg's degenerative disc disease was not substantially incapacitating under the CalPERS standard. The ALJ found persuasive "Dr. Henrichsen's opinion that respondent was not substantially incapacitated from performing his usual job duties as a Security/Patrol Sergeant." Dr. Henrichsen's review of the medical records, and his examination of Respondent Bieg, supported the opinion.

The ALJ concluded that Respondent Bieg'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 motion with the Board under Government Code section 11520(c), requesting that, for good cause shown, the Decision be vacated and a new hearing be granted.

November 16, 2016



CHARLES H. GLAUBERMAN
Senior Staff Attorney