

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Deschelle Walker (Respondent), was employed by Respondent California State Prison – Los Angeles County, California Department of Corrections and Rehabilitation (CDCR) as a Correctional Officer. By virtue of her employment Respondent was a state safety member of CalPERS. Respondent submitted an application for Industrial Disability Retirement on the basis of claimed orthopedic (knee and low back) conditions. Staff reviewed medical reports regarding Respondent's care and treatment, a written description of Respondent's usual and customary job duties and the independent medical examination report submitted by Pierre Hendricks M.D.. Staff denied Respondent's application for Industrial Disability Retirement, and provided both Respondent and CDCR with notice of the determination. Respondent appealed, and a hearing was held on August 23 and October 21, 2016.

Respondent was represented by counsel at all times during the administrative appeal, including the two days of hearing before the Administrative Law Judge (ALJ).

On May 11, 2010, while at work, Respondent was struck from behind by the bumper of a truck. Respondent was pinned against a chain link fence until the vehicle was moved. Contact between the truck bumper and Respondent's right leg was at or below the knee. Respondent complained of pain, but went home at the end of her shift and did not report the incident until the next day that she worked.

Respondent was seen by Gregg Sobeck, M.D., who diagnosed her with a bone bruise. A June 21, 2010, MRI of the right knee disclosed no tears of the menisci or the anterior cruciate ligament (ACL). The MRI did show a grade two chondromalacia (softening of cartilage) of the trochlear groove and a grade two to three chondromalacia of the medial femoral condyle. Respondent was treated with physical therapy and medications.

In February, 2011, Dr. Sobeck performed arthroscopic surgery on Respondent's right knee. Loose bodies were removed and interior knee joint surfaces shaved of softened cartilage. Respondent received additional physical therapy.

Pierre Hendricks, M.D., a board-certified Orthopedic Surgeon reviewed medical reports regarding Respondent, reviewed a written job description for a Correctional Officer and performed an independent medical examination of Respondent. Dr. Hendricks prepared a written report in which he noted his observations, findings, conclusions, and ultimate opinion that Respondent was not substantially incapacitated from performing the usual and customary duties of a Correctional Officer for CDCR because of the claimed orthopedic conditions.

A copy of Dr. Hendricks' written report was received by the ALJ into the evidentiary record. Dr. Hendricks testified that he reviewed a written description of Respondent's usual and customary job duties, was familiar with the duties performed by correctional officers at CDCR facilities, and discussed her usual job duties with Respondent. Dr. Hendricks testified that his review of the relevant medical reports showed that, as

a result of the May 11, 2010 incident at work, Respondent sustained an contusion of her right thigh, right knee and right calf, and that there may have been enough force involved to generate a bone bruise. According to Dr. Hendricks, these conditions should have responded to appropriate physical therapy.

Dr. Hendricks testified that he reviewed the 2010 MRI of Respondent's right knee. He stated that the results showed age related degenerative changes in the articular surfaces of the joint and that the condition did not warrant work restrictions. Dr. Hendricks testified that his examination of Respondent's right knee was essentially normal. He found no tenderness; there was a negative patella grind test, a negative patella apprehension test, full range of motion, no joint line tenderness, and no ligamentous laxity.

Dr. Hendricks also testified regarding his examination of Respondent's lumbar spine and review of medical reports, including a December 2012 MRI study. Dr. Hendricks stated that the MRI report did not reveal clear-cut evidence of any nerve root impingement or lumbar spinal stenosis. The MRI showed a three millimeter disc bulge at L4-5 and a broad based disc protrusion at L5-S1. These findings were again, consistent with age appropriate arthritic degenerative changes and not the result of the May 11, 2010, work-related incident. Dr. Hendricks testified that there was no neuro-diagnostic testing evidence to show or support a diagnosis of lumbar radiculopathy (radiating pain). Dr. Hendricks testified that his examination of Respondent's lumbar spine showed no guarding during range of motion testing, full or normal range of motion, negative straight leg raise testing and normal muscle strength, reflexes, and sensation in the lower extremities.

Dr. Hendricks offered his opinion that Respondent was exaggerating her complaints and that the objective medical evidence, both diagnostic testing and his clinical examination, showed that Respondent was not substantially incapacitated from performing the usual and customary duties of a Correctional Officer.

At the hearing, Respondent testified that her right knee did not seem to be improving and that she was experiencing low back pain. Respondent filed a claim for workers' compensation benefits. The attorney representing Respondent in the workers' compensation action referred her to Mark Greenspan, M.D. Dr. Greenspan took over Respondent's care in September, 2011, and he continues to treat Respondent today.


Dr. Greenspan testified at hearing, and the ALJ received and considered his written reports. Dr. Greenspan testified that the condition of Respondent's right knee (post arthroscopic surgery) would significantly impair or reduce Respondent's ability to squat, stoop, kneel, bend or run. Dr. Greenspan believed Respondent's complaints of pain and/or weakness were not exaggerated and believed that she continued to need treatment. Dr. Greenspan offered his opinion that Respondent was and remains substantially incapacitated from performing the usual and customary duties of a Correctional Officer.

After considering all of the documentary evidence and testimony, the ALJ found that the weight of the competent medical evidence supported Respondent's claim that she is substantially incapacitated from performing the usual and customary duties of a correctional officer. The ALJ found the findings, conclusions, and opinion of Dr. Greenspan to be more persuasive than those of Dr. Hendricks.

The ALJ concluded that Respondent's appeal should be granted. 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 Proposed Decision grants Respondent's appeal. If adopted as its Decision by the Board, there would be no reason for Respondent to pursue any further action, such as filing a petition for writ of mandate with the Superior Court.

February 15, 2017


RORY J. COFFEY
Senior Staff Attorney