

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

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

Respondent Adam M. Healy (Respondent Healy) was employed by the California Department of Corrections and Rehabilitation (CDCR) as a Correctional Officer. By virtue of his employment, Respondent Healy was a state safety member of CalPERS. On November 10, 2011, Respondent Healy filed an Industrial Disability Retirement application on the basis of an orthopedic condition (left upper extremity). CalPERS approved Respondent Healy's application and he retired for IDR effective March 6, 2012, at age 40.

CalPERS initiated a re-examination of Respondent Healy pursuant to Government Code section 21192, which allows CalPERS to re-examine IDR recipients who are younger than the minimum retirement age. CalPERS sent Respondent Healy to an orthopedic surgeon for an Independent Medical Evaluation (IME) and also reviewed Respondent Healy's submitted medical records. From the new IME medical review and additional information, CalPERS determined that Respondent Healy was not permanently incapacitated from performance of the substantial duties of his position as correctional officer. Respondent Healy appealed that determination. A hearing was held on November 8, 2016.

At the hearing, Respondent Healy was represented by an attorney. The ALJ received into evidence multiple documents, including the medical reports, the job duties, the physical requirements and list of essential functions of a correctional officer. The IME and Respondent Healy both testified.

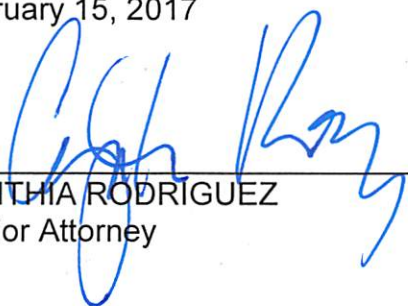
The IME, Dr. Harry A. Khasigian, a board certified orthopedist, testified that although Respondent Healy had some complaints about occasional pain, there were no objective findings. Dr. Khasigian found that the physical findings were normal, and the complaints of pain were unsupported by any medical findings, and that there were no findings of incapacity or dysfunction upon physical examination. Respondent Healy testified that he continued to have pain and discomfort. He also admitted that he is employed full time in a supervisory security position at a casino in Lake Tahoe.

After considering all of the documentary evidence and testimony of witnesses, the ALJ found that CalPERS established through competent medical evidence that Respondent Healy is no longer eligible to be classified as substantially incapacitated for the performance of his usual duties as a Correctional Officer for CDCR and should be reinstated to work at CDCR.

The ALJ concluded that Respondent Healy'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.

February 15, 2017



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