

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Scott M. Cotteen (Respondent Cotteen) was employed as a Sergeant with Respondent California Highway Patrol (Respondent CHP). By virtue of his employment, Respondent Cotteen was a state safety member of CalPERS. Respondent Cotteen applied for Industrial Disability Retirement on or about February 25, 2005 on the basis of an orthopedic (left upper extremity) condition. Respondent Cotteen was approved for Industrial Disability Retirement on or about December 28, 2006.

Respondent Cotteen submitted an application to CalPERS in 2012 reinstatement from Industrial Disability Retirement. Pursuant to Government Code section 21192, CalPERS' staff sought to have Respondent Cotteen reevaluated for the purpose of determining whether he remained substantially incapacitated from performing the usual and customary duties of a Sergeant with Respondent CHP.

To evaluate whether or not Respondent Cotteen should be reinstated to his former position, CalPERS referred Respondent Cotteen to Joseph Matan, M.D. for an Independent Medical Examination (IME). Dr. Matan, a board-certified Orthopedic Surgeon, reviewed medical reports, a written job description and performed an IME of Respondent Cotteen. In his written report, Dr. Matan noted his observations, findings, and conclusions regarding Respondent Cotteen. Dr. Matan offered an opinion that Respondent Cotteen was fit to perform the usual and customary duties of a CHP Sergeant without restrictions and was not substantially incapacitated. CalPERS' staff determined that Respondent Cotteen was no longer substantially incapacitated and, therefore, was no longer eligible for Industrial Disability Retirement.

After the IME examination, Respondent Cotteen advised Respondent CHP that he intended to withdraw from the reinstatement process. Respondent CHP sent Respondent Cotteen a letter on directing him to report for POST training. Respondent Cotteen did not report for the POST training because he felt his condition had worsened.

Prior to the hearing, CalPERS explained the hearing process to Respondent Cotteen 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.

At the hearing, CalPERS made arguments, called Dr. Matan as a witness, and introduced documentary evidence, including the IME Report. Dr. Matan testified to his examination and report. Dr. Matan explained his IME report, which states that Respondent Cotteen's disk herniation at C6-C7 was small and unlikely to be symptomatic. Dr. Matan's reported found that Respondent Cotteen's examination was normal, and he was not substantially incapacitated at the time of examination. Dr. Matan concluded on direct examination that Respondent Cotteen was fit to perform the usual and customary duties of a CHP Sergeant without restrictions at the time of the IME Report.

On cross examination, Dr. Matan was presented with a medical report from Respondent Cotteen's doctors at the Haider Spine Clinic. In the report, Respondent Cotteen reported increased back pain. The report indicated a recent MRI showing moderate disk herniation at C5-C6, and disk desiccation at C6-C7. In addition, the report indicated electrodiagnostic testing of the arms showed moderate right C6 sensory radiculopathy. Electrodiagnostic studies, explained Dr. Matan, are objective findings confirming an injury or irritation. After reviewing the medical report from Haider Spine Clinic, which was introduced as administrative hearsay, Dr. Matan changed his opinion about Respondent Cotteen's condition. Because of the Haider Spine Clinic medical report, Dr. Matan testified that Respondent Cotteen was in worse condition than at the time of his IME examination. Thus, Dr. Matan was hesitant at hearing to approve Respondent Cotteen for his return to work.

Respondent Cotteen testified at hearing about his injury. Respondent Cotteen testified that he still had left arm numbness and pain associated with his injury. And Respondent Cotteen ultimately felt that his injury had gotten worse since his IME examination with Dr. Matan.

The Administrative Law Judge (ALJ) concluded that Respondent Cotteen's appeal should be granted because the ALJ found that CalPERS did not meet its burden of showing that Respondent Cotteen is no longer substantially incapacitated from performing his usual duties as a CHP Sergeant. Thus, the ALJ ruled that Respondent Cotteen is to receive Industrial Disability Retirement retroactive to its termination in early 2016, less credit for service retirement payments received. Staff argues that the Board adopt the Proposed Decision.

Pursuant to Government Code section 11517(c)(2)(C), the Board is authorized to "make technical or other minor changes in the proposed decision." In order to avoid inconsistency and ambiguity, staff recommends that "Mr. Trejo" in Paragraph 11 on Page 3 be changed to "Mr. Cotteen."

Because the Proposed Decision is in favor of Respondent Cotteen, it is unlikely he will appeal the decision. Therefore, the risks of adopting the Proposed Decision are minimal.

February 15, 2017



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