

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent San Juan Navarro (Respondent Navarro) worked as a Correctional Officer for Respondent California Department of Corrections & Rehabilitation - Wasco State Prison (CDCR). By virtue of her employment, Respondent Navarro is a state safety member of the California Public Employees' Retirement System (CalPERS).

On June 6, 2014, Respondent Navarro applied for Industrial Disability Retirement based on her orthopedic low back and right arm conditions.

CalPERS requested an Independent Medical Evaluation (IME) from Ghol B. Ha'Eri, M.D., a board-certified Orthopedic Surgeon, to evaluate Respondent Navarro's orthopedic conditions. Dr. Ha'Eri performed an IME of Respondent Navarro on December 9, 2014. Dr. Ha'Eri reviewed medical records, interviewed Respondent Navarro, conducted a physical examination and authored a report. Dr. Ha'Eri opined Ms. Navarro was unable to perform some of her job duties due to the physical condition of her cervical and lumbar spine. He further concluded Respondent Navarro was substantially incapacitated for the performance of her duties as a Correctional Officer, but such incapacity was for less than six months.

CalPERS sent Dr. Ha'Eri correspondence requesting clarification of his opinion and reminding him of the appropriate standard for determining whether a member is substantially incapacitated. Dr. Ha'Eri prepared a supplemental report in which he concluded that Respondent Navarro's orthopedic conditions did not render her substantially incapacitated from performing her job duties as a Correctional Officer. Dr. Ha'Eri concluded that Respondent Navarro was not disabled under CalPERS' standard.

Respondent Navarro subsequently provided CalPERS an updated MRI of her back and the results of an electrodiagnostic study of her right arm. CalPERS provided the records to Dr. Ha'Eri for his review and opinion. Dr. Ha'Eri prepared a second supplemental report in which he concluded that Respondent Navarro was not substantially incapacitated from performing her job duties as a Correctional Officer.

Based on relevant medical evidence, CalPERS determined that Respondent Navarro was not permanently disabled or incapacitated from performing the usual and customary duties of a Correctional Officer when she filed her application for Industrial Disability Retirement.

CalPERS notified Respondent Navarro and CDCR of its determination by letter dated February 6, 2015. Respondent Navarro filed a timely written appeal, and the matter proceeded to a hearing before an Administrative Law Judge (ALJ) on November 15, 2016.

At the hearing Dr. Ha'Eri described his findings upon physical examination of Respondent Navarro. He testified that there were no job duties that Respondent Navarro could not perform because of her orthopedic low back and right arm conditions.

Counsel represented Respondent Navarro at the hearing. Respondent Navarro testified about her job duties and the physical limitations imposed by her orthopedic conditions. She also offered medical records and reports from her workers' compensation case and the testimony of Richard Sall, M.D.


Dr. Sall testified that Respondent Navarro was substantially incapacitated from performing her duties as a Correctional Officer based on her orthopedic low back and right arm conditions. He identified several job duties that he believed Respondent Navarro could not perform. During his testimony, Dr. Sall stated that he reached his determination using the standard applicable to workers' compensation claims. Dr. Sall testified that he was not familiar with CalPERS' standard for determining whether a member is entitled to disability retirement.

The ALJ concluded that Respondent Navarro's appeal should be denied because she did not demonstrate through competent medical evidence that she is unable to perform the usual functions of her job as a Correctional Officer for CDCR.

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.

March 15, 2017



AUSTA WAKILY
Senior Staff Attorney