

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Melvin Feryance (Respondent) applied for Industrial Disability Retirement (IDR) based on an orthopedic condition (right knee). By virtue of his employment as a Correctional Officer (CO) for Respondent Folsom State Prison, California Department of Corrections and Rehabilitation (Respondent CDCR), he was a state safety member of CalPERS. CalPERS determined that Respondent was not disabled, and Respondent appealed. A hearing was completed on January 31, 2017.

On November 30, 2016, CalPERS sent a letter to the Respondent which explained the hearing process 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 the Respondent testified that his disability occurred on May 1, 2015. Respondent testified that he was walking up a set of steep stairs and felt a sharp pain in the inner portion of his right knee. At the end of his shift as he was leaving, his right knee "locked up" and he could no longer walk. His knee eventually unlocked and he was able to walk to his car. Respondent CDCR did not allow Respondent to return to work due to the injury. Respondent had arthroscopic surgery on his right knee on October 7, 2015. Respondent service retired effective December 31, 2015.

As part of CalPERS' review of his medical condition, Respondent was referred for an Independent Medical Examination (IME) to Orthopedic Surgeon Dr. Harry Khasigian, M.D. Dr. Khasigian interviewed Respondent, took Respondent's work history, and reviewed Respondent's job descriptions, medical records, diagnostic studies and surgical reports. He also performed a comprehensive IME examination.

Dr. Khasigian found no swelling or tenderness in Respondent's right knee and found only a minimal trace of cepitus (grinding) in the knee. He also found the medial collateral, lateral collateral and posterior collateral ligaments of Respondent's right knee to be stable. Dr. Khasigian found age appropriate degenerative changes in Respondent's right knee and opined that Respondent's right knee was "relatively normal."

Dr. Khasigian opined that there were no specific job duties that Respondent was unable to perform, and that Respondent was not substantially incapacitated from performing the duties of a CO. At the hearing, Dr. Khasigian testified to his examination and report. Dr. Khasigian's medical opinion is that Respondent is not substantially disabled.

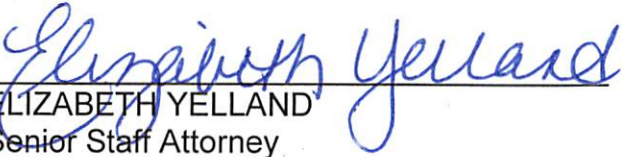
The Administrative Law Judge (ALJ) found that Respondent bears the burden to show by a preponderance of evidence (based on competent medical evidence) that his symptomology renders him unable to perform his usual job duties. The ALJ found that Respondent failed to carry his burden of proof and that Respondent did not establish by

competent, objective medical opinion, that, at the time of application, he was permanently disabled or incapacitated from performing his usual duties of a CO for Respondent CDCR.

The ALJ concluded that Respondent'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.

April 19, 2017


ELIZABETH YELLAND
Senior Staff Attorney