

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

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

Respondent Brooke Moore (Respondent) applied for industrial disability retirement based on an orthopedic condition (left ankle). By virtue of her employment as a Correctional Officer (CO) for Respondent Salinas Valley State Prison, California Department of Corrections and Rehabilitation (Respondent CDCR), she was a state safety member of CalPERS. CalPERS determined that Respondent was not disabled, and Respondent appealed. A hearing was completed on January 23, 2017.

Prior to the hearing, CalPERS sent a letter to the Respondent which explained the hearing process and the need to support her 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, Respondent testified that her disability occurred on May 2, 2011, when she was responding to an alarm at work. She was running across the yard when her foot fell into a hole, and she twisted her left ankle. After the incident, Respondent was evaluated by her treating physician, and treated conservatively with pain medication and physical therapy. As a result of this incident, Respondent testified that, "I am unable to perform my job at all." In February 2012, she had surgery on her left ankle and was diagnosed with a sprain. She never returned to work after the injury.

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

Dr. D'Amico opined that the surgery may have worsened Respondent's condition. He reported that Respondent felt the ankle was unstable and stiff. But Dr. D'Amico felt that the way Respondent described her pain and instability did not make sense from a medical standpoint. Dr. D'Amico did not find a high degree of instability. He also found she could wear a boot on her left foot and perform her job duties.

Dr. D'Amico 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 for Respondent CDCR. At the hearing, Dr. D'Amico testified to his examination and report. Dr. D'Amico's medical opinion is that Respondent is not substantially disabled.

Respondent did not present testimony from any medical provider, nor did she present any medical records.

The Administrative Law Judge (ALJ) found that Respondent bears the burden of proof to offer sufficient competent medical evidence to support her industrial disability retirement

application. Because she did not call an expert witness to testify or present medical evidence, the ALJ found that Respondent failed to offer sufficient competent medical evidence to establish that, at the time she applied for industrial disability retirement, she was substantially and permanently incapacitated from performing the usual duties of a CO based on her left ankle injury. The ALJ found that Dr. D'Amico's report and testimony stated that she was not substantially incapacitated from performing her usual job duties and that his opinion is undisputed.

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