

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Ben Isla (Respondent Isla) was employed by the California Department of Corrections and Rehabilitation (CDCR) as a Correctional Officer. By virtue of his employment, Respondent Isla was a safety member of CalPERS. On May 8, 2015, Respondent Isla filed an industrial disability retirement application due to an orthopedic (right foot) condition. Respondent Isla continues in employment at CDCR although his last date at work was August 25, 2015. On December 15, 2015, CalPERS Benefit Services Division informed Respondent Isla that his application for disability retirement status was denied. A hearing was held on February 27, 2017.

Prior to the hearing, CalPERS explained the hearing process to Respondent Isla and the need to support his case with witnesses and documents. CalPERS provided Respondent Isla with a copy of the administrative hearing process pamphlet.

At the hearing, the Administrative Law Judge (ALJ) heard testimony from Respondent Isla, his wife, and the Independent Medical Examiner (IME). Respondent Isla testified that he was injured running in one of the housing units. He explained that he previously had plantar fasciitis, and it was exacerbated by the running. He testified that there were many activities that he had concerns about performing, and that his workers' compensation doctor told him that he had enough time in the job to go onto disability. Respondent Isla testified that he believed the workers' compensation findings should apply.

The ALJ also heard testimony from the IME, Dr. Ghol Ha'Eri, a board-certified Orthopedic Surgeon. Dr. Ha'Eri prepared an extensive report which was accepted as evidence. The doctor testified that Respondent Isla had a normal gait and no significant incapacity to perform his work duties due to the physical condition of his right foot. In his physical examination of Respondent Isla, the doctor found objective evidence in the musculature and neurological findings that Respondent Isla used both legs normally, indicating that his right foot issues were not incapacitating.

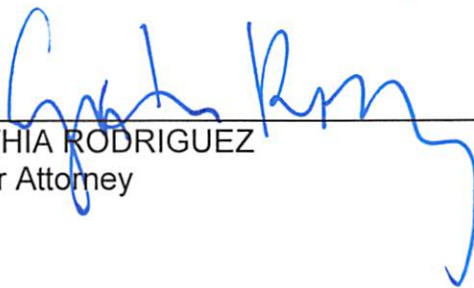
The ALJ found CalPERS' documents and testimony to be persuasive as to the fact that Respondent Isla is not incapacitated in the performance of his job duties. The ALJ determined that Respondent Isla failed to present any competent evidence that he was significantly incapacitated, under the CalPERS standard, to perform his job duties as a Correctional Officer. Additionally, the ALJ determined that the medical report was detailed and thorough as well as supported by physical findings.

After considering all of the documentary evidence and the testimony of witnesses, the ALJ found that Respondent Isla failed to establish that he is substantially incapacitated for the duties of a Correctional Officer with CDCR, and therefore is not entitled to industrial disability retirement. Accordingly, the ALJ found that the weight of the competent evidence supported the conclusion that Respondent Isla was appropriately denied industrial disability retirement.

The ALJ concluded that Respondent Isla'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 motion with the Board under Government Code section 11520(c), requesting that, for good cause shown, the Decision be vacated and a new hearing be granted.

April 19, 2017



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