STAFF’S ARGUMENT TO ADOPT THE PROPOSED DECISION

Bruce A. Welglein (Respondent) applied for industrial disability retirement based on a left knee condition. By virtue of his employment as a Correctional Sergeant for Respondent California State Prison - Solano, California Department of Corrections and Rehabilitation (Respondent CDCR), Respondent was a state safety member of CalPERS.

Respondent filed an application for service retirement on June 28, 2016, and has been service retired since October 29, 2016. On September 1, 2016, Respondent filed an application for industrial disability retirement.

As part of CalPERS' review of Respondent’s medical condition, Robert K. Henrichsen, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. Henrichsen performed a physical examination of Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed his medical records. Dr. Henrichsen opined that Respondent was not substantially incapacitated from the performance of his usual job duties.

In order to be eligible for disability retirement, competent medical evidence must demonstrate that an individual is substantially incapacitated from performing the usual and customary duties of his or her position. The injury or condition which is the basis of the claimed disability must be permanent or of an extended and uncertain duration.

After reviewing all medical documentation and the IME reports, CalPERS determined that Respondent was not substantially incapacitated from performing the duties of his position.

Respondent appealed this determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on October 25, 2017. Respondent represented himself but did not appear at the hearing. Respondent CDCR also did not appear at the hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent 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, Dr. Henrichsen testified in a manner consistent with his examination of Respondent and the IME report. Dr. Henrichsen testified that his medical opinion is that Respondent is not substantially incapacitated from the performance of his usual job duties. Therefore, the only competent medical evidence presented at the hearing is that Respondent is not entitled to an industrial disability retirement.
Respondent did not appear at hearing and did not submit evidence. After considering all of the evidence introduced, as well as argument by CalPERS, the ALJ denied Respondent's appeal.

The ALJ concluded that Respondent is not eligible for industrial disability retirement.

For all the above reasons, staff argues that the Proposed Decision be adopted by the Board.

December 20, 2017

CYNTHIA RODRIGUEZ
Senior Attorney