ATTACHMENT B

STAFF'S ARGUMENT
STAFF’S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION

Respondent Anthony Perez (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge’s (ALJ) Proposed Decision dated October 11, 2018. For reasons discussed below, staff argues the Board deny the Petition and uphold its decision.

Anthony Perez (Respondent) was employed by Respondent Pleasant Valley State Prison, California Department of Corrections and Rehabilitation (Respondent CDCR) as a Correctional Officer. On February 28, 2013, Respondent submitted an application for industrial disability retirement on the basis of orthopedic conditions (right shoulder and right knee). Respondent’s application was approved by CalPERS, and he retired effective July 23, 2013.

In 2017, CalPERS conducted a reexamination of Respondent. As part of CalPERS’ review of Respondent’s medical condition, Respondent was sent for an Independent Medical Examination (IME) to Ernest Miller, M.D., a board-certified Orthopedic Surgeon. Dr. Miller interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed medical records. Dr. Miller also performed a comprehensive IME. Dr. Miller opined that Respondent had recovered completely from bilateral shoulder operations and right knee surgery. Dr. Miller found no objective evidence that Respondent’s claimed orthopedic conditions preclude him from performing his job duties. Dr. Miller’s competent medical opinion is that Respondent is not substantially incapacitated from performing his usual job as a Correctional Officer.

After reviewing all medical documentation and the IME reports, CalPERS determined that Respondent was no longer substantially incapacitated, was no longer eligible for industrial disability retirement, and should therefore be reinstated to his former position as a Correctional Officer.

Respondent appealed this determination. A hearing was held on September 27, 2018. At the hearing, Dr. Miller testified in a manner consistent with his examination and Report. Dr. Miller’s medical opinion is that Respondent can perform the duties of his position and is therefore no longer substantially incapacitated.

Respondent testified on his own behalf. Respondent testified that he understood at the time he filed his application his own doctors opined that his disability was temporary and would only last for six months to one year. Respondent testified that he disagreed with the results of Dr. Miller’s examination and report, but he did not call any physicians or medical professionals to testify on his behalf. He submitted exhibits from his treating physicians which documented his temporary disability, not to exceed 6 months to 1 year (as of 2013).
The ALJ found that the only competent medical evidence was presented by Dr. Miller and that evidence established that Respondent is no longer substantially incapacitated from performing his duties as a Correctional Officer for Respondent CDCR.

After considering all of the evidence introduced as well as arguments by the parties at the hearing, the ALJ denied Respondent’s appeal. The ALJ found that CalPERS met its burden of proof to establish that Respondent is no longer substantially incapacitated for the performance of his duties. Consequently, the ALJ upheld CalPERS’ determination and granted CalPERS’ request that Respondent be involuntarily reinstated from industrial disability retirement.

In his Petition for Reconsideration, Respondent makes the same arguments that were considered and dismissed by the ALJ after hearing. No new evidence has been presented by Respondent that would alter the analysis of the ALJ. The Proposed Decision that was adopted by the Board at the November 15, 2018 meeting was well reasoned and based on the credible evidence presented at hearing.

For all the above reasons, staff argues that the Board deny Respondent’s Petition for Reconsideration and uphold its prior decision.

December 19, 2018

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