

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Jason T. Cichoski (Respondent) applied for industrial disability retirement based on a claimed orthopedic (lumbar spine) condition. By virtue of his employment as a Correctional Officer for Respondent Salinas Valley State Prison, California Department of Corrections and Rehabilitation (Respondent CDCR), Respondent was a state safety member of CalPERS.

As part of CalPERS' review of Respondent's medical condition, Don T. Williams, a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. Williams interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed his medical records. Dr. Williams opined that Respondent was not substantially incapacitated from performing the usual and customary duties of a Correctional Officer.

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 duration which is expected to last at least 12 consecutive months or will result in death.

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

Respondent appealed this determination and requested a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on August 12, 2019. Respondent did not appear at the hearing. Respondent CDCR 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.

CalPERS introduced evidence that proper and adequate notice of the date, time and location of the hearing had been provided to both Respondent and Respondent CDCR. The ALJ found that, pursuant to the provisions of Government Code section 11520, the matter could proceed as a default hearing as to both Respondent and Respondent CDCR.

At the hearing, Dr. Williams testified in a manner consistent with his examination of Respondent and the IME report. Dr. Williams found that Respondent had normal muscle strength, reflexes and sensation in both lower extremities. An EMG and nerve conduction study disclosed no evidence of lumbar radiculopathy or nerve root entrapment. An MRI study of Respondent's lumbar spine disclosed mild, age-appropriate degenerative changes, again with no evidence of any nerve root impingement. Dr. Williams noted, in his review of medical records, that other physicians who had examined Respondent found evidence of exaggeration of complaints and malingering.

After considering all of the evidence introduced, the ALJ found that, based on Respondent's nonappearance, Respondent failed to meet his burden of proof. The ALJ concluded that Respondent is not eligible for industrial disability retirement and that Respondent's appeal is denied.

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

November 20, 2019

RORY J. COFFEY
Senior Attorney