

**ATTACHMENT B**

**STAFF'S ARGUMENT**

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

(Respondent) applied for industrial disability retirement based on a neurologic (right hand) condition. By virtue of his employment as a Correctional Officer for Respondent Correctional Training Facility, California Department of Corrections and Rehabilitation (Respondent CDCR), Respondent was a state safety member of CalPERS.

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.

As part of CalPERS' review of Respondent's medical condition, Donald Pompan, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME) to evaluate Respondent from an orthopedic perspective. CalPERS also referred respondent to Dr. Stephen Dell, M.D., a Neurologist, to evaluate Respondent from a neurological perspective. Both doctors interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed his medical records. Both doctors found that Respondent was not substantially incapacitated within their relevant fields of specialty.

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 29, 2019. Respondent represented himself at the hearing and appeared by telephone. 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.

At the hearing, Respondent testified that in September 2015, he was turning a large key to open a gate at the jail and that he experienced significant pain in his right hand. Even though a December 2015 MRI found his hand to be normal, Respondent still experienced pain in that area.

Dr. Pompan testified that he evaluated Respondent in August 2018, and that during his physical examination, Dr. Pompan found that Respondent demonstrated an inability to grasp with his right hand, and that he was unable to use his right index finger. He diagnosed Respondent as having right hand pain, possible Complex Regional Pain Syndrome, potential symptom magnification, and evidence of carpal tunnel syndrome. Dr. Pompan testified that he felt there were three possible explanations for Respondent's condition: (1) there existed a neurologically based pain syndrome, such as Complex Regional Pain Syndrome; (2) Respondent was consciously embellishing his symptoms; or (3) Respondent had some sort of psychological disorder underlying his symptoms. Since none of these conclusions fell within the field of orthopedic medicine, Dr. Pompan determined he must conclude that Respondent was not substantially incapacitated from an orthopedic perspective.

Dr. Dell also testified at the hearing and explained that he was unable to identify any neurological syndrome involving Respondent's right upper extremity. For this reason, like Dr. Pompan, Dr. Dell testified that he found, within his relevant field of medical specialty, that Respondent was not substantially incapacitated. Notwithstanding this testimony, Dr. Dell also explained at hearing that he was "stymied" by Respondent's condition, and that he did not believe that Respondent was "faking" his symptoms. Dr. Dell testified that he felt Respondent was suffering from some manner of psychological condition that may be limiting his use of his right hand. Based on Respondent's current state, Dr. Dell testified that he believed "something is going on and impairs [R]espondent from performing his job duties." Dr. Dell testified that he believed Respondent has a "real problem and issue" and that he needs medical attention.

Respondent submitted a medical report from Dr. Perry Seagal, a psychiatrist and neurologist, which was admitted as administrative hearsay. Dr. Seagal stated in a March 2019 report that he felt Respondent was substantially incapacitated from performing his duties as a correctional officer, that Respondent is struggling to perform basic, self-care tasks at home, and that the medication he is taking to deal with his symptoms is increasing his impairment.

Respondent explained at hearing that he is not working, that he lives with his parents in Colorado, and has opened a carpet cleaning business but that he does not yet have any clients. Respondent testified at hearing that simple tasks, such as opening a door, or brushing teeth, can cause excruciating pain, where he cannot use his hand for a few days thereafter.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ granted Respondent's appeal. The ALJ found that Respondent's treating physicians and other evaluators "agree that [R]espondent suffers from a condition that has impacted his ability to use his right hand. Although [R]espondent's condition does not appear to be orthopedic or neurological, the medical evidence was persuasive that the pain in his hand is debilitating and likely has a psychiatric component." For these reasons, the ALJ held that Respondent's right-hand condition was substantially

incapacitating, and reversed CalPERS' determination to deny Respondent's IDR application.

Staff argues that the Proposed Decision be adopted by the Board. Although the physicians who evaluated Respondent could not identify the specific medical condition that caused Respondent's problems, both doctors agreed that Respondent was suffering from serious medical issues and acknowledged that his treating physicians had diagnosed him as having Complex Regional Pain Syndrome. For all the above reasons, staff argues that the Proposed Decision be adopted by the Board.

February 19, 2020

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