

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Michael C. Hampton (Respondent) applied for industrial disability retirement based on orthopedic (cervical, hip, back, left calf and leg pain) conditions. By virtue of his employment as a Correctional Officer for Respondent California Correctional Center, 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.

To evaluate Respondent's application, CalPERS requested that Charles F. Xeller, M.D., a board-certified Orthopedic Surgeon, perform an Independent Medical Examination (IME). Dr. Xeller interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed his medical records. Dr. Xeller opined that Respondent is not substantially incapacitated due to any orthopedic condition.

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 exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on January 27, 2020. Neither Respondent nor Respondent CDCR appeared 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. Xeller testified that Respondent presented for examination complaining of pain in his back and neck. Respondent told Dr. Xeller he had worked for Respondent CDCR for approximately 30 years. For 20 of those years, Respondent was in charge of the department's Fire Camp in Suisun City, where he maintained trails and fought fires. Respondent retired for service in February 2017 and applied for industrial disability retirement thereafter. Respondent told Dr. Xeller that he has not worked in any capacity since his retirement.

Dr. Xeller performed a physical examination of Respondent. The examination demonstrated that Respondent's calves were not swollen, he was able to conduct heel and toe raises of his legs, his calves and thighs were of equal measurement, Respondent's gait was normal, and he had full range of motion in his knees, ankles and feet. Evaluating Respondent's upper body, Dr. Xeller noted that Respondent had a 25-percent reduction in his range of motion in his neck, with pain upon bending his neck from side to side. X-rays of Respondent's neck revealed cervical facet arthropathy and degenerative disc disease, which Dr. Xeller testified was consistent with a diagnosis of arthritis. Reviewing Respondent's medical records, Dr. Xeller testified that a workers' compensation physician observed that Respondent's complaints of lower body pain arose from an incident at work in 2012, where Respondent missed a step and fell on his left leg. The reporting physician did not find any specific disabling conditions as a result of the incident.

Based on his evaluation, Dr. Xeller testified that Respondent had a myriad number of complaints, but that he could not find any specific parts of Respondent's body that would cause any sustained disability. Dr. Xeller explained at the hearing that the condition of Respondent's neck, low back and left calf are not disabling conditions. For these reasons, Dr. Xeller found that Respondent is not substantially incapacitated. In a supplemental report of July 2019, Dr. Xeller advised that additional medical records regarding Respondent, sent for his review, did not change his opinion on substantial incapacity, and that a post-IME MRI taken in 2018 was consistent with a prior MRI that Dr. Xeller had already reviewed and considered as part of his evaluation of Respondent.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Dr. Xeller's opinion was persuasive and thorough, and that in Respondent's failure to appear, Respondent did not present any evidence to meet his burden to prove he was substantially incapacitated. For these reasons, 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.

April 22, 2020

Kevin Kreutz
Senior Attorney