

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION

Michael C. Hampton (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision dated February 19, 2020. For reasons discussed below, staff argues the Board deny the Petition and uphold its decision.

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.

CalPERS denied his application, and Respondent's appeal was heard before an 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. CalPERS appeared, and offered the written opinion and testimony of its Independent Medical Examiner (IME), Charles F. Xeller, M.D., a board-certified Orthopedic Surgeon. At hearing, Dr. Xeller opined that he found Respondent was not substantially incapacitated from performing his usual and customary duties, and set forth the medical information and evidence he relied upon in reaching that determination.

After considering all of the evidence, 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.

In seeking reconsideration of this decision, Mr. Hampton apologizes for not attending the hearing but did not provide an explanation or justification for his absence. Thus, the Petition does not justify reconsideration on these grounds.

Second, Mr. Hampton argues that documentation from his spinal surgeon, attached to the Petition, was grounds for reconsideration. The one-paragraph letter from David Jeffrey Moller, who is held out as a medical doctor without substantiating information, advises that Respondent has a back condition that makes him unable to perform his job duties, and that the doctor has recommended Respondent undergo back surgery. This record is administrative hearsay that cannot be relied upon by the ALJ. It also does not specifically address the question of substantial incapacity, is conclusory in nature, and should be rejected.

Finally, Respondent argues that the physical requirements of serving as a fire camp instructor at CDCR are substantially greater than what is traditionally required of

correctional officers. However, Dr. Xeller considered and took into account the duties of a CDCR fire camp instructor, as set forth in his IME report, and the fire camp instructor job duty statement was submitted to OAH as evidence,

In summary, 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 April 22, 2020, meeting was well reasoned and based on the credible evidence presented at hearing.

June 17, 2020

KEVIN KREUTZ
Senior Attorney