

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION, AS MODIFIED

Roy Lee Jr. (Respondent) applied for industrial disability retirement based on orthopedic (left hip, low back) conditions. By virtue of his employment as a Materials and Stores Supervisor I for Respondent Avenal 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, M.D., 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 is not substantially incapacitated from performing his job duties.

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 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 June 14, 2022. Respondent represented himself at the hearing. Respondent CDCR did not appear at the hearing, and a default was taken.

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. Williams testified in a manner consistent with his examination of Respondent and his IME report. During the IME exam, Respondent reported lower back pain, strain and stiffness; left hip pain, strain and weakness; and left leg numbness that worsens with activity. Respondent claimed he is unable to perform physical activities and experiences pain with prolonged walking or standing.

Dr. Williams' physical examination revealed that Respondent's cervical spine had good motion with 40 degrees of flexion and extension and rotation of 80 degrees to each side. Dr. Williams found no abnormalities in Respondent's lumbar spine and lower

extremities. Respondent could walk on his heels and tiptoes and had full lumbar spine strength. Respondent could squat 50 percent of normal and was able to kneel on his left or right knee. Respondent had full range of motion in his hips. He walked with a slight limp that appeared to resolve after taking a few steps. All hip motion testing was within normal limits.

After reviewing Respondent's medical records, Dr. Williams confirmed that Respondent suffers from degenerative disc disease and a repaired labral tear resulting in some back and hip pain. Respondent's condition was treated with lumbar epidural spinal injections, arthroscopic debridement and bone shaving, and physical therapy. Respondent underwent a successful left hip surgery in March 2020, which produced a "good result," then he began physical therapy and his condition improved over time, with considerably less pain. Respondent was off work for nine months following surgery and then returned to a light duty assignment.

Dr. Williams determined Respondent suffered some back and hip discomfort due to his conditions but the pain was not incapacitating. Dr. Williams could identify no medical bases for Respondent's reported inability to perform his job duties. Dr. Williams surmised that Respondent's claims stem from prophylactic medical restrictions issued by Respondent's workers' compensation doctor, or possibly Respondent's fear of injuring himself in the future. Accordingly, Dr. Williams concluded that Respondent was not substantially incapacitated from performing his usual and customary duties as a Materials and Stores Supervisor I for Respondent CDCR.

Respondent testified on his own behalf. He is 48 years old and has worked for Respondent CDCR for approximately 20 years. Respondent was last assigned to Avenal State Prison as a Materials and Stores Supervisor. While lifting and shredding documents on December 17, 2017, Respondent lifted a bin, felt a "pop" and experienced pain in his lower back and left hip. His pain increased over the next several days. While delivering supplies in February 2018, Respondent experienced increased pain and sought medical care. Respondent has received and continued to work under various work restrictions since February 2018. On March 16, 2020, Respondent had left hip arthroscopy with arthroscopic debridement of the labrum and bone shaving. He was off work from the date of his surgery through August 2021.

Respondent CDCR grants temporary job accommodation due to temporary or permanent work restrictions for 90-day periods which can be extended. On February 10, 2022, Respondent CDCR assigned Respondent to work in the records office and mail room as a temporary accommodation based on information from Respondent's physicians.

On May 24, 2022, Dr. Dunlap, the qualified medical evaluator in Respondent's workers' compensation case, issued a Supplemental QME Report which specified that Respondent "should be restricted from lifting over 25 pounds, squatting and kneeling, climbing, or ambulating for more than two hours out of an eight-hour [work] shift." Respondent testified that Dr. Dunlap's work restrictions are designed to avoid putting

himself at risk of further injury while performing his job duties. Respondent also testified that Dr. Dunlap's restrictions establish that he cannot perform his current job duties. Thus, Respondent believes he is substantially incapacitated and qualifies for disability retirement. Respondent emphasized that his job requires him to lift up to 50 pounds, to squat, kneel, and climb ladders, and that he has been unable to perform those tasks for more than a year due to his work restrictions.

Respondent did not call a medical expert to testify. Instead, he submitted medical documents to support his disability application, which included: (1) excerpts from the CDCR Operations Manual related to limited term light duty assignments and return-to-work processes; (2) a May 24, 2022 Supplemental QME Report filed in Respondent's workers' compensation claim; (3) a letter dated June 9, 2022, from a workers' compensation specialist regarding Respondent's claim; (4) email communications between Respondent and the return-to-work coordinator at Avenal State Prison; and (5) a signed CDCR Limited Term Light Duty or Temporary Modified Work Assignment – Offer form, reflecting Respondent's modified work assignments.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent failed to submit sufficient evidence based upon competent medical opinion that, at the time he applied for industrial disability retirement, he was permanently and substantially incapacitated from performing the usual duties of a Materials and Stores Supervisor I for Respondent CDCR. The ALJ concluded that Respondent is not eligible for industrial disability retirement.

Pursuant to Government Code section 11517 (c)(2)(C), the Board is authorized to "make technical or other minor changes in the Proposed Decision." To avoid ambiguity, staff recommends deleting "and uncertain" between the words extended and duration and adding "which is expected to last at least 12 consecutive months or will result in death," after the word duration in paragraph 3 under the Legal Conclusions section, on page 14 of the Proposed Decision.

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

September 21, 2022

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