

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Roberto Martinez, Jr. (Respondent) applied for industrial disability retirement on March 30, 2021, based on an orthopedic (right wrist) condition. By virtue of his employment as a Correctional Officer for Respondent Central California Women's Facility, 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, reviewed his medical records, and performed a physical examination. Dr. Williams opined that Respondent was not substantially incapacitated from performance of 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 August 3, 2022. Respondent represented himself at the hearing. Respondent CDCR did not appear at the hearing. The ALJ found that the matter could proceed as a default against Respondent CDCR, pursuant to Government Code section 11520, subdivision (a).

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 the IME reports. Dr. Williams' medical opinion is Respondent had two successful surgeries that stabilized his wrist; and while Respondent's grip strength is reduced, it is within the normal range and does not prevent him from performing his job duties. Therefore, Dr. Williams' medical opinion is that Respondent is not substantially incapacitated from performing his Correctional Officer job duties.

Respondent testified about his job duties, his right wrist condition, and his limitations due to his condition. He testified that his right hand grip strength has improved since his IME with Dr. Williams. Respondent did not call any physicians or other medical professionals to testify, nor did he submit medical records to support his appeal.

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 had the burden of proof and that he failed to present competent medical evidence to establish that he is substantially incapacitated from performing his Correctional Officer job duties. The ALJ found Dr. Williams' competent medical opinion to be persuasive and not contradicted by any of Respondent's medical records. Consequently, the ALJ concluded that Respondent is not eligible for industrial disability retirement.

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

November 16, 2022

Helen L. Louie
Attorney