

**ATTACHMENT B**  
**STAFF'S ARGUMENT**

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

Respondent Patrick Ong (Respondent) was employed by respondent California Highway Patrol (CHP) as a State Traffic Officer (patrol officer). By virtue of his employment, Respondent became a state safety member of CalPERS. Respondent began working for the CHP in 1985. His last date of employment was May 14, 2011. He filed an Application for "Service Pending Industrial Disability Retirement" on June 21, 2011, and retired from service effective September 23, 2011.

In his disability retirement application, Respondent described his disabilities as "Lower back piriformis muscle syndrome, discogenic disc disease, lumbar spine, probable degenerative disc disease, lumbar thoracic spine pain, cumulatively through 4-20-2010." Respondent described his limitations as "prolong sitting or standing, fatigue", and that his injury affected his ability to perform his job in that he "cannot sit in patrol car for 12 hours, cannot wear gun belt, cannot sit at desk." Additionally, Respondent indicated that he had been "diagnosed with P.T.S.D. by Kay Williams, a CHP trauma specialist."

By letter dated April 24, 2012, the Benefit Services Division notified Respondent that based upon the medical reports it had received, it had determined that Respondent was not substantially incapacitated from performing his duties as a patrol officer with the CHP on the basis of "orthopedic (back and right hip) and psychological condition." CalPERS reviewed medical records prepared by Lawrence Palladino, M.D., William Griffin, M.D., Carl H. Shin, M.D., Ana Marta Salinas, M.D., Denise Mathre, D.C., Janak Mehtani, M.D., Independent Medical Examiner Joseph Serra, M.D. (IME Serra), Independent Medical Examiner Michael Barnett, M.D. (IME Barnett), and Charles Seaman, M.D. The letter also notified Respondent of his appeal rights. Respondent timely requested an administrative appeal and a hearing was held on November 4, 2013.

Prior to hearing, CalPERS explained the hearing process to Respondent and the need to support his case with witnesses and documents. CalPERS provided him with a copy of the administrative hearing process handbook and answered his questions.

At the hearing, Respondent did not offer any medical testimony. Rather, he testified on his own behalf. Respondent described a career and personal life of "pure stress" but also indicated that his work ethic was very thorough and that he was "one of the good ones." Respondent's work performance was not at issue in this OAH case.

IME Serra and IME Barnett testified at the hearing. IME Serra is a board-certified Orthopedic Surgeon and specializes in sports medicine. IME Barnett is licensed in California and board certified in Psychiatry and Neurology.

IME Serra testified that he evaluated Respondent, which included a review of the CHP job specifications and relevant medical records, a physical examination, and oral medical and work history. IME Serra's diagnosis included 1) Muscular ligamentous

strain of the lumbrosacral spine, chronic; and 2) Trochanteric bursitis right hip, mild, chronic. IME Serra further testified that strain to the low back can occur with certain activities such as sitting, lifting, and bending; however, ligamentous strain is a very common problem and not disabling. IME Serra determined that there are no specific job duties that Respondent is unable to perform because of a physical or mental condition. Respondent has some mild findings suggestive of early strain to his lower back, and mild symptoms of throchanteris bursitis right hip; but, on his physical examination he has excellent range of motion and no tenderness in lumbar spine, and only mild tenderness over greater trochanter right hip.

IME Barnett also testified that he examined Respondent, which included a review of the CHP patrol officer job specifications, including the physical requirements of the job, and psychological notes of K.M. Williams, M.A., Dr. Mehtani, and Charles Seaman, M.D. IME Barnett prepared two IME reports, the first dated February 10, 2012, and a supplemental report dated March 26, 2012.

In the first IME report, IME Barnett concluded that there were specific job duties and critical tasks that Respondent was unable to perform. Symptoms causing impairment include flashbacks, hypervigilance, lack of energy, poor concentration, tearfulness, an inability to trust people and an excessive amount of worry. However, after preparing the first IME report, IME Barnett was supplied with a report prepared by Dr. Seaman. Dr. Seaman evaluated Respondent 10 days prior to IME Barnett.

In the supplemental IME report, IME Barnett changed his opinion to agree with that of Dr. Seaman, finding that some of the information supplied by Respondent to Dr. Seaman conflicted and contradicted with the information he received from Respondent. IME Barnett stated that two symptoms that Respondent reported to him, poor concentration and low energy, were invalidated by information in Dr. Seaman's report. When Dr. Seaman evaluated Respondent, he reported that he was able to concentrate on things he was really interested in and he had energy to do things around the house and with his wife. IME Barnett stated that people with Post Traumatic Stress Disorder (PTSD) have one or two specific events that precipitated the symptoms. Other than cumulative job stress and finding a dog's ashes when going through his father's things, Respondent did not report any seminal traumatic event to either IME Barnett or Dr. Seaman, even though he was given the opportunity to do so.

The Administrative Law Judge (ALJ) determined that the professional opinions of IME Serra, IME Barnett and Dr. Seaman were persuasive and their respective findings were given great weight. The ALJ noted that prior to April 2011, Respondent suffered back sprain from repetitive activity. However, he was cleared to return to full duty by Dr. Shin as of April 1, 2011. The following month, Respondent was arrested for domestic violence and therefore, pursuant to peace officer standards, was unable to possess a firearm or perform the duties of a CHP officer. He never returned to work after his May 14, 2011, arrest. He filed the disability retirement application the following month in June 2011. Lastly, Respondent did not demonstrate sufficient evidence of a

substantially incapacitating condition that would interfere with the performance of his usual activities for CHP.

The ALJ noted that Respondent did not present competent medical evidence to establish that he is substantially incapacitated from performing the usual duties of a CHP patrol officer. The ALJ concluded that Respondent's appeal should be denied. The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision.

Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. The member may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

February 20, 2014

  
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CHRISTOPHER PHILLIPS  
Staff Attorney