

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

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

Respondent Archie Hinchon (Respondent) applied for Industrial Disability Retirement on June 21, 2012, based on a shoulder injury sustained in November 2010 while extracting an inmate from a cell. CalPERS determined that Respondent was not disabled from the performance of his duties as a Correctional Officer with Respondent Lancaster State Prison, California Department of Corrections and Rehabilitation (Respondent CDCR). Respondent appealed. A hearing was conducted on June 26, 2014. Respondent was represented by counsel during the hearing.

As part of CalPERS' review of Respondent's medical condition, Respondent was sent for an Independent Medical Examination (IME) to Orthopedic Surgeon Dr. Clive M. Segil. Dr. Segil interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed substantial medical records. Dr. Segil also performed a comprehensive IME examination, emphasizing Respondent's right shoulder. Dr. Segil's medical opinion is that Respondent is not substantially incapacitated to perform his duties as a Correctional Officer.

Based on his exam of Respondent's right shoulder, Dr. Segil found that Respondent was precluded from lifting 90 pounds above shoulder level. A Correctional Officer must be able to lift 100 pounds above shoulder level. When questioned about this restriction at the hearing, Dr. Segil changed his opinion and testified that Respondent had no restrictions. Dr. Segil's IME report had errors (left shoulder referenced instead of right shoulder; date of injury and various treatments incorrect). The Administrative Law Judge (ALJ) found that Dr. Segil was unwilling to acknowledge these errors, albeit minor, in his report and, in fact, became quite hostile when they were pointed out.

The ALJ gave substantial weight and credibility to the Respondent's Orthopedist's Report (who was not present at hearing). The ALJ found that the treating Orthopedist performed shoulder surgery and treated Respondent for more than a year. His medical opinion was in agreement with other medical providers, including Respondent's workers' compensation physician. Even CalPERS' IME agreed with the treating Orthopedist up to the time of providing testimony at hearing.

The ALJ was particularly troubled by Dr. Segil's changing opinions concerning Respondent's weight limitations for lifting. Dr. Segil initially stated that Respondent could not lift greater than 90 pounds above his shoulder. When he was asked about his restriction, Dr. Segil testified that he agreed with Respondent's Orthopedic Surgeon that Respondent could not lift, pull or push greater than 90 pounds. Dr. Segil testified that the "90 pounds above his shoulder" was his own restriction. On cross-examination, Dr. Segil then testified that there were no restrictions for Respondent. The ALJ found that these changing opinions, the last one during hearing and without convincing explanation or substantiation, do not justify any weight be given to Dr. Segil's other opinions.

Based on the totality of the evidence, the ALJ found that Dr. Segil's medical opinion was not persuasive.

The ALJ found that Respondent met his burden to show by a preponderance of the evidence (based on competent medical evidence) that he is substantially incapacitated. The ALJ concluded that Respondent cannot perform his usual job duties, and therefore, is entitled to receive Industrial Disability Retirement.

The ALJ concluded that Respondent's appeal should be granted. 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 Proposed Decision grants Respondent's appeal. Respondent is unlikely to file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

November 19, 2014

  
ELIZABETH YELLAND  
Senior Staff Attorney