

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

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Bryan O. Rankin (Respondent) was employed as a Correctional Officer (CO) by Respondent California Department of Corrections and Rehabilitation, California State Prison, Corcoran (CDCR). By virtue of his employment, Respondent was a State safety member of CalPERS. Respondent submitted an application to CalPERS on June 15, 2009, seeking Industrial Disability Retirement on the basis of claimed orthopedic (torn Achilles tendon) conditions. Respondent's application for Industrial Disability Retirement was approved and he was retired for disability effective April 1, 2010.

On March 18, 2013, CalPERS determined that Respondent was no longer disabled from the performance of his duties as a CO with CDCR, and that he should be reinstated. Respondent appealed and was represented by attorney Thomas J. Tusan throughout the appeal of this matter. The hearing took place on December 15, 2015. Closing briefs were submitted by CalPERS and Respondent on January 18, 2016.

As part of CalPERS' review of Respondent's medical condition, he was sent to Orthopedic Surgeon Dr. Joseph Serra for an Independent Medical Examination (IME). Dr. Serra interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed medical records. Dr. Serra also performed a comprehensive IME.

Following his examination and review of all of the documentation, Dr. Serra opined that Respondent is not substantially incapacitated. It was Dr. Serra's opinion that there were no objective findings to support Respondent's subjective complaints of pain. He found nothing unusual in his examination of Respondent, and concluded that there were no usual job duties the Respondent could not perform.

At the hearing, Dr. Serra testified to his examination and report. Dr. Serra's medical opinion is that Respondent is not substantially incapacitated to perform the usual duties of a CO. However, Dr. Serra testified that he did not consider the ability to run in an all-out effort while responding to alarms as a usual duty when reaching his conclusion. He did not consider this because it is his belief, based on his experience, that CO's do not actually have to perform this duty.

Respondent testified at the hearing. Respondent testified regarding his injury and the medical treatment that he received. In addition, Respondent testified that he did not believe he could do all of the essential functions required of a CO. Respondent did testify that he could run; however, he was not able to run at full speed.

In addition to testifying on his own behalf, Respondent also called Dr. Mohinder Nijjar, an orthopedic surgeon, to testify as to his medical condition. Dr. Nijjar initially examined Respondent as part of a CalPERS IME on July 1, 2010, and his was the medical opinion relied on when CalPERS approved Respondent's industrial disability application. Dr. Nijjar again examined Respondent on April 21, 2015.

Dr. Nijjar opined that Respondent remained substantially incapacitated and could not perform his usual duties as a CO. Dr. Nijjar's opinion was based on a reasonable medical probability that Respondent is unable to run the distance required for his job.

At the hearing, Dr. Nijjar testified as to his examinations and reports. Dr. Nijjar's medical opinion is that Respondent is substantially incapacitated and is unable to perform the usual duties of a CO.

The Administrative Law Judge (ALJ) found that CalPERS bears the burden to show by a preponderance of the evidence (based on competent medical evidence) that Respondent was no longer substantially incapacitated and should be involuntarily reinstated to his former position (Govt. Code §§ 21191, 21192). The ALJ found that CalPERS failed to meet its burden of proof, by a preponderance of the evidence, that Respondent is no longer substantially incapacitated for the performance of his usual and customary duties as a CO with CDCR.

The ALJ found that Dr. Nijjar's medical opinion was the only complete medical evaluation offered. The ALJ based this finding on the fact that Dr. Serra failed to consider "all-out running" as an essential function of a CO. Dr. Nijjar considered this function and the ALJ ultimately found Dr. Nijjar's opinion to be more persuasive.

Ultimately, the ALJ concluded that CalPERS did not present competent medical evidence to establish that Respondent is not currently physically incapacitated for the performance of his usual duties as a CO. Thus, the ALJ concluded that Respondent's appeal should be granted.

Pursuant to Government Code section 11517(c)(2)(C), the Board is authorized to "make technical or other minor changes in the Proposed Decision." In order to avoid ambiguity, staff recommends that the word "industrial" be inserted before the words "disability retirement" on pages one and ten of the Proposed Decision. Staff argues that the Board adopt the Proposed Decision.

Since the member's appeal was granted, it is not likely he will file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

April 20, 2016

A handwritten signature in blue ink, appearing to read "John L. Shipley", is written over a horizontal line.

JOHN L. SHIPLEY  
Senior Staff Attorney