

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

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

Respondent Richard Ayala (Respondent Ayala) was employed by the California Department of Corrections and Rehabilitation (Department) as a Correctional Officer. By virtue of his employment, Respondent Ayala was a safety member of CalPERS. On June 20, 2014, he filed an application for Disability Retirement, seeking service retirement pending Industrial Disability Retirement (IDR). On September 1, 2014, Respondent Ayala retired for service. Respondent Ayala claims a left shoulder injury (torn rotator cuff), and left wrist injury. CalPERS sent Respondent Ayala to an Orthopedic Surgeon for an Independent Medical Evaluation (IME) and reviewed Respondent Ayala's submitted medical records. CalPERS determined that Respondent Ayala was not permanently incapacitated from performance of the usual and customary duties of his position as a Correctional Officer. Respondent Ayala appealed that determination. A hearing was held on October 14, 2016, and November 29, 2016.

Prior to hearing, CalPERS explained the hearing process to Respondent Ayala and the need to support his case with witnesses and documents. CalPERS provided Respondent Ayala with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent Ayala's questions and clarified how to obtain further information on the process.

At the first day of hearing, Respondent Ayala appeared. During the opening session, after the Administrative Law Judge (ALJ) again informed Respondent Ayala of his rights at hearing, Respondent Ayala decided that he wanted to call his Workers' Compensation Medical Evaluator as a witness. Respondent Ayala then requested a continuance so that he could gather evidence and call a medical witness. The ALJ granted that continuance.

At the second day of hearing, Respondent Ayala stated that he was unable to contact the Workers' Compensation Medical Evaluator, so he was not calling the doctor as a witness after all. Respondent Ayala did offer several medical documents into evidence, and he also testified in his own behalf. CalPERS then submitted and the ALJ received into evidence multiple documents, including the Statement of Issues, explanations of Respondent Ayala's job duties and the physical requirements of his position, and the medical reports and testimony of CalPERS' IME Dr. Daniel D'Amico, M.D.

Dr. D'Amico, a board certified Orthopedic Surgeon, testified at the hearing about his examination of Respondent Ayala, his medical records review, and his own report about his evaluation of Respondent Ayala. Dr. D'Amico's testimony and report stated that, upon evaluation, Respondent Ayala had no job duties which he was unable to perform. The ALJ found Dr. D'Amico's opinion that Respondent Ayala is not substantially incapacitated from his usual job duties to be persuasive. The ALJ also determined that although Respondent Ayala may have been advised to avoid some activities, that advice was insufficient to establish a permanent incapacity. The ALJ further determined

that there was no evidence introduced or available which contradicted Dr. D'Amico's opinion.

After considering all of the documentary evidence and testimony of witnesses, the ALJ found that Respondent Ayala failed to establish the requisite permanent medical elements for an Industrial Disability Retirement. Accordingly, the ALJ found that the weight of the competent evidence supported the conclusion that Respondent Ayala's Disability Retirement application must be denied.

The ALJ concluded that Respondent Ayala'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 15, 2017

  
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CYNTHIA RODRIGUEZ  
Senior Attorney