

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Stephen B. Meadows (Respondent) applied for service pending industrial disability retirement based on an orthopedic (low back) condition on June 15, 2021, and has been receiving benefits since that time. By virtue of his employment as a Fire Captain for Respondent California Department of Forestry and Fire Protection (Respondent CalFIRE), 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) on July 30, 2021. Dr. Williams interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed his medical records. Dr. Williams opined that Respondent likely had significant instability due to his spinal injury, this, however, was successfully treated by the spinal fusion surgery. It did take a couple of years for the fusion to become solid, but he now has a solid fusion. Dr. Williams opined that Respondent did not currently have an impairment that amounted to a substantial incapacity to perform his job duties as a Fire Captain.

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 due to an orthopedic (low back) condition. On August 27, 2021, CalPERS notified Respondent of its determination.

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 September 1, 2022. Respondent represented himself at the hearing. Respondent CalFIRE did not appear at the hearing.

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 report. Dr. Williams' medical opinion is that Respondent has good range of motion in his cervical spine, and full motion in his lower extremities. Respondent did have significant instability due to his injury, but it was successfully surgically treated. He acknowledged that Respondent probably still experiences

occasional pain but does not believe the pain renders him substantially incapacitated. Therefore, Respondent is not substantially incapacitated from performing the usual and customary duties of his position as a Fire Captain.

Respondent testified on his own behalf that on February 18, 2020, he slipped and fell fracturing multiple ribs and injuring his lower back, and never returned to work. Respondent presented evidence that his usual job duties were more arduous than those described in the job descriptions. Respondent did not call any physicians or other medical professionals to testify. Respondent submitted medical records from his treating physicians 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 the evidence introduced by Respondent established that in addition to his supervisory duties, he was frequently required to engage in far more arduous activity than occasionally lifting 10 pounds, and that as a Fire Captain, Respondent must be able to perform physically demanding firefighting duties when covering a fire incident. However, the ALJ took into account Dr. Williams' opinion that Respondent can lift 50 pounds and may be able to lift up to 70 pounds. The ALJ noted that Respondent bears the burden of proof and relied heavily on the lifting restrictions placed on him by his primary treating physicians, but because they were a prophylactic measure, they fail to establish Respondent's physical capabilities. Ultimately, Respondent failed to introduce competent medical evidence that he was physically unable to perform the more arduous tasks of a Fire Captain. Based on this, 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

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