

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION, AS MODIFIED

Respondent Dayne R. Mueller (Respondent) applied for disability retirement based on psychological (anxiety, insomnia, depression) conditions. By virtue of his employment as a Maintenance Worker II for Respondent City of Oceanside (Respondent City), Respondent was a local miscellaneous member of CalPERS.

As part of CalPERS' review of Respondent's medical condition, Katalin Bassett M.D., a board-certified Psychiatrist, performed an Independent Medical Examination (IME). Dr. Bassett interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed his medical records. Dr. Bassett opined that Respondent's psychological condition was not disabling and his application for disability retirement was denied.

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 report, CalPERS determined that Respondent was not substantially incapacitated from performing the duties of his position.

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 October 18, 2021. Neither Respondent nor Respondent City appeared at the hearing despite having been notified of the hearing date and time, together with the Court's information regarding appearing by computer or telephone. Instead, on the day of the hearing, Respondent notified CalPERS that he was not going to participate. The ALJ took defaults as to both Respondents.

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. Bassett's IME report was admitted into evidence. Dr. Bassett's report summarized her examination of Respondent, who had complained of depression, anxiety, and sleep deprivation. Respondent's medical records documented his reported

difficulty sleeping. The records showed that Respondent had been previously diagnosed with generalized anxiety, insomnia, and ADHD.

Dr. Bassett administered several psychological tests on Respondent, which she believed Respondent completed haphazardly and without attention. Dr. Bassett did not believe Respondent put forth adequate effort because of his motivation to obtain a disability retirement. Although Respondent claimed severe sleep disturbance, he never had a sleep study done and there were no medical records to corroborate his claim of chronic sleep problems. Thus, Dr. Bassett could not take his claims at face value, especially considering his performance on the psychological tests, which Dr. Bassett believed were consistent with likely malingering. Moreover, Respondent appeared able to take care of activities of daily living including coaching his son's baseball team, performing maintenance for the five sober living facilities he and his wife own, and performing other construction projects.

Dr. Bassett did not believe that Respondent was substantially incapacitated. Instead, she concluded that Respondent was able to perform his usual and customary job duties.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that CalPERS presented competent medical opinion showing that Respondent was not substantially incapacitated. It was Respondent's burden to show that he could not perform his job duties, and he presented no such evidence. Accordingly, the ALJ concluded that Respondent is not eligible for disability retirement and denied the appeal.

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 "mean disability of permanent or extended and uncertain duration" in the quotation in paragraph 2 on page 5 be changed to "mean disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death."

For all the above reasons, staff argues that the Proposed Decision be adopted by the Board, as modified.

January 18, 2022

Charles H. Glauberman
Senior Attorney