

ATTACHMENT B

STAFF'S ARGUMENT

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

Michael J. Mendoza (Respondent) applied for Service Pending Industrial Disability Retirement (IDR) on November 9, 2020, based on cardiovascular (hypertension, coronary artery disease, and ischemia diastolic dysfunction) and orthopedic (bilateral shoulders, bilateral hands/wrists, and neck) conditions. By virtue of his employment as a Correctional Sergeant for Avenal State Prison, California Department of Corrections and Rehabilitation (Respondent CDCR), Respondent was a state safety member of CalPERS. Respondent retired for service effective November 3, 2020, and he has been receiving service retirement benefits since then.

As part of CalPERS' review of Respondent's cardiovascular conditions, two board-certified specialists were retained. Robert B. Weber, M.D., a board-certified Internist, performed a comprehensive Independent Medical Examination (IME). Scott Graham, M.D., a board-certified Orthopedic Surgeon, performed an orthopedic IME. Both physicians interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, reviewed his medical records, and performed a physical examination in their specialty. Both physicians agree that Respondent is not substantially incapacitated from performing his job duties.

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 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 both IME reports, CalPERS determined that Respondent was not substantially incapacitated from performing the duties of his position as a Correctional Sergeant for Respondent CDCR.

Respondent appealed this determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). Three days of hearing were held on September 6, 2022, October 14, 2022, and January 9, 2023. Respondent was represented by counsel at all days of the hearing. Respondent CDCR did not appear at the hearing, and the matter proceeded as a default against Respondent CDCR pursuant to Government Code section 11520.

Respondent testified regarding his job as a Correctional Sergeant and his claimed medical conditions. Respondent called Bikram Soni, M.D., who is board-certified in Cardiovascular Diseases, Interventional Cardiology and Nuclear Medicine; and James Schmitz, M.D., who is board-certified in Cardiovascular Disease and Internal Medicine, to testify on his behalf. Respondent also submitted a report from William N. Foxley, M.D. and Qualified Medical Evaluation (QME) reports of Dr. Schmitz and William J. Previte, D.O., to support his appeal.

Dr. Soni testified that Respondent's stress test results revealed that he could have blockages in his arteries. Dr. Soni opined that an angiogram would be necessary for a conclusive diagnosis of ischemia, but that Respondent declined the angiogram, stating he was asymptomatic.

Dr. Schmitz testified that Respondent did not meet the requirements to qualify as a peace officer because he did not pass a required stress test. Dr. Schmitz opined that law enforcement candidates with heart trouble are presumed to be unable to perform their duties in a manner that would not endanger their health or safety, or the health and safety of others. Dr. Schmitz did not review Respondent's specific job duties when forming his opinion. He further testified that without further testing, he has no opinion as to the expected duration of Respondent's impairment.

Dr. Weber testified at hearing in a manner consistent with his examination of Respondent and his IME report. Dr. Weber opined that Respondent's performance on the stress test indicates very good exercise tolerance for his age. Dr. Weber opined that there is insufficient evidence to conclude that Respondent has significant coronary artery disease and there is no clinical history of ischemic heart disease. Therefore, Dr. Weber's medical opinion is Respondent is not substantially incapacitated for performing his job duties.

Dr. Graham testified at hearing in a manner consistent with his examination of Respondent and his IME report. Dr. Graham opined that his review of Respondent's medical records showed that Respondent had an accident in 2017, which resulted in his orthopedic conditions, but Respondent continued to work without any restrictions whatsoever for the subsequent three years. Therefore, Dr. Graham's medical opinion is Respondent is not substantially incapacitated from performing his 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 Respondent had the burden of proof and failed to establish through competent medical evidence that he is substantially incapacitated from performing his job duties. The ALJ found that Dr. Weber's and Dr. Graham's findings and opinions were credible and more persuasive. The ALJ found that neither Dr. Soni's testimony, Dr. Schmitz's testimony nor the additional medical reports submitted constitute competent medical evidence related to Respondent's substantial incapacity under the CalPERS disability standard. The ALJ concluded that Respondent is not eligible for industrial disability retirement.

Pursuant to Government Code section 11517, subdivision (c)(2)(C), the Board is authorized to "make technical or other minor changes in the Proposed Decision." To avoid ambiguity, staff recommends changing "service pending disability retirement" to "service pending industrial disability retirement" in paragraph 1, under the Factual Findings section, on page 2 of the Proposed Decision; deleting "and uncertain" between the words "extended" and "duration" in paragraph 1, under the Legal Conclusions section, on Page 16 of the Proposed Decision; and changing "service pending disability retirement" to "industrial disability retirement" in the Order section, on Page 17 of the Proposed Decision.

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

March 15, 2023

Helen L. Louie
Attorney