ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Joe Martinez (Respondent) worked for the California Department of Corrections and Rehabilitation, Corcoran (CDCR) as a Medical Technical Assistant. Due to his employment, Respondent is a state safety member of CalPERS. He filed an application for industrial disability retirement claiming disability on the basis of an orthopedic condition related to a lower back injury he sustained while performing his duties as a Medical Technical Assistant. On his application, Respondent indicated that his lower back condition limited him from performing the physical duties of his position.

Staff reviewed medical reports regarding Respondent's orthopedic back condition and a written description of his usual and customary job duties. CalPERS retained Kenneth L. Baldwin, M.D., an Orthopedic Surgeon, to conduct an Independent Medical Examination. Dr. Baldwin examined Respondent and reviewed medical records and a written job description. Based on his examination and records review, Dr. Baldwin issued a report indicating that Respondent was not substantially incapacitated for performing the usual and customary duties of a Medical Technical Assistant. Specifically, Dr. Baldwin noted that there were no objective findings or substantiated diagnostic studies confirming the presence of acute or chronic conditions that would impair Respondent's ability to perform his normal work activities. Further, Dr. Baldwin found that, while Respondent's low back condition may have made performing certain tasks difficult by causing some pain or discomfort, there was no clinical evidence to suggest that he would be unable to perform the actual and present job duties of a Medical Technical Assistant. As a result, staff denied Respondent's application for industrial disability retirement. In response, Respondent submitted a timely appeal of staff's determination and a hearing was held to determine whether Respondent was substantially incapacitated from performance of his duties as a Medical Technical Assistant.

To be eligible for industrial 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 claimed basis for the disability must be permanent or of an extended and uncertain duration.

The medical evidence presented by Respondent in support of his industrial disability retirement application came from several workers' compensation physicians. In particular, Dr. Rudolph, who treated him for his workers' compensation injury, opined that Respondent was able to perform the following modified duties: occasionally lift/carry 50 pounds; occasional pulling/pushing 50 pounds; occasional bending and stooping; and unable to: climb ladders, crawl, shovel or dig; no running or jumping. Those modified duties are consistent with the physical duties of the Medical Technical Assistant, as described in the duty statement for Respondent's position. Additionally, the physical restrictions of no heavy lifting, repeated bending and stooping, which were imposed by workers' compensation agreed medical evaluator Dr. Newton, were also consistent with the duties performed by the Medical Technical Assistant.

At the hearing, Respondent was present and represented by counsel. He testified about his employment history with the CDCR, the job duties performed by the Medical Technical Assistant, and how his low back injury occurred. During his testimony, Respondent also discussed the treatment he received and the doctors that examined and treated him for his low back injury.

Based on the testimony presented at the hearing, the evidence submitted by the parties, as well as trial briefs filed, the Administrative Law Judge (ALJ) found that Respondent has not demonstrated through competent medical evidence that he is permanently incapacitated from performance of his duties as a Medical Technical Assistant for the CDCR. As the ALJ explained, the criteria for finding a person disabled in a workers' compensation case are different from the criteria in a CalPERS case. Accordingly, the ALJ found the information set forth in Respondent's workers' compensation medical reports do not show that Respondent qualifies for disability retirement under CalPERS' criteria. Thus, after considering all of the medical evidence, the ALJ determined the most persuasive opinion was that of Dr. Baldwin, who opined that Respondent is not substantially incapacitated from the actual duties of a Medical Technical Assistant. In support of this determination, the ALJ noted that, although the impairment suffered by Respondent may cause some pain or difficulty performing the Medical Technical Assistant duties, the impairment did not prevent him from performing those duties. Further supporting Respondent's ability to perform his duties as a Medical Technical Assistant was the fact that the restrictions imposed by Dr. Newton and Dr. Rudolph were compatible with the physical demands of the position. Consequently, the ALJ denied Respondent's application for industrial disability retirement.

The Proposed Decision is consistent with the law and the facts. For the reasons stated above, staff argues that the Board should 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 21, 2013

RENEE SALAZAR
Senior Staff Attorney