

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Steven J. Blancarte (Respondent Blancarte), employed as a City Manager for the City of Irwindale (City), filed an application for disability retirement on the basis of stress and a cardiovascular condition.

As City Manager, Respondent was the chief executive officer for the City. He reported directly to the City Council and appointed City department heads. He was responsible for implementing City Council directives, supervising support staff and for developing and administering the City budget. He also served as Executive Director of the City's Redevelopment Agency. Respondent described his position as being highly political and subject to extreme political pressures from residents and the business community. He said that he could also be fired at any time on a majority vote by the City Council.

One day, following a very competitive round of golf, Respondent experienced severe pain in his chest and abdomen. He was rushed to the hospital emergency room, where he was determined to have suffered a Type B aortic dissection, which is a tear in the wall of the aorta. He had also suffered an aortic aneurysm which means that there was swelling in the aortic wall. His treating physician placed him on medications designed to lower his blood pressure and cholesterol. He was hospitalized seven days, but thereafter returned to work. He worked full time for an additional four years.

During those next several years of work, Respondent's doctors continued to monitor his health closely. He was instructed to monitor his blood pressure at work and noticed that he would experience elevated blood pressure levels one to four times per day. At those times, he would become flush and could feel heaviness in his arms. His treating physicians at Kaiser Permanente observed that the aneurysm was increasing in size. His doctors informed him that his high blood pressure increased the pressure on his aortic wall and the likelihood of rupture of the aneurysm. Unfortunately, should he have a rupture, it would almost certainly result in death. He was advised to consider surgical intervention in 2005. He was told that the mortality rate associated with the recommended surgical intervention was 95 percent. This meant that he had only a five percent chance of surviving the procedure. For this reason, he was unwilling to have surgery. Instead, alarmed by the risks of the surgery, he told his doctor "I really need to retire." His doctor agreed that this "would be a good idea." Respondent then applied for disability retirement effective the following January in order to permit an orderly transition for his replacement.

In order to be eligible for disability retirement, an individual must demonstrate, through competent medical evidence, that he or she is substantially incapacitated from performing the usual and customary duties of his or her position. The injury or condition that is the basis for the claimed disability must be permanent or of an uncertain and extended duration.

CalPERS relied on the opinion of Independent Medical Evaluator (IME), Howard Staniloff, M.D., a board-certified Cardiologist, in denying Respondent's disability

retirement application. Dr. Staniloff examined Respondent and reviewed reports by Respondent's treating and evaluating physicians. He concluded that Respondent was not substantially incapacitated from the performance of his duties. Respondent appealed the denial and a hearing was held before an impartial Administrative Law Judge (ALJ).

Dr. Staniloff was present to testify at hearing to explain the reasons for his conclusion. He testified that he agreed that Respondent's condition was serious and that a rupture of the aorta could occur. He also conceded that should a rupture occur, Respondent would be more likely than not to die. However, he explained that, at the time that he examined Respondent, his blood pressure and cholesterol were well controlled and were not causing any symptoms. Dr. Staniloff agreed that stressors at work, should Respondent return to work, could very likely contribute to a return of his symptoms. However, Dr. Staniloff opined that, to take this issue into account in finding Respondent incapacitated, would amount to giving him a prophylactic restriction. He concluded that because there were not specific job duties that Respondent was unable to perform because of his condition, and because his medications were the major factor impacting his blood pressure, he could not find him substantially incapacitated from the performance of his duties as a City Manager.

Respondent was represented by an attorney at the hearing and presented the testimony of Jay N. Schapira, M.D. Dr. Schapira is also a board-certified Cardiologist. Although he did not treat Respondent, he reviewed reports by Respondent's treating and evaluating physicians and conducted a physical examination of Respondent, just as Dr. Staniloff had done. Dr. Schapira testified to the same findings as the treating physicians and other evaluators, including Dr. Staniloff. However, he explained that his opinion was that the need to prevent Respondent from elevated stress was more than a prophylactic measure. He testified that because emotional stress causes Respondent's blood pressure to increase and the increase in blood pressure bore a direct relationship to the stress on the aortic wall, returning to work would tend to make further dissection and rupture of the aorta a certainty for Respondent. Dr. Schapira emphasized that this was not a prospective issue, but a medical certainty because returning Respondent to work would hasten his death by putting him under stress that would translate to increased stress on his aorta.

The Administrative Law Judge (ALJ) found Dr. Schapira's testimony and analysis persuasive. He found that Dr. Schapira demonstrated that Respondent's medical condition was shown to be a current, substantially incapacitating condition that prevents him from performing the usual duties required of the City Manager. Accordingly, the ALJ granted the Respondent's appeal.

The Proposed Decision is supported by the law and the facts. Staff argues that the Board should adopt the Proposed Decision. Because the Proposed Decision applies the law to the salient facts of this case, and because the Respondent is unlikely to challenge a decision in his favor, there is no risk in adopting the Proposed Decision.

February 21, 2013



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