

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Jesus Escanuela was employed by the California Department of Corrections and Rehabilitation (Avenal State Prison) (CDCR) as a Correctional Officer. By virtue of his employment, Respondent was a state safety member of CalPERS. Respondent submitted an application for Industrial Disability Retirement (IDR) on the basis of claimed neurological (headaches), vascular (high blood pressure) and psychological (stress) conditions. CalPERS staff reviewed relevant medical reports regarding Respondent's condition and a written description of Respondent's usual and customary job duties. Respondent was evaluated by three Independent Medical Examiners (IMEs), all of whom prepared written reports in which they expressed their opinion that Respondent was not substantially incapacitated from performing the usual and customary duties of a Correctional Officer. CalPERS staff denied Respondent's application for IDR. Respondent appealed this determination and a hearing was held on January 10, 2013.

In order to be eligible to receive disability retirement benefits, competent medical evidence must demonstrate that the 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 and uncertain duration.

Respondent testified at the hearing, describing his duties as a Correctional Officer. Respondent admitted that the job of a Correctional Officer is inherently stressful. Respondent also admitted that, during his work as a Correctional Officer, he was not physically assaulted by any inmate, was never physically injured on the job, was not harassed or treated poorly by his coworkers or his supervisors. Respondent claimed that he simply got to the point where he felt "overwhelmed" at the thought of going to work at the prison.

Respondent did not call a physician or psychiatrist to testify on his behalf at the hearing. Respondent did offer into evidence copies of reports from three physicians who had examined and/or treated him for his claimed conditions.

Steven L. McIntire, M.D., is a board-certified Neurologist. Dr. McIntire testified regarding his examination of Respondent and review of medical records. Dr. McIntire found that Respondent's complaint of headaches was caused largely by Respondent's failure to take prescribed high blood pressure medication on a timely basis. Further, Respondent admitted that when he would experience a headache he would take ibuprofen, which would completely resolve the headache in at least 50 percent of the time. Dr. McIntire stated that Respondent's headaches were avoidable by correct compliance with the prescribed blood pressure medication and that "from a neurological

perspective, this is a benign headache disorder. It is also one that is treatable.” Dr. McIntire concluded that Respondent was not substantially incapacitated from performing the usual and customary duties of a Correctional Officer for CDCR.

Harcharn S. Chann, M.D. is board-certified in Internal Medicine and a Fellow of the American College of Cardiology. Dr. Chann testified regarding his examination of Respondent and review of medical reports. Respondent advised Dr. Chann that most of his difficulties were the result of his uncontrolled high blood pressure. According to Respondent, just the thought of going to work would make him feel anxious and this caused his blood pressure to increase. Dr. Chann noted that, in the past, Respondent was diagnosed with cardiac dysrhythmia, which was successfully treated with radiofrequency ablation. Dr. Chann testified that Respondent did not have any particular vascular or cardiac pathology. Regarding Respondent’s high blood pressure, Dr. Chann testified that it could be, and as the medical records demonstrated, has at times in the past, been successfully treated with a combination of medication, diet, exercise and weight loss. Dr. Chann testified that Respondent was not substantially incapacitated on the basis of a vascular or cardiac condition.

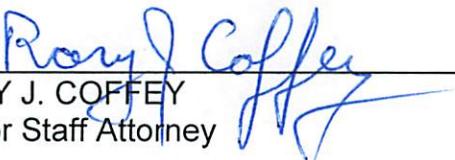
Thomas Callahan, M.D. is a board-certified Psychiatrist. Dr. Callahan testified regarding his evaluation of Respondent and review of medical and psychiatric reports. Dr. Callahan’s mental status examination of Respondent was unremarkable. Dr. Callahan did not find any evidence of an ongoing psychiatric disorder. Respondent admitted that, even though counseling had been recommended to him by physicians in order to address his claims of anxiety, he had never pursued any sort of psychological counseling. Accordingly, Dr. Callahan concluded that Respondent “has not approached anxiety as a psychological problem needing psychological attention.” Rather, Respondent presents with hypertension (which is treatable), but when not correctly controlled leads to headaches, which cause Respondent to feel increased anxiety. In Dr. Callahan’s opinion, this overall sense of anxiety – without a specific triggering event – tied to his physical condition, did not equate with Respondent being substantially incapacitated from performing the usual and customary duties of a Correctional Officer.

After considering all of the evidence and testimony, the Administrative Law Judge (ALJ) found that Respondent failed to present competent medical evidence in support of his claim that he was/is substantially incapacitated from performing the usual and customary duties of a Correctional Officer. The ALJ concluded that the only competent medical evidence was contained in the written reports and testimony of doctors McIntire, Chann and Callahan, all of whom expressed the opinion that Respondent was not substantially incapacitated.

The ALJ concluded that Respondent's appeal should be denied. The Proposed Decision is supported by the law and the facts. Staff argues that the Board 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.

March 20, 2013



RORY J. COFFEY
Senior Staff Attorney