ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Kerry Carter (Respondent) worked for the California Department of Corrections and Rehabilitation, Tehachapi (CDCR) as a Registered Nurse. Due to her employment, Respondent is a state safety member of CalPERS. She filed an application for Industrial Disability Retirement claiming disability on the basis of an internal/cardiologic condition related to her heart and hypertension, and a rheumatologic condition related to fibromyalgia, which manifested while performing her duties as a Registered Nurse. On her application, Respondent indicated that her cardiologic condition limited her from performing the physical duties of her position because they caused an increased heart rate, shortness of breath, palpitations and chest pain.

Staff reviewed medical reports regarding Respondent's internal/cardiologic and rheumatologic conditions, and a written description of her usual and customary job duties. CalPERS retained T. Anthony Don Michael, M.D., a Board Certified Cardiologist, and Mark Borigini, M.D., a Board Certified Rheumatologist, to conduct Independent Medical Examinations. After examining Respondent, Dr. Borigini noted that the examination was unremarkable in terms of soft tissue pain and she had minimal issues related to fibromyalgia. An opinion confirmed by Respondent via her statement to Dr. Borigini that her heart, not fibromyalgia, was the problem keeping her from performing her duties as a Registered Nurse. Therefore, Dr. Borigini determined that Respondent was not substantially incapacitated for the performance of her duties as a Registered Nurse, from a rheumatology point of view.

Dr. Don Michael examined Respondent and reviewed medical records and a written job description. Based on his examination and records review, Dr. Don Michael issued a report indicating that Respondent was not substantially incapacitated for performing the usual and customary duties of a Registered Nurse. Specifically, Dr. Don Michael opined that Respondent had undergone successful ablation of her tachycardia. Further, Dr. Don Michael found that Respondent's mitral valve prolapse may cause occasional chest pain and palpitations, but these symptoms were not incapacitating. As a result, staff denied Respondent's application for Industrial Disability Retirement. Respondent submitted a timely appeal of staff's determination and a hearing was held to determine whether Respondent was substantially incapacitated from performance of her duties as a Registered Nurse.

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.

At the hearing, Respondent testified about her employment with the CDCR, the job duties performed by a Registered Nurse in the correctional facility, and how her heart condition prevented her from performing her job duties. During her testimony, Respondent also discussed the treatment she received and the doctors who examined and treated her for her cardiologic condition. Part of the medical evidence presented by

Respondent in support of her Industrial Disability Retirement application came from Anil Kumar, M.D., and Electrophysiologist, Koonlawee Nademanee, M.D. Dr. Kumar performed extensive testing, which indicated that Respondent had mitral valve prolapse, chronic edema and exercise-induced tachyarrhythmia, along with supraventricular tachycardia coinciding with complaints of palpitations. Those indications led to a referral to Dr. Nademanee, who performed an ablation to treat Respondent's arrhythmia. Subsequent to treatment, her condition improved, however, after returning to work, Respondent began having palpitations and other cardiologic symptoms. The risks of a second ablation appeared to outweigh the benefits, therefore Respondent's physicians indicated that she could not perform the usual and customary duties of a Registered Nurse.

Dr. Don Michael also testified at the hearing. During his testimony, he changed the opinion outlined in his report, by stating that he could only comment on Respondent's current medical condition, but could not say whether she was substantially incapacitated for performance of her duties as a Registered Nurse.

Based on the testimony presented at the hearing and the evidence submitted by the parties, the Administrative Law Judge (ALJ) found that Respondent is permanently incapacitated from performance of her duties as a Registered Nurse for the CDCR. As the ALJ explained, the duties of a Registered Nurse in a correctional institution are more physically demanding than those of a nurse in an office setting. The ALJ found that Respondent suffered ongoing arrhythmias, tachycardia and chest pain while performing her duties at the correctional institution. Accordingly, pursuant to the medical evidence provided by Respondent's physicians, the ALJ determined that Respondent is substantially incapacitated from performing the usual duties of a Registered Nurse due to her cardiac condition. Consequently, the ALJ granted Respondent's appeal of the denial of her 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 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. Since the Proposed Decision grants the member's appeal, she likely will not seek to overturn a Decision of the Board adopting the Proposed Decision.

August 21, 2013

Renee S

RENEE SALAZAR
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