

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Richard Howard (Respondent) was employed by the Department of Mental Health, Atascadero State Hospital (ASH) as a Psychiatric Technician. By virtue of his employment, Respondent was a state safety member of CalPERS. Respondent submitted an application for industrial disability retirement on the basis of a claimed orthopedic (low back pain) condition. CalPERS staff reviewed medical reports and a written description of Respondent's usual and customary job duties. Brendan McAdams, M.D., a board-certified Orthopedic Surgeon, reviewed medical reports and a written job description and performed an Independent Medical Examination (IME) of Respondent. Dr. McAdams prepared a written report which contained his observations, findings and ultimate conclusions. Dr. McAdams offered his opinion that Respondent was not substantially incapacitated from performing the usual and customary duties of a Psychiatric Technician at ASH. CalPERS staff denied Respondent's application. Respondent appealed CalPERS determination and a hearing was held on September 12, 2013.

In order 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 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. He described his usual and customary duties as a Psychiatric Technician at ASH. Respondent did not call a physician witness to testify on his behalf. Respondent offered copies of various medical reports into evidence, which were received by the Administrative Law Judge (ALJ) as administrative hearsay evidence.

Dr. McAdams testified at the hearing. He described the clinical examination that he performed of Respondent. Dr. McAdams stated that, while Respondent did have evidence consistent with age appropriate degenerative disc disease in his lumbar spine, there were no objective signs of impairment or radiculopathy. Many of the physical findings were normal. Testing for sensory deficit did not result in complaints that would make sense anatomically. Dr. McAdams believed that Respondent attempted to voluntarily control some of his responses to clinical examination. Dr. McAdams testified that Respondent was not substantially incapacitated from performing his usual and customary duties as a Psychiatric Technician at ASH.

After considering all of the evidence and testimony, the ALJ found that Respondent did not produce sufficient competent medical evidence to demonstrate that he was substantially incapacitated. The ALJ found that the written report and testimony of Dr. McAdams demonstrated that Respondent was not disabled.

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.

November 20, 2013



RORY J. COFFEY
Senior Staff Attorney