

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Eugene L. Blanck, Jr. was employed as an Engineering Geologist by the Water Resources Control Board (Board). By virtue of his employment, Respondent was a state miscellaneous member of CalPERS. Respondent submitted an application for disability retirement, claiming multiple conditions; orthopedic (arthritis), internal (sleep apnea and high blood pressure or hypertension), otolaryngological (mucous membrane dysplasia) and psychological (stress, depression, anxiety). CalPERS staff reviewed relevant medical records and a written description of Respondent's usual and customary job duties. Respondent was evaluated by four physicians, each with an area of specialized practice. All four of the Independent Medical Examiners (IMEs) prepared written reports which contained their observations, findings and conclusions. All four IMEs offered opinions that Respondent was not substantially incapacitated from performing the usual and customary duties of his position as an Engineering Geologist for the Board. CalPERS staff denied Respondent's application for disability retirement. Respondent appealed this determination and a hearing was held on March 26 and 27, and September 9 and 10, 2013.

Prior to hearing, CalPERS explained the hearing process to Respondent and the need to support his case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process handbook. CalPERS answered Respondent's questions, and provided him with information on how to obtain further information on the process.

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 for the claimed disability must be permanent or of an extended and uncertain duration.

Respondent's work as an Engineering Geologist initially involved visiting, inspecting and overseeing the cleanup of hazardous waste sites. In 2002, in response to work restrictions recommended by a physician who had performed an annual medical examination/evaluation of Respondent, the Board modified Respondent's usual and customary job duties such that he no longer performed field work. Respondent's job duties were performed almost exclusively in an office setting, where he performed research, reviewed investigative reports, prepared his own analysis and reports and responded to communications from co-workers and management. As the Administrative Law Judge (ALJ) noted in Factual Finding No. 11, "...Respondent's position became a sedentary one, primarily requiring desk work."

Respondent testified that, beginning in 2002, he filed a claim for workers' compensation benefits. Respondent believed that, in response to his filing a workers' compensation claim and other claims such as work place discrimination and harassment (Department of Fair Employment and Housing), his supervisors and management at the Board began to treat him differently. Respondent testified that by 2006, he had become convinced that the Board had created a "hostile work environment" for him and, on the advice of

his then physician, Respondent left work and did not return. The issue of whether a claimed "hostile work environment" was or was not present and whether the Board discriminated against and/or harassed Respondent was not the subject of the appeal and was not considered or addressed by the ALJ.

Respondent called Patricia Schechter, D.O. to testify on his behalf at the hearing. Dr. Schechter is a family practitioner and testified that she has been treating Respondent with a course of varied antibiotics, which Respondent reports as relieving his complaints of joint pain. Dr. Schechter admitted that she was not familiar with the CalPERS standard for disability retirement, was not familiar with the usual and customary duties of Respondent's position as an Engineering Geologist with the Board, had not evaluated Respondent for purposes of determining whether he was or was not capable of performing the usual and customary duties of his position and did not offer an opinion regarding whether Respondent was substantially incapacitated from performing such duties.

Respondent called David E. Powles, M.D. to testify on his behalf at the hearing. Dr. Powles is a board-certified Psychiatrist. Dr. Powles first saw Respondent in August, 2006. Dr. Powles' records and his testimony demonstrated that when Respondent first came to him the reported complaints were stress or anxiety from work and claimed harassment from supervisors. Respondent did not report that he felt that he was psychologically disabled from performing his usual and customary duties. Dr. Powles admitted that his assessment of Respondent was that he did not have a serious psychological problem or condition.

Dr. Powles continued to treat Respondent. Dr. Powles wrote a letter to the Board in 2007 stating that, based upon Respondent's own belief or perception that his former work place (i.e., supervisors) presented a "hostile work environment", Respondent was precluded from returning to his position with the Board. Dr. Powles did not write or state that Respondent was in any way psychologically disabled from performing the usual and customary duties of his position with the Board. Further, Dr. Powles admitted that when Respondent filed his application for disability retirement, Respondent was fully capable of performing the work of an Engineering Geologist for another employer, such as the Department of Transportation.

At the hearing, Dr. Powles testified that his opinion is now that Respondent cannot return to work in any environment that Respondent perceives to be stressful. Dr. Powles agreed that Respondent is obsessed with his belief that all of his physical complaints are due to exposure to chemicals, even though there is no medical or scientific evidence to support such belief.

Asha P.S. Sidhu, M.D., is board-certified in Internal Medicine. Dr. Sidhu reviewed medical records regarding Respondent, reviewed a written job description and performed an Independent Medical Examination of Respondent. Dr. Sidhu testified that, while Respondent does have hypertension or high blood pressure, this condition was not and is not disabling. Respondent was diagnosed with the condition and properly treated before he left work, and before he filed his application for disability

retirement. In other words, Respondent successfully performed his usual and customary duties for years while having a diagnosis of hypertension.

Dr. Sidhu testified that hypertension is a multifactorial condition, meaning that it can be successfully treated with weight loss, changes in diet, exercise, as well as medication. In Respondent's case, weight loss has been and continues to be a recommended course of care, in addition to medication. Dr. Sidhu testified that Respondent was not substantially incapacitated from performing his usual and customary duties on the basis of any internal condition.

Donald Carter, M.D. is board-certified in Otolaryngology (ears, nose and throat).

Dr. Carter reviewed medical records regarding Respondent, reviewed a written job description and performed an Independent Medical Examination of Respondent.

Dr. Carter testified that, with respect to the claim that mucous membrane dysplasia was a disabling condition, nasal endoscopic examination showed only mild inflammation of the tissue and well-healed post-operative structures. In other words, Dr. Carter testified that Respondent had received the proper care, including reconstructive surgery, to his nasal passages and that, at present and into the future, nothing about Respondent's nasal passage was or could be disabling. Dr. Carter also testified that Respondent's sleep apnea had been diagnosed long before he left work or filed an application for disability retirement and that Respondent had been able to perform his usual and customary duties with such diagnosis with no documented problems or restrictions.

Dr. Carter noted (and Respondent admitted) that Respondent had properly been prescribed the use of a CPAP machine to address the sleep apnea condition.

Dr. Carter testified that Respondent was not substantially incapacitated from performing his usual and customary duties because of any otolaryngological condition.

Brendan McAdams, M.D. is board-certified in Orthopedic Medicine. Dr. McAdams

reviewed medical records, reviewed a written job description and performed an Independent Medical Examination of Respondent. Dr. McAdams testified that Respondent did have evidence of early degenerative changes in his right hip.

Respondent testified that, following his examination by Dr. McAdams, he had hip replacement surgery, which was successful. Dr. McAdams testified that, otherwise, his review of records and his examination of Respondent was unremarkable. Dr. McAdams testified that, from an orthopedic standpoint, Respondent was not substantially incapacitated from performing his usual and customary duties.

Thomas Callahan, M.D. is a board-certified Psychiatrist. Dr. Callahan reviewed medical and psychiatric records regarding Respondent, reviewed a written job description and performed an Independent Psychiatric Evaluation of Respondent. Dr. Callahan testified that Respondent did not have any psychologically disabling symptoms or conditions.

Dr. Callahan agreed that Respondent did present with an obsessive concern regarding multiple health issues. For that reason, Dr. Callahan felt that the most accurate and well supported diagnosis for Respondent was Obsessive-Compulsive Personality Disorder with Hypochondriacal Features. Dr. Callahan testified that Respondent was not substantially incapacitated from performing his usual and customary duties on the basis of any psychological condition.

After considering all of the documentary evidence and testimony from witnesses, the ALJ found that Respondent had failed to present credible medical or psychological evidence in support of his claim of being disabled.

"24. Respondent did not present credible medical evidence to establish that he is unable to perform his usual and customary duties by reason of internal or otolaryngological conditions. While he has been diagnosed with various internal medical conditions, including sleep apnea, hypertension, irritable bowel syndrome, and mucous membrane dysplasia, he presented no expert testimony that any of these conditions singularly or in combination prevented him from performing his duties. On the contrary, the credible medical evidence, in the form of Drs. Sindhu's [sic] and Carter's testimony and opinion, as partially corroborated by opinions and records of others who have examined Respondent over the years, established that Respondent is not disabled for the performance of his work duties.

25. With respect to orthopedic conditions, Respondent also failed to present credible medical evidence to support his claim of disability. While Respondent suffers from joint pain, which is being treated by Dr. Schechter, neither Dr. Schechter nor any other physician opined that Respondent was unable to work as an engineering geologist. Rather, Dr. McAdams examined Respondent, reviewed pertinent records, and concluded that Respondent was not disabled. Dr. McAdams's opinion is persuasive and is credited.

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27. The evidence is in conflict regarding Respondent's disability by reason of a psychological condition. However, Dr. Callahan's opinion is more persuasive and establishes that Respondent is not disabled for the performance of his duties. ...Dr. Powles was unable to satisfactorily explain why Respondent had been unable to work in the same allegedly hostile work environment for approximately four years before being excused by his doctors. Dr. Powles had not diagnosed Respondent with any major psychological condition in May 2006...Moreover, even Dr. Powles agreed that Respondent was able to work as an engineering geologist for two other employers after he stopped working at the Board. ...Accordingly, the competent medical evidence does not establish that Respondent is disabled for performance of his

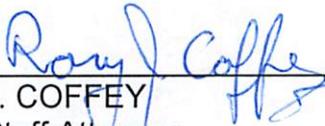
usual and customary duties by reason of a psychological condition.”

The ALJ concluded that Respondent had failed to present competent medical and/or psychological evidence in support of his claim of disability. The ALJ denied Respondent’s appeal.

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.

February 20, 2014



RORY J. COFFEY
Senior Staff Attorney